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**House of Representatives Standing Committee on
Employment and Workplace Relations**

**Inquiry into: Pay Equity and Associated Issues
Related to Increasing Female Participation in the
Workforce**

**Submission by the Department of Education,
Employment and Workplace Relations
September 2008**

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1. Introduction

1. The Department of Education, Employment and Workplace Relations (the Department) welcomes the opportunity to make a submission to the inquiry by the House of Representatives Standing Committee on Employment and Workplace Relations into pay equity and associated issues related to increasing female participation in the workforce. The Department's submission provides information to assist the Committee with its deliberations in regard to the gender wages gap, the treatment of pay equity in legislation (particularly under the federal *Workplace Relations Act 1996* – the WR Act) and other employment entitlements of relevance to women and their earnings capacity. In addition, information is provided on gender trends and relevant training and assistance programs of relevance to women's workforce participation. Finally, information is provided on pay equity initiatives in selected overseas countries.

Definitions

2. By way of introduction, it is useful to consider how the terms 'pay equity' and 'gender pay gap' are commonly understood. The WR Act uses the term 'equal remuneration' and relies on definitions in relevant international conventions.¹ International Labour Organisation Equal Remuneration Convention, 1951 (ILO Convention 100) defines equal remuneration, at Article 1, as follows:

Remuneration means the ordinary basic or minimum wage or salary and any additional emoluments whatever payable directly or indirectly, whether in cash or kind, by the employer to the worker and arising out of the worker's employment....the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

3. Under the New South Wales *Industrial Relations Act 1996* and the Queensland *Industrial Relations Act 1999* pay equity is defined as "equal remuneration for men and women doing work of equal or comparable value". The term 'gender pay gap' is generally understood as the difference in average earnings of women and men and pay equity is the process of narrowing the gap in remuneration between women and men.

¹ Equal Remuneration Convention, 1951 (Convention No.100) and the Equal Remuneration Recommendation, 1951 (Convention No.90).

2. Gender Pay Gaps

International evidence

4. According to the OECD the gender pay gap in Australia is commensurate with the average across OECD countries, and it has followed a similar trajectory over time. Chapter 3 of the 2008 OECD *Employment Outlook* provides a preliminary assessment of the effectiveness of anti-discrimination laws for OECD countries and discusses their labour market implications.² The OECD defines discrimination in the labour market as a situation in which persons who provide labour market services and who are equally productive are treated unequally because of their gender.

5. The main findings of the OECD's preliminary assessment were that across OECD countries, on average, women were paid 17 per cent less than their male counterparts and there was a substantial contraction of the gender pay gap between the 1960s and 1990s.³ This contraction was mostly due to changes in characteristics such as educational attainment and labour market experience. However, there was little evidence of further narrowing of the gender pay gap between 1994 and 2001. In addition, the OECD found that:

- (i) empirical evidence indicates that discrimination in the labour market contributes to the disparity;
- (ii) educational attainment and labour market experience typically explain only a small or even negligible portion of the gender pay gap;
- (iii) labour market segmentation by occupation, type of contract, industry, firms and establishments typically explain a far larger share of the gender pay gap. But even taking into account a fine disaggregation of occupations, industries and establishments, more than 50 per cent of the pay gap remains unexplained;
- (iv) even when using the broadest range of potential explanatory characteristics possible (such as education, experience, occupation, motivation, expectations, and field of study) one-fourth of the gender pay gap remains unexplained;
- (v) the unexplained share of the gender pay gap appears to have increased over time; and
- (vi) while labour market segmentation may explain some of the gender pay gap, it does not account for it entirely and there needs to be further analysis of the reasons for differences in remuneration across occupations, types of contract, industries and establishments.

² OECD 2008, *Employment Outlook 2008*, OECD, Paris; Chapter 3: "The Price of Prejudice: Labour Market Discrimination on the Grounds of Gender and Ethnicity".

³ Unweighted average based on the latest data for OECD countries over the period 1997-2006.

6. In terms of policies to address gender pay gaps, the OECD reported that:
- (i) pro-competitive product market deregulation, by limiting entry, survival and growth of discriminating firms, can reduce the extent of discrimination in the labour market - however, regulatory reforms are unlikely to eliminate all employers who operate discriminatory practices from the market and other policy interventions are necessary;
 - (ii) public awareness and incentives for victims to lodge complaints are crucial elements of an effective anti-discrimination policy strategy;
 - (iii) anti-discrimination legislation may reduce gender disparities in labour market outcomes, but the magnitude of these positive effects remains difficult to establish; and
 - (iv) the interaction of legislation with other policy instruments to promote equality and diversity, such as positive and affirmative action, deserves an in-depth analysis.

Australian evidence

7. The ABS publishes three surveys which enable the calculation of a gender pay gap. They are the quarterly *Average Weekly Earnings* (AWE)⁴, the annual *Employee Earnings, Benefits and Trade Union Membership* (EEBTUM)⁵ and the biennial *Employee Earnings and Hours* (EEH)⁶ surveys. AWE and EEH are surveys of employers while EEBTUM is a survey of employees.

8. There are two broad ways of examining the gender pay gap. The first is by using weekly earnings measures. The second is using hourly earnings measures. Hourly earnings measures provide a narrower gender pay gap than weekly measures because women tend to work fewer hours per week than men. Indeed, males employed full-time work about 10 per cent more total hours per week than full-time females.

9. Using total average weekly ordinary time earnings of full-time adults (exclusive of overtime payments), the gender pay gap stood at 16.2 per cent in May 2008 based on AWE, and 15.4 per cent in May 2006 based on EEH. Women do not receive overtime earnings to the same extent as men. When overtime payments are included in the average weekly total earnings, the gender pay gap estimates in the three surveys are higher at 19.5 per cent for AWE, 18.8 per cent for EEH and 19.9 per cent for EEBTUM. Refer to Table 2.1 below.

⁴ ABS, *Average Weekly Earnings* (Cat. No. 6302.0), May 2008.

⁵ ABS, *Employee Earnings and Hours* (Cat. No. 6306.0), May 2006

⁶ ABS, *Employee Earnings, Benefits and Trade Union Membership* (Cat. No. 6310.0), August 2007

Table 2.1: Average weekly gender pay gap (ABS data – ordinary time earnings)

	Males (\$)	Females (\$)	Persons (\$)	Earnings Gap (%)
ABS Average Weekly Earnings⁷				
<i>Full-time adult employees, May 2008</i>				
Average Weekly Ordinary Time Earnings	1 202.70	1 008.10	1 131.40	16.2
Average Weekly Total Earnings	1 274.40	1 025.50	1 182.60	19.5
ABS Employee, Earnings and Hours⁸				
<i>Full-time adult employees, May 2006</i>				
Average Weekly Ordinary Time Earnings	1 117.30	945.20	1 053.50	15.4
Average Weekly Total Earnings	1 184.60	961.80	1 102.00	18.8
ABS Employee, Earnings, Benefits and Trade Union Membership⁹				
<i>Full-time employees, August 2007</i>				
Average Weekly Total Earnings	1 212.00	971.00	1 126.00	19.9

Pay gap trends

10. The quarterly AWE survey is the most regular and timely source of data on the gender wage gap. When combined with data on hours worked from the ABS *Labour Force* survey, a quarterly time series of the gender pay gap on an hourly earnings basis can be calculated.

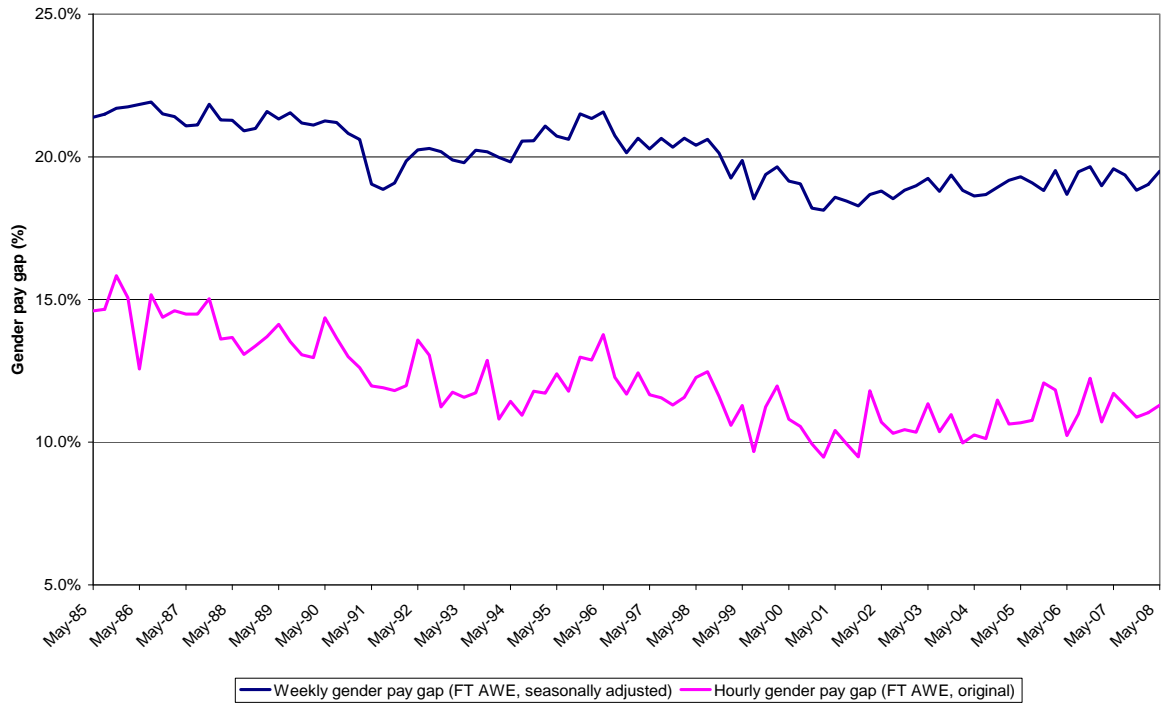
11. Chart 1 below shows the gender pay gap based on both weekly and hourly earnings data from November 1984 to June 2008. Whereas both measures followed similar trends, the gender pay gap estimate, based on weekly data, averages around 8 percentage points higher than that based on hourly data. The hourly gender pay gap declined steadily from around 15 per cent in 1985 to around 10 per cent in 2001, but has since trended up slightly to be around 11 per cent.

⁷ ABS Average Weekly Earnings (Cat. No.6302.0), table 2, seasonally adjusted. Excludes amounts salary sacrificed.

⁸ ABS Employee, Earnings and Hours (Cat. No.6306.0), table 6, original data. Includes amounts salary sacrificed

⁹ ABS Employee, Earnings, Benefits and Trade Union Membership (Cat. No.6310.0), table 4, original data. Includes amounts salary sacrificed.

Chart 2.1: Gender pay gap using AWE total earnings – weekly and hourly



Source: ABS *Average Weekly Earnings* (Cat. No.6302.0) and ABS *Labour Force, Australia, Detailed, Quarterly*, May 2008 (Cat. No.6291.0.55.003), original data.

State/territory

12. Using ABS EEH data, as Table 2 below shows, state/territory gender pay gaps vary from 4.2 per cent in Tasmania to 19.2 per cent in Western Australia. Most of the variation was due to variation in male hourly rates (which varied by \$5.50). Leaving aside the ACT, which has relatively high female earnings, female earnings varied by \$1.70. The relatively high gender pay gap in Western Australia is influenced by high male earnings. In Western Australia, the male average hourly rate was the highest of all and \$2.70 above the national average. The female rate was \$0.10 below the national average.

Table 2.2 : Gender pay gap (non-managerial adults) by state/territory - hourly ordinary time rates of pay (May 2006)

	<i>Hourly ordinary time adult rate of pay</i>		<i>Gender wage gap (%)</i>
	<i>Male (\$)</i>	<i>Female (\$)</i>	
NSW	27.30	24.40	10.6
VIC	26.10	23.50	10.0
QLD	25.40	22.70	10.6
SA	24.30	23.10	4.9
WA	29.20	23.60	19.2
TAS	23.70	22.70	4.2
NT	26.20	24.10	8.0
ACT	27.90	26.60	4.7
AUST	26.50	23.70	10.6

Source: ABS *Employee, Earnings and Hours* (Cat. No.6306.0), unpublished data.

Occupation

13. Using ABS EEH data, as Table 3 below shows, the occupation with the lowest gender pay gap was Professionals at 12.3 per cent and the highest was Technicians/trades workers at 20.2 per cent. These gender pay gaps by occupation are higher than the average gender pay gap of 10.6 per cent for all occupations because of gender segmentation in the labour market. For example, there is a low proportion of females and a high proportion of males in the relatively lower paid Machinery operator/driver and Labourer occupations. As such, the gender pay gap for all occupations is lower than it would be if males and females were evenly distributed among the occupations.

Table 2.3 : Gender pay gap (non-managerial adults) by occupation - hourly ordinary time rates of pay and proportions of employees (May 2006)

	Male		Female		Gender wage gap (%)
	(\$)	(%)	(\$)	(%)	
Managers	37.50	4	30.50	2	18.7
Professionals	36.70	18	32.20	24	12.3
Technicians and Trades	25.80	21	20.60	4	20.2
Community/Personal Service	24.60	8	20.40	17	17.1
Clerical/Administrative	25.90	11	21.80	30	15.8
Sales Workers	21.20	9	18.40	12	13.2
Machinery Operators/Drivers	23.10	14	19.10	2	17.3
Labourers	20.40	16	17.50	9	14.2
Total	26.50	100	23.70	100	10.6

Source: ABS *Employee, Earnings and Hours* (Cat. No.6306.0), unpublished data.

Industry

14. Using ABS EEH data, as Table 4 below shows, gender pay gaps by industry ranged from 1.1 per cent for Accommodation, cafes and restaurants to 24.7 per cent for Finance and insurance. Gender pay gaps were below the 'all industries' gap in only three industries. This indicates that there is also considerable labour market segmentation by industry, as there was by occupation. There is no clear relationship between the size of the gender pay gap within an industry and the proportion of employees who are women. Gender pay gaps are high in male dominated industries such as mining, construction and electricity, gas and water supply but are also high in the female dominated industries of finance and insurance and health and community services. Overall, however, gender pay gaps tend to be higher in industries where the proportion of females is smaller.

Table 2.4: Gender pay gaps for non-managerial adults by industry - hourly ordinary time rates of pay (May 2006)

	Industry proportion of total employment (%)	Hourly rate of pay		Gender Pay Gap (%)	Females as proportion of total employment ¹ (%)
		Male (\$)	Female (\$)		
Mining	1.5	38.50	29.90	22.3	15.2
Manufacturing	11.3	24.50	22.10	9.8	25.3
Electricity, Gas and Water Supply	1.0	33.30	27.00	18.9	20.8
Construction	7.0	26.00	21.00	19.2	12.6
Wholesale Trade	4.8	24.60	21.30	13.4	31.5
Retail Trade	15.4	19.90	17.70	11.1	53.3
Accommodation, Cafes & Restaurants	5.0	18.90	18.70	1.1	59.7
Transport and Storage	4.8	26.20	22.50	14.1	26.2
Communication Services	1.9	31.80	27.40	13.8	30.4
Finance and Insurance	4.2	33.60	25.30	24.7	53.2
Property and Business Services	11.6	28.10	23.10	17.8	46.4
Government Admin. & Defence	5.5	27.30	26.70	2.2	49.3
Education	7.9	33.00	29.40	10.9	69.6
Health and Community Services	11.8	31.00	24.90	19.7	79.3
Cultural and Recreational Services	2.7	25.50	22.20	12.9	52.7
Personal and Other Services	3.7	26.10	21.80	16.5	48.7
All Industries	100.0	26.50	23.70	10.6	47.1

Source: ABS Employee, Earnings and Hours (Cat. No.6306.0), unpublished data.

Union membership

15. ABS EEBTUM data for August 2007 show that 20.8 per cent of full-time employees and 14.3 per cent of part-time employees were union members. On average, a higher proportion of male full-time employees were union members (21.1 per cent) compared with female full-time employees (20.2 per cent). A higher proportion of female part-time employees were union members (17.7 per cent) compared with male part-time employees (10.4 per cent).

16. On average, the gender pay gap tends to be low for union members across state/territory, industry, occupations and employment types. ABS EEBTUM data for August 2007 show that the average weekly gender pay gap was low for union members. The gender pay gap for full-time union members stood at 12.9 per cent compared with 22.0 per cent for full-time non-union members. For part-time employees, the gender pay gap stood at 3.7 per cent for union members compared with 2.7 per cent for non-union members.

Pay-setting method

17. The average gender wage gap was greater in every type of individual agreement than it was in type of collective agreement. Table 5 below shows that gender wage gaps ranged from -2.1 per cent for award-reliant employees (revealing that females on awards earn more than males on awards) to 55.8 per cent for state registered individual agreements.¹⁰ The higher award-reliance of females contributes to the gender pay gap. Award-reliant employees earn less than employees on other industrial instruments and a higher proportion of females are award-reliant than males.

Table 2.5 : Gender wage gap for non-managerial adults by method of setting pay. Hourly ordinary time rates of pay, May 2006

	<i>Hourly ordinary time adult rate of pay</i>		<i>Gender wage gap (%)</i>
	<i>Male (\$)</i>	<i>Female (\$)</i>	
<i>Federal Agreements</i>			
Collective	28.00	25.00	10.7
Individual	26.60	23.60	11.3
<i>State Agreements</i>			
Collective	29.10	28.00	3.8
Individual	55.40	24.50	55.8
<i>Unregistered Agreements</i>			
Collective	23.40	21.10	9.8
Individual	27.30	23.20	15.0
Award Only	19.00	19.40	-2.1
Total	26.50	23.70	10.6

Source: ABS Employee, Earnings and Hours (Cat. No.6306.0), unpublished data.

Collective bargaining

18. Under s.844 of the WR Act, the Minister for Workplace Relations must report on developments in bargaining for workplace agreements every three years (up until 2010, after which reports are required every five years). Amongst other things, the Minister's report must include information on the effect agreement making has had on the wages and conditions of women. The most recent report on agreement making covered the period January 2004 to December 2006.¹¹

¹⁰ The very small proportion of employees on state registered individual agreements means this estimated gender wage gap is less reliable. These employees comprised 1.4 per cent in Western Australia, and less than 0.2 per cent of adult non-managerial employees in Australia.

¹¹ Department of Employment and Workplace Relations 2007, *Agreement making in Australia under the Workplace Relations Act 2004-2006*, Commonwealth of Australia.

19. The 2004-2006 report on agreement making found that the proportion of women covered by collective agreements within each industry matches the distribution of women within industries generally. Women represent more than 50 per cent of employees under collective agreements in the retail trade, finance and insurance and health and community services industries. Women represent fewer than 10 per cent of employees under collective agreements in the mining and construction industries.¹²

20. The 2004-2006 report on agreement making reports on wage outcomes in collective agreements in terms of average annualised wage increase per employee (AAWI).¹³ Table 2.6 below shows the AAWIs for women and men and for collective agreements covering different proportions of female employees. The AAWIs were similar for men and women in each year of the reporting period.

Table 2.6 : AAWIs : Collective agreements by gender, proportion of women 2000-2006

	AAWI per employee (%)				
	2002	2003	2004	2005	2006
Overall					
Female	3.7	4.1	4.0	4.2	3.8
Male	3.8	4.1	4.1	4.2	4.0
Share of women employees in CA					
<40 % women	4.0	4.1	4.1	4.1	4.1
40-60% women	3.5	4.0	4.1	4.4	4.0
>60% women	3.9	4.1	3.9	4.2	3.5

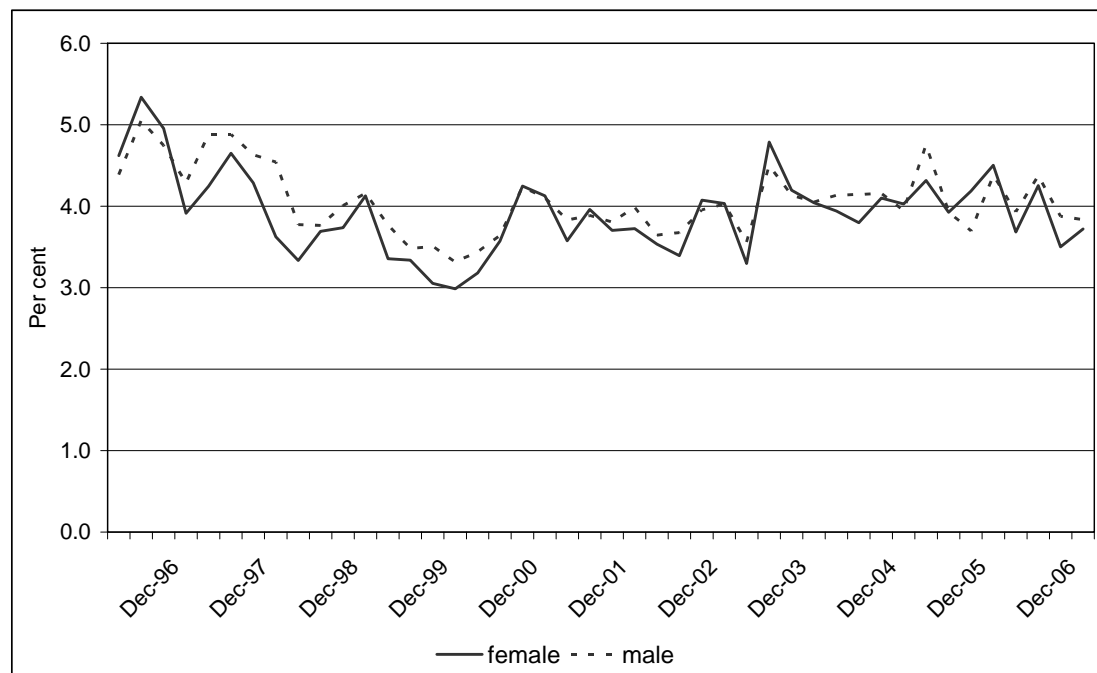
Source: DEWR, Workplace Agreements Database

21. Chart 2.2 below shows the AAWI for men and women for collective agreements certified or lodged between January 1996 and December 2006. The AAWI for women is slightly more volatile than that for men. The gender wage convergence that occurred in the late 1990s had continued, with little difference between the AAWI figure for men and women in the reporting period.

¹² Ibid, Table 2.1.9, p.32.

¹³ AAWI estimates are calculated for those collective agreements that paid quantifiable wage increases and estimates exclude increases paid in the form of conditional performance pay, one-off bonuses, profit sharing or share acquisition, because these data cannot readily be quantified or annualised. As a result, the AAWI may under-estimate average wage increases.

**Chart 2.2 : AAWIs : collective agreements certified/lodged in quarter by gender
1996-2006**



Source: DEWR, Workplace Agreements Database

3. Legislative Provisions

Workplace Relations Act 1996

Equal remuneration provisions

22. Equal remuneration provisions were first introduced into the federal workplace relations legislation in 1994 giving effect to obligations under various international conventions including ILO Convention 100 (ratified by Australia in 1974) and the United Nations Convention on Elimination of all Forms of Discrimination against Women (CEDAW) ratified by Australia in 1983. Prior to this, legal principles which underpinned the Federal industrial tribunal's wage fixing principles were established by two important test cases, the Equal Pay for Equal Work Case of 1969 and the Equal Pay for Work of Equal Value Case of 1972.

23. Equal remuneration provisions are primarily set out in Division 3 of Part 12 of the WR Act. Some changes to the legislation were made in 2006 by the *Workplace Relations Amendment (Work Choices) Act 2005* (the Work Choices Act), to reflect the transfer of the federal minimum wage-fixing function from the Australian Industrial Relations Commission (AIRC) to the Australian Fair Pay Commission (Fair Pay Commission).

24. In making wage-setting decisions, the Fair Pay Commission is required to apply the principle that women and men should receive equal remuneration for work of equal value (s.222(1)(a)).

25. The WR Act also provides the AIRC with certain complementary powers to ensure equal remuneration for work of equal value between men and women. These concepts have the same meaning as in ILO Convention 100. Subject to certain conditions, the AIRC may make such orders as it considers appropriate to ensure that, for employees covered by the orders, there will be equal remuneration for work of equal value (s.624(1)), including by increasing rates of remuneration other than those set by the Fair Pay Commission (s.624(2)).

26. As the AIRC is not responsible for minimum wage fixing under the current WR Act (except in relation to transitional awards), it is not empowered to deal with applications that, if granted, would have the effect of changing minimum wages determined by the Fair Pay Commission (s.622).

27. However, the AIRC may deal with equal remuneration issues associated with above-minimum wages, such as wages set by an agreement or contract of employment, subject to certain parameters (s.622), and other aspects of remuneration such as allowances and superannuation.

28. Any award or order of the AIRC or workplace agreement that is inconsistent with an order under the equal remuneration provisions does not have effect to the extent of the inconsistency (s.686).

29. The WR Act also includes provisions to promote the principle of equal remuneration through the decision making parameters that apply to the institutions governing the workplace relations system. As previously mentioned, the Fair Pay Commission in exercising any of its wage-setting powers must apply the principle that men and women should receive equal remuneration for work of equal value (s.222(1)). In addition, the AIRC must take into account the need to apply the principle of 'equal pay for work of equal value' (s.104(b)) in performing its functions and, in relation to award modernisation, must have regard to (among other things) the need to promote the principle of equal remuneration for work of equal value (s.576B(2)(e)).

Equal remuneration cases

30. There have been no applications for equal remuneration orders considered by the AIRC since the Work Choices Act, and sixteen applications prior to the Work Choices Act. No an equal remuneration orders were made in relation to these proceedings. The most significant cases brought were:

- (i) the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AFMEPKI) v HPM Industries (HPM case), which involved an application to bring the pay rates of female packers up to those of the predominately male general hands and store persons;¹⁴ and
- (ii) the Automotive, Food Metals, Engineering, Printing and Kindred Industries Union v David Syme & Co Ltd.¹⁵

31. Pay equity reports commissioned by the Victorian and Queensland governments and other studies by academics and workplace relations commentators have extensively reported on the legal and practical complexities of these cases.¹⁶

Forward with Fairness

32. The Australian Government policy plan for a new workplace relations system offers important new employment protections for women.¹⁷ The *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was the first piece of legislation brought before the Parliament in 2008. This legislation commenced the transition to a new workplace relations system to be fully operational by January 2010. In particular, the transition legislation amended the WR Act to prevent the making of new Australian Workplace Agreements, introduce a new no disadvantage test for workplace agreements and enable the AIRC to commence the process of modernising awards.

33. Legislation for the more substantial workplace relations reforms will be introduced into the Parliament late in 2008. This legislation will bring about a stronger safety net, comprising ten National Employment Standards (NES) and a system of modern awards. The NES were released in draft form for public comment in February 2008 and were the subject of extensive consultation and public submissions prior to the Government releasing them in finalised form in June 2008.

34. The NES provide for improved personal/carer's leave (no longer capped at 10 days per year and a guarantee, for the first time, that casual employees will have an entitlement to two days unpaid compassionate leave).

¹⁴ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries, AIRC, Dec 253/98 Print P9210 and continued hearing Print Q1002, and application withdrawn Print R 1338 (1999)

¹⁵ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v David Syme & Co Ltd, AIRC, Dec 555/99 M Print R5199

¹⁶ See: Queensland Industrial Relations Commission 2007, *Pay Equity Time to Act*, and URCOT (for Industrial Relations Victoria) 2005, *Pay Equity: How to Address the Gender Pay Gap*.

¹⁷ *Forward with Fairness – Labor's plan for fairer and more productive Australian workplaces*, April 2007.

35. The NES also provide improved parental leave entitlements enabling both parents to gain access to separate periods of up to 12 months' leave. Where parents prefer one parent to take a longer period of leave, that parent will have a right to request from their employer an additional 12 months of leave. A new right for parents to request flexible working arrangements, such as part-time work or flexible working hours, is also available until their child reaches school age. Employers can only refuse such a request on reasonable business grounds.

36. The previous Government's approach to agreement-making will be replaced by a flexible and fair system enabling employees and employers to bargain collectively for agreements delivering benefits to all parties. The new bargaining framework will not provide for statutory individual contracts. However, transitional arrangements have been put in place to give businesses and employees certainty during the transitional period. Collective agreements will be subject to a better off overall test to be conducted by a new independent body, Fair Work Australia.

37. Fair Work Australia will oversee the new system, operating as a 'one-stop-shop' for practical information, advice and assistance, to settle grievances and ensure compliance with the workplace laws. Presently the institutional arrangements are complex. Together with the AIRC, a number of other bodies have workplace relations roles such as the Fair Pay Commission, the Workplace Authority and the Workplace Ombudsman.

38. As part of the substantial workplace relations reforms, the Government is considering legislative provisions for equal remuneration. The substantial workplace relations reforms are being developed in consultation with key stakeholders including representatives from the Business Advisory Group, Workers' Advisory Group, National Workplace Relations Consultative Council and Workplace Relations Ministers' Council.

State/Territory laws

39. The WR Act generally excludes state/territory industrial laws that may otherwise cover an employee in the federal system. However, the WR Act preserves the operation of state/territory anti-discrimination laws (s.16(2)(a)). The AIRC cannot deal with an application for equal remuneration if it is satisfied that there is another adequate alternative remedy available that will ensure equal remuneration for work of equal value for the employees concerned (s.621(1)). For example, depending on the nature of the application, there may be an adequate alternative remedy available under anti-discrimination legislation.

40. State industrial relations legislation in Queensland, New South Wales, Western Australia and South Australia provide for industrial tribunals to consider equal remuneration for work of comparable value. A report into equal pay commissioned by the Queensland Government indicates that the Commonwealth legislation has never provided real opportunities to correct the undervaluing of feminised work or skills. This is in part because the AIRC's equal remuneration orders are limited to work of equal value and the Commonwealth legislation has never contemplated equal remuneration for work of comparable value.¹⁸

Sex Discrimination Act 1984

41. The *Sex Discrimination Act 1984* (Sex Discrimination Act) prohibits discrimination on the basis of sex, marital status, pregnancy or potential pregnancy in a range of areas of public life. These areas include work, accommodation, education, the provision of goods, facilities and services, the activities of clubs and the administration of Commonwealth laws and programs.

42. Anything done by a person in direct compliance with the following is not unlawful under the Sex Discrimination Act (s.40(1)):

- (i) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment;
- (ii) a decision of the Fair Pay Commission; or
- (iii) an 'industrial instrument' as defined under s.40(1)(g) of the Sex Discrimination Act.

43. However, a complaint in writing alleging that a person has done a discriminatory act under an industrial instrument may be lodged with the Human Rights and Equal Opportunity Commission (HREOC) under s.46PW(1) of the *Human Rights and Equal Opportunity Commission Act 1986* (HREOC Act). If it appears that the act is discriminatory, the President of HREOC must refer the industrial instrument to the AIRC (s.46PW(3) of the HREOC Act). For this purpose, an act is considered discriminatory if it would be unlawful under Part II of the Sex Discrimination Act, but for the exemption relating to industrial instruments.

¹⁸ *Pay Equity: Time to Act*, Queensland Industrial Relations Commission, September 2007, Section 3, p.49.

44. Upon referral of an award, the AIRC must convene a hearing to review the award (ss.554(2) and cl.30 of Sch.6 to the WR Act). If the AIRC considers that the award is a discriminatory award, it must take the necessary action to remove the discrimination by making an order varying the award (ss.554(4) and cl.30 of Sch.6 to the WR Act). For this purpose, an award is considered discriminatory if it requires a person to do any act that would be unlawful under Part II of the Sex Discrimination Act, except for the fact that the act would be done in direct compliance with the award (s.554(7) and cl.30 of Sch.6 to the WR Act).

45. Similar provisions apply in relation to a referral of a discriminatory preserved State agreement, notional agreement preserving State awards or collective agreement.

46. The Sex Discrimination Act has been referred to the Senate's Legal and Constitutional Affairs Committee for inquiry and report by 12 November 2008.

Equal Opportunity for Women in the Workplace Act 1999

47. A principal object of the *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act) is to promote equal opportunities for women in relation to employment matters (s.2A(b)). The EOWW Act requires private sector companies and other organisations (including community organisations, non-government schools, unions, group training companies, and higher education institutions) with 100 or more employees to establish a workplace program to remove the barriers to women entering and advancing in the organisation.

48. The functions of the Equal Opportunity for Women in the Workplace Agency (EOWA) are to advise and assist relevant employers in the development and implementation of equal opportunity for women work programs. This includes:

- (i) issuing guidelines to assist relevant employers improve equal opportunity outcomes for women in the workplace;
- (ii) monitoring and reviewing the lodging of reports by relevant employers;
- (iii) undertaking research, education programs and other programs for the purpose of promoting equal opportunity for women in the workplace; and
- (iv) reviewing the effectiveness of the EOWW Act and reporting to the Minister on such matters in relation to equal opportunity for women in the workplace as the Agency thinks fit.

49. As part of EOWA's role in educating and assisting firms with achieving equal opportunity for women, organisations can apply for Employer of Choice citations. Citations are given where, amongst other things, employers demonstrate a pay equity gap of less than the national average. EOWA recently reported that the average pay

gap in the 99 EOWA Employer of Choice for Women organisations in 2008 is 10%, 7% lower than the national average.¹⁹ EOWA calculates the national gender wage gap by industry on the average of the last 4 quarters of available ABS data for ordinary time earnings.

50. EOWA has developed an online Pay Equity Tool to assist employers audit and analyse pay distribution throughout their organisation, enabling them to identify any pay inequities. EOWA promotes the tool as a measure to assist in eliminating sex discrimination from the wage-setting system by ensuring that employers use gender-neutral and gender-inclusive criteria to determine the value of job components such as skill, responsibility, qualifications and working conditions.

Reports and surveys

51. The Committee may also be interested in the following reports and surveys when considering pay equity and women's workforce participation:

- (i) a research report by the National Foundation of Australian Women, the Women's Electoral Lobby and HREOC that assesses available data sources for women and employment and recommends proposals to address the data shortfall including annual reporting by government agencies responsible for agreement-lodgement, annual workplace relations surveys, monitoring of trade offs in bargaining and on-going comprehensive national program of case-study and interview-based research²⁰;
- (ii) surveys of eastern seaboard states undertaken by the Workplace Research Centre of the University of Sydney on behalf of the governments of NSW, Qld, and Victoria²¹ which provide data on working conditions, wages and entitlements, method of pay setting and management attitudes at the workplace level²²; and
- (iii) a 'benchmark' report also by the Workplace Research Centre based on a survey of over 8,000 labour market participants' perceptions of working life.²³

¹⁹ EOWA Media Release, 4 march 2008 at http://www.eowa.gov.au/Information_Centres/Media

²⁰ *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators (WESKI) database*, Curtin University of Technology, September 2006

²¹ Considine, G & Buchanan, J, 2007, *Workplace Industrial Relations on the Eve of Work Choices: A report on a survey of employers in Queensland, NSW and Victoria*, Workplace Research Centre, University of Sydney; and Evesson, J, Buchanan, J, Bambrery, L, Frino, B & Oliver, D, 2007, *Lowering of Standards Report, From Awards to Work Choices in Retail and Hospitality Collective Agreements* Workplace Research Centre, University of Sydney.

²² The survey had some similarities with the 1995 Australian Workplace Industrial Relations Survey – refer to the report by Morehead, A, Steele, M, Alexander, M, Stephen, K and Duffin L, *Changes at Work: the 1995 Australian Workplace Industrial Relations Survey*, Longman, 1997.

²³ van Wanrooy, B, Oxenbridge, S, Buchanan, J & Jakubauskas, M, *Australia @ Work: The Benchmark Report*, Workplace Research Centre, University of Sydney.

4. Workforce Participation

Participation rates

52. The structure of the Australian economy and labour market has changed dramatically since the 1970s. A striking feature is the greater participation of women in the workforce. The seasonally adjusted labour force participation rate for women rose substantially, from 43.7 per cent in July 1978 to 58.4 per cent in July 2008, close to a record high. Workforce participation and labour market statistics for women are shown in Tables 4.1 to 4.4 and discussed further below.

Table 4.1: Participation rate (%), women by age cohort, June 1978-June 2008

	1978	1988	1998	2008	Change over decade (% pts)	Change over 30 years (% pts)
15+	43.5	49.6	54.1	58.2	4.2	14.8
15-24*	63.7	67.5	67.6	69.9	2.3	6.2
25-34	50.6	62.9	69.8	74.2	4.5	23.6
35-44	56.7	68.1	70.7	74.9	4.2	18.3
45-64	35.5	41.1	54.9	65.3	10.3	29.8
65+	2.9	2.4	3.1	5.2	2.1	2.8

ABS Labour Force, Australia, detailed (Cat. No. 6291.0.55.001) original data.

*Data for 15-24 year olds are 12-month averages of original estimates. Accordingly, earliest available data are for January 1979.

Table 4.2: Key labour market statistics, women by age cohort, June 2008

Age cohort	Participation rate (%)	Employment rate (%)	Total Employment ('000)	Full-time employment ('000)	Part-time employment ('000)	% of employment which is part-time
15+	58.2	66.8*	4831.7	2634.0	2197.8	45.5
15-24**	69.9	63.6	906.5	430.3	476.3	52.5
25-34	74.2	70.9	1024.3	676.6	347.7	33.9
35-44	74.9	71.8	1108.8	579.0	529.8	47.8
45-64	65.3	63.6	1708.9	932.7	776.2	45.4
65+	5.2	5.2	81.1	22.8	58.2	71.8

ABS Labour Force, Australia, detailed (Cat. No.6291.0.55.001) original data.

* Note that the employment rate here is for women aged 15-64 years, rather than for all women aged 15 and over.

**Data for 15-24 year olds are 12-month averages of original estimates.

Table 4.3: Participation rates for mothers by age of youngest child, June 1994-June 2008

	Aged up to 4 years (%)	Aged 5 to 9 years (%)	Aged 10 to 14 years (%)	Aged up to 14 years (%)
1994	46.1	64.9	70.5	57.1
1995	49.3	69.7	73.7	60.9
1996	47.4	67.5	73.0	59.2
1997	47.8	68.5	70.3	58.9
1998	48.2	66.4	72.9	59.5
1999	47.1	68.1	71.1	59.3
2000	49.1	68.9	74.0	60.9
2001	49.7	68.0	74.5	61.3
2002	49.1	67.6	74.4	61.1
2003	49.9	70.5	73.9	62.0
2004	47.5	69.1	74.7	60.6
2005	51.3	72.0	77.6	64.1
2006	52.4	72.9	77.3	64.8
2007	51.2	73.3	78.6	64.6
2008	53.0	75.3	80.8	66.3

ABS Labour Force, Australia: Labour Force Status and Other Characteristics of Families – June 2008 (Cat No.6224.0.55.001), original data.

Table 4.4: Participation rates for lone mothers by age of youngest child, June 1994-June 2008

	Aged up to 4 years (%)	Aged 5 to 9 years (%)	Aged 10 to 14 years (%)	Aged up to 14 years (%)
1994	31.1	55.8	62.9	47.8
1995	34.2	62.1	60.9	49.7
1996	35.7	56.2	60.3	48.7
1997	38.6	54.3	61.3	49.4
1998	34.7	56.7	64.6	50.1
1999	35.5	62.2	62.6	52.0
2000	36.9	60.6	67.4	53.5
2001	38.6	58.0	67.3	53.4
2002	39.3	57.5	64.8	53.1
2003	37.7	64.3	66.0	54.6
2004	32.3	61.4	66.9	52.3
2005	37.4	68.2	65.0	55.9
2006	43.6	65.4	72.6	59.7
2007	39.7	68.8	75.1	61.3
2008	39.9	74.3	78.7	63.6

ABS Labour Force, Australia: Labour Force Status and Other Characteristics of Families – June 2008 (Cat No.6224.0.55.001), original data.

53. The increase in women's labour force participation over recent decades has been due to a range of factors, including changing social attitudes to women working and perceived gender roles, reduced fertility rates and women choosing to have children later in life, greater access to childcare, an increasing acceptance of women with children remaining in the labour force and the emergence of more part-time employment opportunities. The latter has also been assisted by the strong growth over recent decades in many industries, particularly those which are service-based, that have traditionally employed a high proportion of women, as well as an increase in female participation in further education.

54. The proportion of women aged 15-64 who had a bachelor degree, or higher, has risen from 13.5 per cent in May 1997 to nearly 22 per cent in May 2007 (latest available data) and over the last 10 years, employment in service-based industries, such as Retail trade (up by 303 700 or 24.3 per cent) and Health and community services (up by 297 700 or 36.4 per cent), has increased strongly.

Full-time and part-time work

55. Reflecting the significant increase in women's participation, the seasonally adjusted employment rate²⁴ for women aged 15-64 years has also risen considerably over the last three decades, up from 46.7 per cent in July 1978 to 66.7 per cent in July 2008. Importantly, women have recorded sizeable increases in both full-time and part-time employment over this period. For instance, full-time employment for women has risen by 1 266 000 (or 88.6 per cent) since July 1978, while the level of part-time employment has increased by a robust 1 413 600 (or 193.7 per cent) over the same period.

56. Part-time employment, which currently comprises 44.3 per cent of total female employment, is particularly important to many women, as it gives them the flexibility to balance work with family responsibilities, study and other commitments. Indeed, most women working part-time do not want a full-time job. Latest available ABS data showed that nearly 80 per cent of women working part-time preferred not to work more hours, while just 4.5 per cent were actively seeking and available to start full-time work in May 2008 (latest available data).

²⁴ The employment rate measures the proportion of the working age (15-64) population who are employed.

Age cohorts

57. Significantly, participation rates for women in all age cohorts have increased over recent decades (refer Table 4.1). However, it is important to note that participation rates and the incidence of part-time employment for women vary considerably by age cohort.²⁵ For instance, in June 2008, the participation rate for women aged 15-19 years stood at 60.6 per cent, while their incidence of part-time time employment was 75.8 per cent. This is not surprising, given that the majority of women in this cohort participate in full-time education, a significant proportion of who combine their study with part-time work.

58. On the other hand, women aged 20-24 years have a significantly higher participation rate (of 78.9 per cent), while a smaller proportion of employed women in this cohort work part-time (36.6 per cent). This reflects the fact that a number of women complete their education and enter full-time employment while still in this cohort.

59. The participation rates for women aged 30-34 years and 35-39 years are considerably lower than those of their younger counterparts, reflecting the increased tendency for women to have children while in these child bearing age cohorts.

60. To illustrate, the participation rates for women aged 30-34 years and 35-39 years stood at 71.8 per cent and 71.6 per cent respectively in June 2008. Further, a considerable proportion of employed women in these cohorts work part-time (41.4 per cent and 48.5 per cent respectively) as they balance work and caring responsibilities. In this regard, it is worth noting that the participation rates for mothers in the labour force have also risen considerably over recent decades. The participation rate for all mothers in families with dependent children (aged 0-14 years) has increased significantly, from 57.1 per cent in June 1994 (earliest available comparable data) to 66.3 per cent in June 2008 (latest available data). Refer to Table 4.3.

Dependent children

61. While the participation rate for mothers in families with dependent children remains below the participation rate for all women aged 15-64 (69.9 per cent in June 2008), the participation rate for mothers increases significantly with the age of the youngest child in their family.

²⁵ The incidence of part-time employment refers to the proportion of total employment which is part-time.

62. In June 2008, the participation rate for mothers whose youngest child was aged 0-4 years stood at 53.0 per cent (up from 46.1 per cent in June 1994). Mothers whose youngest child was aged 5-9 years had a much higher participation rate, of 75.3 per cent (up from 64.9 per cent in June 1994). In addition, mothers whose youngest child was aged 10-14 years had a participation rate of 80.8 per cent (up from 70.5 per cent in June 1994).

Lone mothers

63. Lone mothers have also recorded substantial improvements in their participation rate, up from 47.8 per cent in June 1994 to currently stand at 63.6 per cent in June 2008. As is the case for all mothers, the participation rate of lone mothers increases considerably with the age of their youngest child. For example the participation rate for lone mothers whose youngest child was aged 0-4 years stood at 39.9 per cent in June 2008 (up from 31.1 per cent in June 1994). Lone mothers whose youngest child was aged 5-9 years had a participation rate of 74.3 per cent (up from 55.8 per cent in June 1994). In addition; lone mothers whose youngest child was aged 10-14 years recorded a participation rate of 78.7 per cent (up from 62.9 per cent in June 1994). Refer to Table 4.4.

Participation gaps

64. Research by the Productivity Commission (PC) has shown that while Australia's overall workforce participation rate ranks fifth among 30 countries of the Organisation for Economic Cooperation and Development (OECD) countries, there are three labour market segments which lag significantly behind in participation rates, including women of childbearing age (25 to 44 years), prime aged males (25 to 54 years) and older men and women (55 to 64 years)²⁶.

65. Workforce participation rates of Australian women of child bearing age were ranked 20 out of 30 OECD countries. The PC report indicates that to close Australia's participation gap relative to the highest performing comparable OECD country for this labour market segment, participation rates for child-bearing aged women should increase by 7.1 percentage points, expanding the total workforce by around 209,000.

66. A new inquiry by the PC into improved support for parents of newborn children includes a reference to identify the scope for improving the participation rate of women of child-bearing age.²⁷

²⁶ Abhayaratna, J & Lattimore, R 2006, *Workforce Participation Rates - How Does Australia Compare?*, Productivity Commission, Canberra, at <http://www.pc.gov.au>

²⁷ Inquiry into Paid Maternity, Paternity and Parental Leave, at www.pc.gov.au

Job search assistance

67. The Department administers a number of programs which assist women when entering the workforce or returning to work after a period of absence.

Job Network

68. Job Network providers are contracted by the Australian Government to provide services to job seekers and to provide tailored assistance where appropriate, within the limits of guidelines. The range of employment service made available to job seekers is subject to specific eligibility criteria. Levels and intensity of servicing are based on the individual's length of unemployment and risk factors.

69. Principal carers in receipt of Parenting Payment Single, Parenting Payment Partnered, NewStart Allowance, Youth Allowance (other), or Special Benefit are fully eligible for Job Network services. Providers are encouraged to schedule activities for parents during school hours and outside school holidays.

Employment preparation

70. Employment Preparation is a Job Network program designed to assist parents, carers, and people aged 50 and over, to return to the workforce. The objective of the program is to assist Fully Job Network Eligible (FJNE) job seekers to find paid employment. FJNE job seekers are those who are identified by Centrelink or another relevant organisation, as eligible for the full range of Job Network services. A woman (who is a parent, a carer or aged 50 and over and is FJNE) may be eligible to participate in the Employment Preparation program..

71. Job Network members provide participants with a suitable and flexible mix of services, support and training to meet their individual needs and personal circumstances. They must also be responsive to the particular barriers and issues that each individual participant faces when returning to the workforce. In addition to this program for FJNE jobseekers, there are 5 000 Employment Preparation capped places available across Australia per year, for eligible mature age, parents and carers who are not FJNE.

Productivity Places Program

72. The Productivity Places Program is part of the Government's Skilling Australia for the Future initiative which is designed to address chronic skills shortages, increase workforce participation, and drive productivity growth. The Government has allocated funds for 630,000 new training places over five years to ensure that Australians develop the skills that industry needs. Of these, 238,000 training places will be allocated for job seekers. A further 392,000 places, will provide improved qualifications and skills for people who are employed but need to update or upgrade their skills.

73. Under Phase 1 of the program (from 1 April 2008 – 30 June 2008), 20,000 places were made available for job seekers at the Certificate II and Certificate III levels. The second Phase, which commenced from 1 July 2008 to 31 December 2008, continues to address skills shortages by providing 22,000 industry focussed training places for job seekers. Training qualifications under Phase II of the program also include training at Certificate IV and Diploma level.

74. As at 8 August 2008, there were 33,500 participants enrolled in the program. Of these, 20,800 (62 per cent) were women. The most popular qualifications were Certificate III in Children's Services, Certificate III in Aged Care Work, Certificate II in Retail Operations, Certificate II in Financial Services and Certificate II in Retail.

5. International initiatives

75. Several overseas countries have enacted stand alone equal pay legislation and have specific programs in place requiring public sector agencies to undertake pay equity audits (for example, New Zealand and the United Kingdom). A summary of government approaches to equal pay in New Zealand, the United Kingdom and Canada follows.

New Zealand

76. In New Zealand pay equity is addressed through both employment relations and human rights legislation. The *Employment Relations Act 2004* includes personal grievance provisions on discrimination that mirror the provisions of the *Human Rights Act 1993*. Discrimination is defined in section 22(1) of the Act as being when an employer:

*...refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees with the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; because of the employee's: sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, or sexual orientation.*²⁸

77. Stand alone legislation in the form of the *Equal Pay Act 1972* provides for equal pay for women and men doing substantially similar work and covers all employees. This legislation, enacted to give effect to New Zealand's international obligations, addresses pay inequity between male and female employees performing substantially similar jobs. However, there is currently no policy which requires 'equal pay for work of equal value', an obligation imposed by the ILO Equal Remuneration Convention which New Zealand ratified in 1983.²⁹

78. In 2003, in order to address this shortfall, the New Zealand Government set up a Taskforce to advise how the factors that contribute to the gender pay gap apply in particular parts of the New Zealand Public Service and in the public health and public education sectors. The Taskforce was also required to advise on a five-year plan of action for achieving pay and employment equity, based on the findings from the study of the public sector.³⁰

79. In response to recommendations in the Taskforce report, the New Zealand Government established the Pay and Employment Equity Unit in 2004 to implement and monitor the Pay and Employment Equity Plan of Action. This Plan allows for the development of a review process to be undertaken in three stages. In phase one, the Plan of Action covers Public Service, public health and public education. Reviews of pay and employment equity and response plans to issues identified are required to be undertaken in 38 Public Service departments, over the three year period from 2005/06, and in the public health sector and the public education sector.

²⁸ Human Rights Act 1993 (NZ)

²⁹ International Labour Organisation 2008, Report of the Committee of Experts on the Application of Conventions and Recommendations, Geneva.

³⁰ Ministry of Women's Affairs 2002, *Next Steps towards pay Equity: a discussion document*, Wellington, New Zealand.

80. Public Service reviews commenced first in the 38 Public Service Departments, which have around 40 000 employees in total.³¹ The review will then continue to cover a wider portion of women in the public sector, with results expected, eventually, to influence private sector businesses.

81. In addition to administering the plan of action, the Pay and Employment Equity Unit also provides capacity building support tools which are intended to provide 'know-how' to non-expert participants seeking to implement equitable employment practices. Tools and resources such as fact sheets, handbooks and leaflets as well as support in the form of training and education courses have been developed by the Unit. In addition, the Unit administers a contestable fund that is available to Public Service, public education and public health employers and unions to undertake specific projects to support pay and employment equity, to undertake pay and employment equity reviews and to provide ongoing training and support.

82. In 2008 the ILO Committee of Experts on the Application of Conventions and Recommendations urged the New Zealand Government to consider amending its equal pay legislation at the earliest opportunity, so as to provide not only for equal remuneration for equal, the same or similar work, but also to prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.³²

United Kingdom

83. The United Kingdom has two pieces of legislation that relate to equal remuneration; the *Equal Pay Act 1979*, dedicated to the objective of pay equity and the *Sex Discrimination Act 1975*. The purpose of the Equal Pay Act is to eliminate discrimination between men and women in the same employment in pay and other terms and conditions of employment such as piecework, bonus payment, redundancy payment and employer's superannuation contributions.

84. The Equal Pay Act provides for equal pay between women and men in the same employment by giving a woman the right to equality in the terms of her contract of employment where she is employed for the same or broadly similar work, for work related as equivalent to a man's under the same job evaluation scheme or work of equal value.

³¹ Hall, P. 2007, *New Zealand's Pay and Employment Equity Story – Building Capacity, Working Together to Make Gender Equity Ordinary, and Transforming Workplaces*. Paper presented at the Gender, Work and Organisation Conference, Keele University, Staffordshire, England, 27th – 29th June 2007. Accessed at <http://www.dol.govt.nz/services/PayAndEmploymentEquity/resources/gwo-june2007/index.asp>

³² International Labour Organisation 2008, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Geneva.

85. The Equal Pay Act offers avenues of recourse for claimants who believe they have been discriminated against on the basis of sex, with the burden of proof resting with the employer to prove to the employment tribunal that any differences in pay are not inequitable but are genuinely due to a factor other than the difference in sex between the employees concerned.

86. While the Equal Pay Act provides compliance mechanisms the Sex Discrimination Act seeks to influence the gender pay gap through prevention of discrimination in education, training and employment. Direct and indirect sex discrimination, as defined, is unlawful both in employment and in the provision of education and vocational training. Direct discrimination defined in a statutory test occurs where a person is or would be treated less favourably than another on the grounds of his or her sex.

87. In addition to legislative instruments, the Government has developed a Code of Practice on Equal Pay, which first came into force in 1997. The Code serves as a guide for the application of pay equity, based on a series of practices derived from court rulings. The Code outlines the five stages to be followed in order to carry out a pay review on a voluntary basis:

- (i) decision on the scope of the review and identify the required data. The employer may select which jobs are to be compared and which are not. The employer may decide to include or exclude employee representatives;
- (ii) determination of equal jobs and those of equal value. The employer is free to choose the method s/he considers fit, and that may or may not rely on a job evaluation method;
- (iii) gathering of data on wages in order to identify the pay gaps. It is specified that only significant pay gaps should be considered;
- (iv) identification of the objective causes of any significant pay gap; and
- (v) formulation of a plan of action and follow-up.³³

88. The voluntary nature of the Code has sparked some criticism, due to fairly limited levels of compliance. Subsequently the Government commissioned an Equal Pay Taskforce (established by the Equal Opportunities Commission) and the Kingsmill Review of Women's Employment and Pay – both tasked with producing new ideas for improving women's participation and advancement in the labour market.³⁴ The 2006 ILO Working Paper on pay equity models was also critical of the United Kingdom model finding that despite a genuine willingness (on the part of the

³³ Equal Opportunities Commission 2003, *Code of Practice on Equal Pay*, London.

³⁴ Kingsmill, D. 2001, *A Review Of Women's Employment And Pay*. London: Women and Equality Unit. Refer to: <http://www.equalities.gov.uk/pay/kingsmill/kingsmill.htm>

Government) to promote pay equity in workplaces the model “focuses more on the establishment of non-discriminatory pay practices than on the elimination of the pay gaps themselves; more on achieving equal opportunities rather than equal results”.³⁵

Canada

89. As a collection of federated states, the Canadian approach to pay equity is addressed at both the Federal and Provincial levels. In Canada, provisions covering pay equity are found in 3 types of legislation; at the Federal level, labour standards legislation (in the form of the *Canadian Labour Code 1985*) and in human rights legislation (in the *Canadian Human Rights Act 1985*) and legislation applied at the provincial level. This multi-tiered arrangement sparked prolonged concern from stakeholders and members of the public, with key concerns identified as being:

- (i) lack of clarity with respect to definitions of key concepts, standards and methodologies, including the meaning of ‘establishment’, occupational group, gender-neutral job evaluation, and wage adjustment methods;
- (ii) frequent challenges to the methodologies selected for job evaluation and wage adjustment;
- (iii) timeliness and effectiveness of the current system which has been characterized by protracted and costly litigation and concomitant delays in correcting wage inequities; and
- (iv) inaccessibility of the system to individual and non-unionized employees.³⁶

90. In response to these concerns, an independent Pay Equity Taskforce was established in 1999. The Taskforce was charged with making recommendations which would ensure the effective implementation of pay equity in Canadian workplaces. The Taskforce delivered its report entitled *Pay Equity: A New Approach to a Fundamental Right* in 2004. The report, having considered regulatory regimes employed around the country, recommended the development of new federal stand-alone pay equity legislation to be characterised as human rights legislation, a recommendation largely based on the success of similar existing models in the provinces of Ontario and Quebec. The Canadian Government is currently considering the report.

³⁵ Chicha, M-T 2006, A comparative analysis of promoting pay equity: models and impacts, International Labour Office, Geneva.

³⁶ Department of Justice Canada 2004, *Pay Equity Review Backgrounder*, Ontario. Accessed at <http://www.justice.gc.ca/eng/payeq-eqsal/6026.html>

Quebec

91. Legislation adopted in Ontario and Quebec, characterised as ‘proactive legislation’, typically provides that employers must be prepared to demonstrate that they have taken systematic steps to analyse the work done by their employees and to demonstrate that they have taken systematic steps to eliminate any discriminatory wage practices that are revealed as a result.³⁷ This approach is distinct from the Federal ‘complaints-based’ approach, which requires those who wish to, to establish that a violation of the Act has occurred.

92. In Quebec the *Pay Equity Act 1996* requires companies to adopt a pay equity action plan including an analysis of pay determination systems and implementation of the required pay adjustments to ensure that jobs of equal value receive an equal pay.³⁸ Under Quebec’s proactive approach, employers have an obligation to carry out a review to detect the existence of pay discrimination in their company and, subsequently, correct any pay discrimination uncovered.

93. The Pay Equity Act covers all aspects of pay equity implementation and applies to any employer with 10 or more employees. The statute contemplates different requirements for enterprises employing more than 100 employees, enterprises employing between 50 and 99 employees and enterprises with between 10 and 49 employees. For the purposes of the Act, ‘enterprise’ is defined as configuration of activities which can be described as self-contained and functional. For employers who employ 50 or more staff the Act prescribes the development of a four stage pay equity plan designed to determine the cause of gender pay discrimination. In summary, the four stages are:

- (i) identification of predominantly male jobs and those which are predominantly performed by women;
- (ii) development of job evaluation methodology;
- (iii) job evaluation, calculation of pay disparities and implementation of pay adjustments; and
- (iv) determination of the timeframe for making pay adjustments (a four year timeframe is prescribed from the development of the pay equity plan to the implementation of pay adjustments).³⁹

³⁷ Department of Justice Canada 2004, *Pay Equity Task Force, Pay Equity: A new approach to a fundamental right, 2004*, Ontario. Accessed at <http://www.justice.gc.ca/eng/payeq-egsal/>

³⁸ Chicha, M-T 2006, *A comparative analysis of promoting pay equity: models and impacts*, International Labour Office, Geneva.

³⁹ Department of Justice Canada 2004, *Pay Equity Task Force, Pay Equity: A new approach to a fundamental right, 2004*, Ontario.

94. Employers with more than 100 employees are required to establish a pay equity committee representing employers and employees and these representatives are responsible for developing stages 1 to 3 of the process. The committee must comprise at least two-thirds employee representatives, of which at least half must be women. Furthermore, employers must provide training and information to the committee representatives to allow them to carry out their responsibilities.⁴⁰

95. Administration of the Quebec Pay Equity Act is the responsibility of the Pay Equity Commission. The Commission provides information and resources to assist employers in giving effect to the Act. Section 93 of the Act confers on the Commission a broad range of powers and responsibilities, which include:

- (i) conducting impartial investigations of disputes or complaints;
- (ii) developing tools for the assistance of employers and pay equity committees in developing pay equity plans or otherwise achieving pay equity;
- (iii) assisting in the training of pay equity committee members; communicating information to the public about the Pay Equity Act;
- (iv) providing reports and advice to the Government about the progress of this legislative policy; and
- (v) carrying out research and studies on relevant issues.⁴¹

⁴⁰ Industrial Relations Victoria 2005, *Pay Equity: How to Address the Gender Pay Gap*, Melbourne.

⁴¹ Department of Justice Canada 2004, Pay Equity Task Force, *Pay Equity: A new approach to a fundamental right*, 2004, Ontario.