

INDEPENDENT EDUCATION UNION OF AUSTRALIA

**HOUSE STANDING COMMITTEE ON
EMPLOYMENT AND WORKPLACE RELATIONS**

**INQUIRY INTO PAY EQUITY AND ASSOCIATED ISSUES RELATED TO
INCREASING FEMALE PARTICIPATION IN THE WORKFORCE**

August 2008

1. Executive summary

- 1.1. IEUA firmly supports the investigation into pay inequity and associated issues related to female participation in the workforce.
- 1.2. IEUA believes that the single greatest factor impeding achievement of equal pay in Australia has been the failure to carry out the investigations of the nature and value of women's work. Given the highly segregated nature of work in Australia, unless this is done, pay equity will never be achieved.
- 1.3. IEUA acknowledges the research which demonstrates that women are vulnerable under the WorkChoices regime and that if a focus on individual pay settings were to remain the prospect of achieving pay equity is remote.
- 1.4. IEUA acknowledges that female employees in Queensland, New South Wales and Tasmania have had the right to equal remuneration for work of equal or comparable value. The work, classification structures and conditions under which work is performed has been able to be examined by those State Commissions to ensure that Awards and Agreements are able to be adjusted to ensure that equal or comparable worth is recognised.
- 1.5. IEUA believes that rights of women under principles adopted in New South Wales, Queensland and Tasmania must be maintained as a minimum, and rights of women covered by a new federal system be no less than the rights to pay equity already enjoyed by women whose work is regulated by the New South Wales, Queensland and Tasmanian industrial relations systems
- 1.6. IEUA believes that a new federal legislative framework that recognises people's rights at work must prevent and eliminate discrimination in the workplace and, in particular, ensure equal remuneration for men and women doing work of *equal or comparable* value.

1.7. IEUA makes the following recommendations in regard to a new Industrial Relations Act:

- 1) That a stand alone Object of the Act be developed to ensure equal remuneration for men and women doing work of *equal or comparable value*. This Object should be in addition to any other requirement contained within the Act to eliminate discrimination on the grounds of gender, ethnicity and race.
- 2) That a new Industrial Relations Act invest broad statutory powers to Fair Work Australia to ensure compliance with Australia's international obligations in respect to ILO Convention 100 and ILO Convention 111, relating to Equal Remuneration for Work of Equal value.
- 3) That the legislation should incorporate the Queensland pay equity principles and apply these principles when Fair Work Australia:
 - a) Makes, amends or reviews awards;
 - b) Makes orders;
 - c) Arbitrates industrial disputes about equal remuneration; or
 - d) Values or assess the work of employees in female industries, occupations or callings.
- 4) The rights of women under those principles adopted in New South Wales, Queensland and Tasmania be maintained as a minimum, and rights of women covered by a new federal system be no less than the rights to pay equity already enjoyed by women whose work is regulated by the New South Wales, Queensland and Tasmanian industrial relations systems.

1.8. IEUA makes the following recommendations in regard to the Awards:

- 1) That a new Industrial Relations Act ensure that Awards made by Fair Work Australia provide equal remuneration and other conditions of employment for men and women doing work of *equal or comparable value*.
- 2) That, in the making of modern awards, classifications together with descriptors covering the full range of skills particularly in predominantly female industries and occupations be retained.
- 3) That Fair Work Australia be required, in adjusting rates of pay, to have regard to the need to ensure equal pay for work of *equal or comparable value*
- 4) That a new Industrial Relations Act provides for Fair Work Australia to consider claims concerning undervaluation of work for men and women doing *equal or comparable work*, and without restricting any enquiry, take into account the findings and Principles adopted by the New South Wales and Queensland Commissions concerning Pay Equity.

- 5) That there is capacity and structured processes for unions, on behalf of their members, to bring a case to adjust rates of pay based on undervaluation of work.
- 6) That annual wage rate reviews and four yearly reviews of awards include a review in respect of the Object of the Act ensuring equal remuneration and other conditions of employment for men and women doing work of *equal or comparable value*. It is fundamental to the operation of any proper approach to pay equity, that an order be made for an increase in remuneration rates contained in classification structures and pay scales, including minimum rates.
- 7) Comparisons are able to be undertaken of work contained in any Award, with work in the same Award, occupation, industry or workplace, or in Awards covering different occupations, industries and workplaces from the one brought forward for consideration.
- 8) That Fair Work Australia be required, in adjusting rates of pay, to have regard to the need to ensure equal pay for work of *equal or comparable value*.

1.9. IEUA makes the following recommendations in regard to the Agreements (Collective or Common Law):

- 1) That in applying the 'better off overall test' Fair Work Australia is required to consider whether the agreement provides for equal pay for work of *equal or comparable value*.
- 2) Further, that contained within the divisions of a new Industrial Relations Act dealing with Agreements, the Act should provide that Agreements (Collective or Common Law) may be varied during their life in order to give effect to the Objects of the Act.

1.10. IEUA makes the following recommendations in regard to the Collective Bargaining:

- 1) That legislation provides for employees to engage in collective bargaining on a multi-employer basis and that the full range of entitlements that would exist under good faith bargaining provisions for single site bargaining, be made available to employees in pursuit of multi-employer bargaining.

1.11. The IEUA recognises that whilst the Australian Government Equal Opportunity for Women in the Workplace Agency requires reporting on the strategies and achievements for a non-government school's equal opportunity for women, a Pay Equity plan would provide a greater depth and focus for real outcomes to be achieved in the area of pay equity. Therefore IEUA recommends:

- 1) That legislation be extended for the requirement of pay equity plans by organisations that provide strategies to rectify any identified pay inequity.
- 2) That legislation provide for the establishment of equity committees subject to the number of employees employed by an organisation to address, develop and review pay equity plans.
- 3) That a Division of Fair Work Australia be created to have a function in the auditing of equity plans and providing reports on outcomes.

1.12. The IEUA calls into question the value of the data collections that have been used to date to track the gender pay gap over time, particularly given the profound nature of the current changes to the regulatory environment in Australia. Therefore the IEUA recommends:

- 1) That mechanisms are developed which supplement current data sources with more detailed longitudinal survey data. Such data would enable researchers to assess movements in and effects on gender pay equity.
- 2) That a Division of Fair Work Australia be established, with a particular purpose and role to gather data, publicise best practice and issue regular updates on the achievement of equal remuneration for employees covered by the federal system of Awards and Agreements. Such a Division would be able to be called upon by Fair Work Australia in order to assist in any review undertaken in order to give effect to the Object of the Act dealing with equal remuneration.
- 3) That the Division of Fair Work Australia be responsible for education of employers, employees and unions on the status of pay equity in Australia using data collected.

1 Introduction

The Independent Education Union of Australia (IEUA) welcomes the opportunity to contribute to this inquiry into pay equity and associated issues related to increasing female participation in the workforce.

The IEUA is the federally registered union representing over 65,000 education professionals (teachers and other education staff) in the non-government education sector, over 70 per cent of whom are women. The IEUA is responsible for negotiating awards and agreements which include skills based classifications as well as the provision of entitlements such as parental leave, family leave, carers' leave and maternity leave.

2 The Non-Government Education Sector

The non-government education sector is diverse. There are approximately 2,650 non-government schools across the country employing over 100,000 teachers and support staff. The sector also comprises early childhood centres, pre-schools, long day care centres, English Language Colleges and private training providers.

A large majority of non-government schools are affiliated with and operated by particular religious groups, the largest of which is the Catholic Church which employs over 70% of staff in the sector.

There are over 800 employing authorities in the non-government sector including those schools which form part of the Catholic, Anglican and Lutheran systems and also over 780 separate independent school authorities.

The size and diversity of the sector impacts on the industrial context and the salary and working conditions which have been negotiated into awards and collective agreements across the schools and systems in all States and Territories reflects a similar complexity and diversity.

3 Context of Pay Equity

The gap between women's and men's earnings reflects a number of distinct, yet complex and interrelated factors. These factors may be divided into two categories:

- 3.1 Equal pay factors
- 3.2 Equal opportunities factors

3.1 Equal Pay factors which contribute to the earnings gap

The undervaluation of women's skills reflects a range of social, historical and industrial factors. Prejudices regarding women as employees and the nature of their skills have interfered with the objective assessment of women's work. For example, women's skills are often viewed as "natural attributes" or social skills, rather than industrial or workplace skills. In addition, the work value criteria used by industrial tribunals in some cases have

tended to value features which are characteristic of work performed predominantly by men.

Women workers often receive a lower level of discretionary payments, particularly over award and bonus payments. Women tend to be concentrated in jobs with less access to a range of over award payments and bonuses and in industries where over award payments are not traditionally offered.

This is particularly experienced by female IEUA members in regard to the availability and access to payments for coaching of co-curricular or extra-curricular activities.

3.2 Equal opportunity factors which contribute to the earnings gap

Working women generally carry a greater share of the responsibility for caring for family members than working men. These women may have their earnings affected because they:

- May not be able to work fulltime, take on extra responsibilities, access professional development and career development opportunities or work in jobs where flexible arrangements are not available.
- May have broken employment patterns due to career breaks taken to care for children or other family members, which are likely to have a negative impact on career progression.
- May be subject to employers' negative perceptions about the effect of family responsibilities on work performance, attitude and loyalty to the organisation, which in turn may affect remuneration and promotional aspects.

Many IEUA members' experiences have highlighted the fact that access to ongoing professional development whilst on maternity leave is minimal, thus minimising opportunities for career advancement upon their return.

The availability of part time work is advantageous to many women and men with family responsibilities. Despite this, women's concentration in part time and casual employment has a number of pay equity implications, including lower access to training and more limited opportunities for advancement and career development than full time employees.

In IEUA members' experience, access to promotional positions by part time employees is limited and, in many cases, not encouraged by school employing authorities.

A further factor affecting pay equity for women is the deregulation of the labour market. Australian's centralised wage fixing system had often been credited with closing the gender earnings gap. The trend towards greater decentralisation of Australia's industrial relations system has been a major disadvantage to women.

In particular instances where Australian Workplace Agreements were offered to IEUA members, female teachers were asked to identify existing entitlements which could be "traded" off against paid maternity leave. Such examples highlight the level of disadvantage that women experience in a decentralised industrial relations system.

4 Terms of Reference

The IEUA welcomes the inquiry into pay equity and puts forward the following in response to the terms of reference.

4.1 The need for further legislative reform to address pay equity in Australia

Historically women in Australia benefited from the highly centralised system of wage fixing and the associated principles and decisions of the AIRC.

Prior to WorkChoices, the extensive coverage of the award system ensured wage adjustments awarded through a range of processes. Decisions from national wage cases, work value cases, minimum rates adjustment processes and test cases could flow through to many classifications within the award system.

Employees in Queensland, New South Wales and Tasmania have had the right to equal remuneration for men and women employees for work of *equal or comparable* value. The work, classification structures and conditions under which work is performed had been able to be examined by those State Commissions to ensure that Awards and Agreements are able to be adjusted to ensure that equal or comparable worth is recognised.

However, the constitutional developments leading to a unitary system has curtailed the capacity of State governments to provide an industrial response about pay equity. The demise of awards and the growth of individual wage setting arrangements have had a strong impact on pay equity.

Under WorkChoices, the Australian Fair Pay Commission had a narrow economic focus and was not legislatively obliged to consider fairness of its decision in respect of the minimum wage. This was in stark contrast to the jurisdiction of the state and federal industrial relations commissions and other state tribunals which have social justice as one of their principle objects.

Thus WorkChoices has had serious consequences for pay equity.

A new federal legislative framework that recognises people's rights at work must work to prevent and eliminate discrimination in the workplace, and in particular, ensure equal remuneration for men and women doing work of *equal or comparable* value.

The single greatest factor impeding achievement of equal pay in Australia has been the failure to carry out the investigations of the nature and value of women's work. Given the highly segregated nature of work in Australia, unless this is done, pay equity will never be achieved.

Essentially it is important that the Objects of a new Industrial Relations Act should include giving effect to the ILO Convention 100 (Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal or Comparable Value) as well as the ILO Convention 111 (Discrimination in Respect of Employment and

Occupation) which, among other matters, guarantees women rights to remuneration free of discrimination and provide as one of the Objects, 'ensure equal pay for work of *equal or comparable* value'.

It is fundamental to the proper operation of the federal industrial relations regime that the new Modern Award system and agreements (collective and common law) operate in a manner which prevents and eliminates discriminatory remuneration.

Therefore assessments of work and the conditions under which it is performed, contained in and governed by Awards and Agreements operating as a result of the federal Act, must be able to be undertaken.

4.1(a) Recommendations in regard to a new Industrial Relations Act

In order to ensure that this can occur, the IEUA recommends the following:

- 1. That a stand alone Object of the Act be developed to ensure equal remuneration for men and women doing work of *equal or comparable value*. This Object should be in addition to any other requirement contained within the Act to eliminate discrimination on the grounds of gender, ethnicity and race.**
- 2. That a new Industrial Relations Act invest broad statutory powers to Fair Work Australia to ensure compliance with Australia's international obligations in respect to ILO Convention 100 and ILO Convention 111, relating to Equal Remuneration for Work of Equal value.**
- 3. That the legislation should incorporate the Queensland pay equity principles and apply these principles when Fair Work Australia:**
 - (a) Makes, amends or reviews awards.**
 - (b) Makes orders**
 - (c) Arbitrates industrial disputes about equal remuneration or**
 - (d) Values or assess the work of employees in female industries, occupations or callings.**
- 4. The rights of women under those principles adopted in New South Wales, Queensland and Tasmania be maintained as a minimum, and rights of women covered by a new federal system be no less than the rights to pay equity already enjoyed by women whose work is regulated by the New South Wales, Queensland and Tasmanian industrial relations systems.**

4.1(b) Recommendations in regard to the making and review of Awards

Under WorkChoices, skilled based career paths were not allowable award matters or preserved award entitlements. With the exclusion of classification and remuneration systems from awards, the ability to flow through decisions from one sector to another was significantly constrained.

This had particular impact on school assistants within the non-government sector as they were covered by skilled based classifications.

It is essential that, in the making of modern awards, such classifications be retained together with descriptors covering the full range of skills particularly in predominantly female industries and occupations.

Further, the IEUA believes that it is important that Fair Work Australia has the power to address unequal remuneration in respect of Awards, collective agreements and common law agreements and issue Orders to vary where appropriate.

To achieve this, IEUA recommends

- 1 That a new Industrial Relations Act ensures that Awards made by the Fair Work Australia provide equal remuneration and other conditions of employment for men and women doing work of *equal or comparable value*.**
- 2 That in the making of modern awards, classifications together with descriptors covering the full range of skills particularly in predominantly female industries and occupations be retained.**
- 3 That Fair Work Australia be required, in adjusting rates of pay, to have regard to the need to ensure equal pay for work of *equal or comparable value***
- 4 That a new Industrial Relations Act provides for Fair Work Australia to consider claims concerning undervaluation of work for men and women doing *equal or comparable* work, and without restricting any enquiry, take into account the findings and Principles adopted by the New South Wales and Queensland Commissions concerning Pay Equity.**
- 5 That there is capacity and structured processes for unions, on behalf of their members, to bring a case to adjust rates of pay based on undervaluation of work.**
- 6 That annual wage rate reviews and four yearly reviews of awards include a review in respect of the Object of the Act ensuring equal remuneration and other conditions of employment for men and women doing work of *equal or comparable value*. It is fundamental to the operation of any proper approach to pay equity, that an order be made for an increase in remuneration rates contained in classification structures and pay scales, including minimum rates.**
- 7 Comparisons are able to be undertaken of work contained in any Award, with work in the same Award, occupation, industry or workplace, or in Awards covering different occupations, industries and workplaces from the one brought forward for consideration.**

4.1(c) Recommendation in regard to Agreements (Collective and Common Law)

It is essential that the Act prevents agreements (Collective and Common Law) from being able to include discriminatory arrangements including unequal remuneration for work of equal value. **Therefore, the IEUA recommends:**

- 1. That in applying the ‘better off overall test’ Fair Work Australia is required to consider whether the agreement provides for equal pay for work of *equal or comparable* value.**
- 2. Further, that contained within the divisions of the Act dealing with Agreements, the Act should provide that Agreements (Collective or Common Law), may be varied during their life in order to give effect to the Objects of the Act.**

4.1(d) Recommendations in regard to Collective Bargaining

Historically, the non-government sector, particularly the Catholic system, Anglican and Lutheran systems, have sought to engage in collective bargaining for all schools within that one system, despite multiple employers.

The various employing authorities, particularly the Catholic employing authorities, have agreed with our union that this approach is the best approach for their schools. The nature of funding of these schools supports sound reasons for this approach.

Such multi employer bargaining provides for women workers in specific schools to gain the benefits of collective bargaining.

Therefore, the IEUA recommends:

- 1 That legislation provides for employees to engage in collective bargaining on a multi-employer basis and that the full range of entitlements that would exist under good faith bargaining provisions for single site bargaining be made available to employees in pursuit of multi-employer bargaining.**

4.2 Terms of Reference. The need for education and information among employers, employees and trade unions in relation to pay equity issues

So far, pay equity has been considered as an industrial relations context. However, industrial relations can only take the issue so far, when in fact the causes of pay inequity go beyond industrial concerns and encompass broader social issues.

Practices within organisations such as recruitment, promotion and access to training and development, impact on pay equity. Appropriately designed and implemented, these processes can be effective equal employment opportunity measures.

Too often, though organisations are aware of discrimination issues, the achievement of gender equity which is a broader issue in a workplace is often left to the discretion of the workplace.

Legislative underpinning to policies that affect the employment and promotion of women in the workforce is essential.

Whilst it is recognised that the Australian Government Equal Opportunity for Women in the Workplace Agency requires reporting on the strategies and achievements for a non-government school's equal opportunity for women, a Pay Equity plan would provide a greater depth and focus for real outcomes to be achieved in the area of pay equity.

It is considered that whilst the Equal Opportunity for Women in the Workplace Act provides that certain employers must develop and implement workplace programs, it does not address pay equity for two reasons. Firstly it excludes employers who employ fewer than 100 employees and secondly, it does not mandate pay equity outcomes.

Such a pay equity plan would include:

- The identification of predominantly male jobs and those which are predominantly performed by women;
- Development of job evaluation methodology;
- Job evaluation;
- The recruitment procedure and selection criteria, for appointment and engagement of persons as employees;
- The promotion, transfer and termination of employment of employees;
- Training and development for employees;
- Work organisations;
- Conditions of employment; and
- Arrangements for dealing with employees with family responsibilities.

Organisations should be required to review their pay equity plans and report on the outcomes of that review.

The establishment of equity committees would assist in the development and review of pay equity plans along with addressing other equity issues. Such committees could be of at least three members (subject to the size of the organisation) and contain 50% women.

In smaller organisations, the establishment could be optional, however, legislation should provide for its establishment where female employees request it.

Representation of unions on the committee is also highly recommended.

Committee representatives need to be trained to understand pay equity as an equal opportunity measure as well as its causes and the various tools to evaluate policies and practices.

It is also considered that as pay equity should become more central to all considerations around Awards and Agreements, then the monitoring of equity plans and reporting of such plans becomes the function of a division of the Fair Work Australia.

4.2(a) Therefore IEUA recommends:

- 1 That legislation be extended for the requirement of pay equity plans by organisations that provide strategies to rectify any identified pay inequity.**
- 2 That legislation provide for the establishment of equity committees subject to the number of employees employed by an organisation to address, develop and review pay equity plans.**
- 3 That unions be represented on such pay equity committees.**
- 4 That paid training be provided to pay equity committee members.**
- 5 That a Division of the Fair Work Australia be created to have a function in auditing of equity plans and providing reports on outcomes.**

4.3 Terms of Reference. The adequacy of current data to reliably monitor employment changes that may impact on pay equity issues

It is vital that data is available which will allow adequate monitoring of pay equity into the future.

The IEUA calls into question the value of the data collections that have been used to date to track the gender pay gap over time, particularly given the profound nature of the current changes to the regulatory environment in Australia.

Data arising from the Inquiry into Pay Equity in Queensland found, using a variety of measures, that the precise size of the gap was less important than the evidence of the existence and persistence of that gap.

The aggregated level tracking of the gender pay gap through the ABS cross sectional surveys needs to be supplemented with more detailed longitudinal data. This would enable researchers to assess the effects on individuals over time and gain a deeper understanding of influences on gender pay inequity as men and women move between employers, jobs and industrial arrangements and respond to family needs.

The utility of this data could then be maximised by linking it with information collected from businesses in surveys similar to those implemented in Queensland (Queensland Workplace Industrial Relations Survey) and other similar surveys in other states.

4.3(a) Recommendations in regard to collection of data

- 1 That mechanisms are developed which supplement current data sources with more detailed longitudinal survey data. Such data would enable researchers to assess movements in and effects on gender pay equity.**
- 2 That a Division of Fair Work Australia be established, with a purpose and role to gather data, publicise best practice and issue regular updates on the achievement of equal remuneration for employees covered by the federal system of Awards and Agreements. Such a Division would be able to be called upon by the Fair Work Australia in order to assist in any review undertaken in order to give effect to the Object of the Act dealing with equal remuneration.**
- 3 That the Division of Fair Work Australia be responsible for education of employers, employees and unions on the status of pay equity in Australia using the data collected.**

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