

**Change**  
**THE RULES**

FOR WORKING WOMEN

**Changing  
the rules  
for working  
women**

Authorised by S. McManus, 365 Queen St, Melbourne 3000. ACTU D No. 176/2018

**Change**  
**THE RULES**

Australian  
Unions  
Join. For a  
better life.

CHANGING THE  
RULES FOR  
WORKING WOMEN



## Executive Summary

Despite decades of advocacy and reform, working women in Australia continue to be uniquely disadvantaged in the current industrial relations context. The factors that determine this gendered inequality are both structural and systemic in nature. In the context of entrenched societal norms that undervalue the paid and unpaid work of women, discrimination entwines with gendered work patterns and behaviours. Legislative and industrial frameworks continue to perpetuate outdated norms and discriminatory practices. Women are disproportionately impacted by the current trends toward insecure work and decreased wages. Career breaks affect pay as child bearing, carer responsibilities and experiences of family violence impose a penalty on women in terms of career and salary progression, and in turn, on their ability to generate retirement incomes linked to employment continuity. These issues are multidimensional, interconnected and compounding in nature. The Change the Rules Campaign provides an overarching industrial relations framework, and suggests a number of critical and interconnected changes to current legislation and policy, to advance gender equality.

### **A robust industrial relations framework**

An industrial relations framework that centralises the aim of gender equality is long overdue. Industry bargaining and improving awards have the capacity to address entrenched undervaluing of women's work and limit the increasing trend toward insecure work. Unions require an effective mechanism for advocating for improved employment rights for women and pursuing pay equity claims. In order to achieve this, Unions must have the capacity to bargain and negotiate at every level unencumbered by overly complex rules, regulations, and restrictions. A simplification of current rules and facilitation of collective bargaining is an essential element in achieving gender equality at work. Gender equality should be a central aim of industrial relations policy and legislation, and the Fair Work Commission should be required to promote gender equality and strengthen minimum employment rights for women in all its functions and powers. It is within this framework that key contributors to gender inequality can be addressed.



## Achieving Equal Remuneration

The gap in pay advantaging men over women has proven both persistent and universal. The determinants of the current gender pay gap are complex. Women's disproportionate representation in lower wage occupations is a crucial contributor. In addition, wages for employees in female-dominated occupations are significantly lower than for comparable employees in male-dominated and integrated occupations. It is clear that the rules regarding awards as a wage setting mechanism need to change in order to overcome the historical gender-based undervaluation of work in female-dominated industries. Specifically, the system requires:

- Increased transparency in the reasoning driving the differences in minimums set by the Fair Work Commission. In order to increase confidence that the award system does not put women relying on minimum wages at a disadvantage, wage-setting process must explicitly acknowledge and quantify the factors considered in determining minimum wages.
- That parties lodging enterprise agreements with the Fair Work Commission for approval should provide information about the steps taken to provide for equal remuneration.
- The establishment of an expert Pay Equity Panel to undertake research into pay equity matters and provide recommendations for consideration by a Full Bench of the Fair Work Commission. This panel should conduct a review of alternative means of making equal remuneration orders, such as conciliation through the Pay Equity Panel, with a view to achieving more timely resolution of equal remuneration applications.
- A series of transparent Pay Equity Principles for the resolution of all pay equity matters must be legislated and followed by Fair Work Australia. These principles should expressly confirm that no 'male comparator' is required to prove that work is undervalued on gender grounds.
- A requirement that the Fair Work Commission make an Equal Remuneration Order when the legislative conditions are met.

## Creating work security

Women are overrepresented in non-standard work categories, and remain more vulnerable than men to exploitative, casualised and insecure forms of work. The dramatic expansion of non-standard work in Australia in recent has shifted economic risks from the employer to the worker. There are clear economic consequences of this trend for women including lower wages, less hours of work, a lack of paid leave, an increased likelihood of periods of unemployment and a reduction in superannuation over the lifespan. The aim of gender equality in the workforce requires the restoration of basic rights and security for women in non-standard forms of work. This includes:

- A reversal of the current trend towards reduction and removal of penalty rates. A high proportion of those in insecure work are in those industries and occupations that are increasingly subject to cuts in weekend and holiday pay, including hospitality, pharmacy, retail and fast food workers. A restoration of penalty rates to the pre-July 2017 levels, and legislative restrictions on the ability of businesses to impose future cuts is required.
- A statutory definition of casual employment. A shared understanding denotes the main feature of casual work as employment and pay on an hourly basis, such that the employer need only offer employment to the casual employee if they choose to do so. Casual employment needs to be properly defined so that casual workers cannot be so easily exploited by employers.

- Access to basic rights for casual employees, and those on rolling contracts. Awards need to be subject to improvement to reflect community standards. All workers, regardless of their status, should have the same basic rights to access the minimum wage, paid leave, public holidays, occupational health and safety protections and collective bargaining. Those who have worked on a regular or systematic basis for six consecutive months, deserve the right to convert to permanent work if they choose.
- Steps to ensure that those experiencing family violence are not subject to the impacts of insecure work. Workers who are experiencing violence should not have to choose between making themselves, and often their children, safe and a secure job and economic security. Paid family violence leave must be incorporated into the National Employment Standards in order to address the systemic job insecurity and economic hardship experienced by those seeking to leave an abusive relationship.

### **Accommodating carer responsibilities**

- In the work context, having and caring for children negatively impacts women's wages and progression over the career span, particularly for those in low income careers. Carer responsibilities are also related to the quality of female employment with the unequal amount of time spent by women on unpaid care work increasing the probability that they will be engaged in vulnerable employment. It is clear that strong, consistent and enforceable policies are needed. Two key elements of effective policy are the degree to which policies allow women with family responsibilities to remain in the labour market regardless of their care responsibilities, and the degree to which policies support men's uptake of care responsibilities. These elements can be addressed through:
  - The provision of adequate carer leave through standardised leave provisions, including a minimum of 26 weeks paid parental leave. This leave should be equally accessible to men or women based on a shareable family entitlement apportioned according to family needs. In order to support implementation of best practice, paid parental leave should be an industrial right in the National Employment Standards.
  - The establishment of family-friendly working arrangements enable parents and carers to balance their working hours and caring responsibilities. All employees require the right to part time or reduced hours and the right to return when their caring responsibilities have reduced or ended. It is suggested that where an employee meets minimum eligibility and notice requirements, the provision must grant a right to reduced or part-time working hours.
  - Attractive and robust conditions for family-friendly working arrangements. This includes security of status, role and remuneration and the ability to increase working hours when responsibilities lessen. This improvement in quality would encourage equal access to these arrangements by both women and men.

## Ensuring adequate superannuation for women

The current superannuation system is failing women. Given this multiplicity of contributing factors there is no singular solution to the issue of gender disparity in superannuation. Improvements to superannuation outcomes for women can be partially achieved by addressing systemic disadvantages and increasing women's workforce participation and earnings. However additional specific legislative, regulatory and employer-focused changes are also needed. Specifically:

In order to reduce the disadvantage faced by women in insecure, part-time and short-term work, the minimum threshold for compulsory employer contributions of \$450 per month must be abolished. Such a reduction would see a cumulative increase in superannuation for those workers in insecure working arrangements.

It is imperative that superannuation schemes accommodate common disruptions to paid work associated with parenting and caring responsibilities. Entitlement to these benefits must be consistent with the goal of making a statutory paid parental leave scheme mirror, as much as possible, leave arrangements more generally.

It is clear that there remains much scope for progress with respect to legislation, policy, and social norms that perpetuate women's disadvantage at work. While industrial relations policy and legislation form only part of an adequate response to gender inequality in the working lives of Australian women, these mechanisms have the capacity to be structuring factors in the context-specific system of the resources and constraints within which individuals, households, and families develop their strategies and make choices with respect to labour division. A structural and systemic approach to achieving gender equality requires a robust legislative, policy and practice scaffolding, one that is inclusive of strong regulatory provisions. The Change the Rules Campaign provides a framework for addressing the complex, structural and systemic factors that continue to maintain women's disadvantage. It is evident that the need for action is urgent. It is time to Change the Rules for working women.

# Change the Rules: Structural and Systemic Change for Working Women

As of 2009, each Australian state government had undertaken at least one inquiry into the issue of gender inequality in working lives. These high-level government reviews have explored gender-based inequality in both the public and private sectors. Aimed at elucidating the persistence of the gender pay gap and other inequalities, each of these inquiries produced a range of legislative, policy and institutional remedies that required government enforcement. In the decade since, multiple national level inquiries and extensive consultations have echoed both the issues and potential solutions. Despite these consistencies, attempts at redress have often been piecemeal, singular and ad hoc in nature. As such, results have been limited in scope and duration, and gender inequality remains a structural feature of the Australian workforce.

A key failing of approaches to date is that the persistent and interconnected contributory factors that keep women at a disadvantage across their lifetime have been inadequately addressed in the industrial relations context. These factors derive from entrenched social norms that undervalue women and women's work, and ascribe expectations that take women away from the workforce without commensurate family-friendly working arrangements. Today, continued practices of bias and discrimination in hiring, promotion and pay decisions remain largely unchecked.<sup>1</sup> Female-dominated industries and occupations consistently attract lower wages,<sup>2</sup> and women continue to be overrepresented in occupations characterised by high levels of reliance on the employment safety net, low-pay, and high levels of insecure work.<sup>3</sup> Women undertake a disproportionate share of unpaid caring and domestic labour<sup>4</sup> in a context lacking sufficient, good-quality flexible working arrangements.<sup>5</sup> Women's career progression and opportunities continue to be greatly impacted by absences to tend to carer responsibilities.<sup>6</sup>

There is ongoing debate as to the extent to which these outcomes are reflective of an inevitable and reasonable result of differing work patterns and behaviours by women and men, or the impact of employment discrimination against women.<sup>7</sup> However, the human capital approach to the issue of gender inequality at work, which suggests investment in employees should be relative to the time spent at and in work, has increasingly lost relevance.<sup>8</sup> The most contemporary research confirms that the factors that determine gender inequality are both structural and systemic in nature.<sup>9</sup> In the context of entrenched societal norms that undervalue the paid and unpaid work of women, discrimination entwines with gendered work patterns and behaviours. In advanced countries,

1 Johnston, D. W., and Lee, W. S. (2012). Climbing the job ladder: New evidence of gender inequity. *Industrial Relations: A Journal of Economy and Society*, 51(1), 129-151.

2 Whelan, D. (2005) Advancing pay equity: Their future depends upon it. Report by the Victorian Pay Equity Working Party to the Minister for Industrial Relations, Melbourne, Victoria: Victorian Minister for Industrial Relations.

3 For example, Annual Wage Review 2016-17 [2017] FWCFB 3500 at [654]

4 Miranda, V. (2011). Cooking, caring and volunteering: Unpaid work around the world. Paris: OECD; Charlesworth, S., Strazdins, L., O'Brien, L., and Sims, S. (2011). Parents' jobs in Australia: Work hours polarisation and the consequences for job quality and gender equality. *Australian Journal of Labour Economics*, 14(1), 35.

5 Workplace Gender Equality Agency (2017), Australia's gender equality gender pay gap statistics, Sydney: Australian Government, p. 2

6 Bimrose, J., McMahon, M., and Watson, M. (Eds.). (2014). *Women's career development throughout the lifespan: An international exploration*. Routledge.

7 Lips, H. (2013). The Gender Pay Gap: Challenging the Rationalizations. Perceived Equity, Discrimination, and the Limits of Human Capital Models. *Sex Roles*, 68(3), p. 169

8 Grybaite, V. (2006) Analysis of theoretical approaches to gender pay gap, *Journal of Business Economics and Management*, 7:2, 85-91; Joshi, H., Makepeace, G., and Dolton, P. (2007). More or less unequal? Evidence on the pay of men and women from the British birth cohort studies. *Gender, Work and Organization*, 14(1), 37-55; Preston, A. and G. Crockett. (1999). "Equal Pay: Is the Pendulum Swinging Back?" *Journal of Industrial Relations*, 41: 561-574.

9 Blau, F. D., and Kahn, L. M. (2017). The gender wage gap: Extent, trends, and explanations. *Journal of Economic Literature*, 55(3), 789-865

including Australia, legislative and industrial frameworks continue to perpetuate outdated norms and discriminatory practices. Here, women are disproportionately impacted by the current trends toward insecure work and decreased wages. As a result, there are predictions that gender inequalities are likely to increase in the future without intervention.<sup>10</sup>

There is a clear need for an overarching framework for the achievement of gender equality in the industrial relations context, in addition to a suite of cohesive reforms that address individual and interconnected contributory factors that keep Australian working women at life-long disadvantage. A structural and systemic approach to achieving gender equality requires a robust legislative, policy and practice scaffolding, one that is inclusive of strong regulatory provisions. The Change the Rules Campaign (the Campaign) proposes a framework for all working Australians to access better pay and more secure work. This paper outlines how the proposals of the Campaign specifically benefit women, and provide a structural and systemic approach to achieving gender equality at work. In considering the causes of this inequality, and critically analysing previous attempts at redress, we demonstrate that key components of the Campaign are necessary and critical to addressing the systemic disadvantages faced by working women in Australia.

---

10 Waters, E. (2014). The widening gender pay gap is about to get worse. *Australian Options*, (78), 12.



# Gender inequality in working lives

The persistence of gender inequality is demonstrated by tracking the comparative position of women on key outcomes. A current snapshot reveals that disadvantage is pervasive and often cumulates over the lifespan, progressively curtailing career progress and earnings. In Australia today:

Women face discrimination in hiring practices,<sup>11</sup> and start their careers at a pay disadvantage. The average undergraduate starting salaries for women are 1.8 percent less than for men. This increases to 16.5 percent for postgraduate (coursework) graduates.<sup>12</sup>

The current pay gap stands at 15.3 percent, and women earn on average \$253.70 less than men each week.<sup>13</sup> Accounting for full-time total remuneration, men still take home 22.4 percent a year more than women on average (\$26,527).<sup>14</sup>

The gender labour income gap in Australia is 41.5 percent compared to an OECD average of 38.5 percent. This indicator refers to annual labour earnings, that reflects gender differences in time worked.<sup>15</sup>

Women are disproportionately impacted by the trend toward insecure work. Women comprise 52.6 percent of all casual employees,<sup>16</sup> and 26.9 percent of working women are employed on a casual basis, compared to 21.4 percent of men.<sup>17</sup>

Overall, 74.3 percent of all periods of paid parental leave are utilised by women. Women are seven times as likely as men to leave the workplace at the conclusion of a period of parental leave, and 8.6 percent of women on parental leave cease employment.<sup>18</sup>

Women are much less likely to be promoted than men, and receive significantly lower wage increases when promoted. Although there are no gender differences in terms of employer change rates, women are on average receiving a wage penalty when changing employers.<sup>19</sup>

Across sectors, the most senior roles are heavily male-dominated.<sup>20</sup> Women hold 13.7 percent of chair positions, 24.9 percent of directorships, as well as representing 16.5 percent of Chief Executive Officers and 29.7 percent of key management personnel.<sup>21</sup>

The average superannuation balances for women at retirement (age 60–64) are 42 percent less than those for men.<sup>22</sup> Of people aged 65 years and older receiving the aged pension, 55.6 percent are women.<sup>23</sup>

- 11 Chang, J., Connell, J., Burgess, J., and Travaglione, A. (2014). *Gender wage gaps in Australian workplaces: are policy responses working?* *Equality, Diversity and Inclusion: An International Journal*, 33(8), 764-775.
- 12 Quality Indicators for Learning and Teaching (QILT) (2017), Graduate Outcome Survey National Report, retrieved from [https://www.qilt.edu.au/docs/default-source/gos-reports/2017/2017\\_gos\\_national\\_report\\_final\\_accessiblea45d8791b1e86477b58fff00006709da.pdf?sfvrsn=ceb5e33c\\_4](https://www.qilt.edu.au/docs/default-source/gos-reports/2017/2017_gos_national_report_final_accessiblea45d8791b1e86477b58fff00006709da.pdf?sfvrsn=ceb5e33c_4)
- 13 Workplace Gender Equality Agency (2017), Australia's gender equality gender pay gap statistics, Sydney: Australian Government, p. 1
- 14 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 4
- 15 OECD (2018) How does Australia compare? Employment Outlook 2018, Accessible at: <https://www.oecd.org/australia/Employment-Outlook-Australia-EN.pdf>
- 16 ABS (2018), Characteristics of Employment Australia, August 2016, cat. no. 6333.0
- 17 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 17
- 18 *ibid*, p. 9
- 19 Johnston, D. W., and Lee, W. S. (2012). Climbing the job ladder: New evidence of gender inequity. *Industrial Relations: A Journal of Economy and Society*, 51(1), p. 151.
- 20 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 13
- 21 Workplace Gender Equality Agency (2017) Gender workplace statistics at a glance, Sydney: Australian Government
- 22 Clare R. (2017), Superannuation account balances by age and gender, Sydney: ASFA Research and Resources Centre
- 23 DSS (2014), Statistical Paper No. 12: Income support customers: a statistical overview 2013 retrieved from: [https://www.dss.gov.au/sites/default/files/documents/01\\_2015/sp12\\_accessible\\_pdf\\_final.pdf](https://www.dss.gov.au/sites/default/files/documents/01_2015/sp12_accessible_pdf_final.pdf)



Decades of inquiries and consultations have identified consistent determining factors that create and perpetuate these inequalities.<sup>24</sup> Gender discrimination in hiring, promotion and access to training/professional development limits both career advancement and earning capacity. Breaks from the workforce to tend to child bearing and other unpaid carer responsibilities compound these limitations. Over time, gender discrimination and career breaks contribute to occupational segregation, in which men dominate higher paying leadership and management roles. Ultimately, each of these three factors cumulatively hinder women’s ability to generate retirement incomes, which are inherently tied to employment continuity and career advancement. Industrial segregation and the persistent undervaluation of female-dominated professions perpetuates the gender pay gap and other inequalities. Women continue to be overrepresented in lower paid and insecure service industries such as aged care, hospitality and retail. These, and similar industries, are historically impacted by an undervaluation of feminised work; an undervaluation reinforced by an institutional wage-setting system that has historically short changed female dominated occupations. Finally, pay setting methods also affect women’s pay and other conditions. Many women are in occupations or industries that are dependent on awards, and are not empowered to bargain with employers.<sup>25</sup> It is evident that these factors exist in a complex interplay, and that the underlying causes of gender inequality in the working lives of Australians remains both structural and systemic.

The snapshot above confirms a failure of historical attempts at redress. Labour law scholarship provides a clear picture of the limitations in the development, implications and impact of the different approaches to gender equality in Australia’s industrial history. An examination of this scholarship suggests that solutions have fallen short of addressing the multiple, interconnected, and deeply entrenched societal norms that structure the disadvantage of women at work. It is clear that existing approaches are not sufficient to address the historical, social, political, and cultural factors that perpetuate the gender pay gap, sex-segregated occupations, and other workplace gender inequalities.<sup>26</sup> Given the structural and systemic nature of gender inequality it is unsurprising that the singular, piecemeal and inconsistent approach to redress have made little in the way of progress. These complexities require a multidimensional approach to challenging gender-based disadvantage in this context.

---

24 Workplace Gender Equality Agency (2013), *Behind the Gender Wage Gap*. Sydney: Australian Government

25 Chang, J., Connell, J., Burgess, J., and Travaglione, A. (2014). Gender wage gaps in Australian workplaces: are policy responses working?. *Equality, Diversity and Inclusion: An International Journal*, 33(8), p. 768.

26 Rubery, J., D. Grimshaw and H. Figueiredo (2005), 'How to Close the Gender Pay Gap in Europe: Towards the Mainstreaming of Pay Policy', *Industrial Relations Journal*, 36, 3, 184-213

## A Framework for Gender Equality

A central mechanism for addressing gender inequality at work is the industrial relations system, inclusive of legislative provisions and governing institutions. Historically, specific features of Australia's industrial relations system that impact gender equality have been the award system and legislative provisions for arbitration by industrial tribunals for setting wages and conditions and resolving industrial disputes. The history of Australia's industrial relations system in this context demonstrates a widening chasm between intent and practice, and increasing limitations of mechanisms to achieve gender equality. As such, the relationship between litigation and bargaining strategies, and the interaction between wage-setting institutions and organisational practices, provide a basis for progress going forward.<sup>27</sup> A solid framework for these mechanisms is needed.

Unions require an effective mechanism for advocating for improved employment rights for women and pursuing pay equity claims. Extensive research confirms that collective bargaining and advocacy by unions is effective in achieving progress with respect to advancing gender equality. For instance, historical evidence maps the correlation between increasing pay inequality and a decline in collective bargaining in industrialised countries.<sup>28</sup> Conversely, studies suggest that higher collective bargaining coverage has a robust, inequality-reducing impact on the gender pay gap,<sup>29</sup> to a greater degree than attributed to minimum wage mechanisms.<sup>30</sup> Whether the result of high membership density, centralised bargaining arrangements, or the extension of collective agreements, collective bargaining is also associated with less wage inequality at an aggregate level.<sup>31</sup> In recent years, the fragmentation of the bargaining system, and the distribution of female employment between wage determination streams (and the inequalities within the streams) has exacerbated gender pay inequities.<sup>32</sup> Data suggests that the gender pay gap is substantially greater for those on individual agreements than on collective agreements.<sup>33</sup>

Union action, largely in the form of advocacy for legislative reform and test cases, has also been instrumental in progressing equal remuneration,<sup>34</sup> accommodating carer responsibilities, and achieving flexible working arrangements.<sup>35</sup> This has centralised these issues, and gender equality more broadly, in bargaining practice. It is essential that the objectives of closing the gender pay gap and achieving gender equality more broadly continue to be central to bargaining practice. In order to achieve this aim, unions must have the capacity to bargain and negotiate at every level unencumbered by overly complex rules, regulations, and restrictions. It is imperative that negotiations take place with those who have the power to address wage disparity and policies that impact women's advancement in the workplace. Industry bargaining and improving awards has the capacity to address entrenched undervaluing of women's work and limit the increasing trend toward insecure work. As such, a simplification of current rules and facilitation of collective bargaining is an essential element in achieving gender equality at work.

27 O'Reilly, J., Smith, M., Deakin, S., and Burchell, B. (2015). Equal pay as a moving target: International perspectives on forty-years of addressing the gender pay gap. *Cambridge Journal of Economics*, 39(2), 299-317.

28 Hayter, S., and Weinberg, B. (2011). Mind the gap: Collective bargaining and wage inequality. *The role of collective bargaining in the global economy: Negotiating for social justice*, 136-186.

29 Ibid.

30 Blau, F. D., and Kahn, L. M. (2003). Understanding international differences in the gender pay gap. *Journal of Labor Economics*, 21(1), 106-144.

31 Checchi, D., Visser, J., and Van De Werfhorst, H. G. (2010). Inequality and union membership: The influence of relative earnings and inequality attitudes. *British Journal of Industrial Relations*, 48(1), 84-108.

32 Todd, P. (2010). Gender mainstreaming: The answer to the gender pay gap? In Eveline J. and Bacchi C. (Eds.), *Mainstreaming Politics: Gendering Practices and Feminist Theory* (pp. 163-190). South Australia: University of Adelaide Press, p. 170

33 Todd, P., and Eveline, J. (2006). Gender Pay Equity: It's Time (Or is it?). *Making the Link No*, 19-25.

34 Austen, S., and Jefferson, T. (2014). Economic analysis, ideology and the public sphere: insights from Australia's equal remuneration hearings. *Cambridge Journal of Economics*, 39(2), 405-419.

35 Ravenswood, K., and Markey, R. (2011). The role of unions in achieving a family-friendly workplace. *Journal of Industrial Relations*, 53(4), 486-503.

In addition, strong policy and legislative provisions are required in order to adequately centralise and embed gender equality within industrial relations practice. For example, despite improvements made to the provisions in 2009, Equal Remuneration Orders have proven to be costly, time-consuming and largely ineffective in delivering pay equity.<sup>36</sup> It is clear that industrial tribunals play an integral part in the Australian history of gender equality and pay equity.<sup>37</sup> The frustrating history of equal remuneration cases demonstrates that progress towards pay equity, and gender equality more broadly, will remain elusive until the problem and its solutions are represented as central to the objects of the industrial relations regulatory system.<sup>38</sup> Gender equality should be a central aim of industrial relations policy and legislation, and the Fair Work Commission should be required to promote gender equality and strengthen minimum employment rights for women in all its functions and powers. This is why Australian unions are seeking a legislated gender equality principle applicable to the exercise of all Fair Work Commission powers, including making and varying awards, setting minimum wages, arbitrating disputes, approving agreements and making Equal Remuneration Orders.

In order to address the complexity of gender inequality, any approach must be inclusive of adequate provisions for union actions, and incorporate gender equality as a core aim of industrial legislation and the functions and practice of the Fair Work Commission. It is within this framework that key contributors to gender inequality can be addressed. The remainder of this paper outlines specific solutions for working women which are advanced by the Change the Rules Campaign. Each of these solutions addresses an element of the systemic disadvantage currently faced by working women. The necessity of the above framework is reinforced throughout the following analysis, as the complex and interrelated nature of gendered inequality in the industrial relations jurisdiction is made evident.

---

36 See for instance Application by United Voice and the Australian Education Union [2018] FWCFB 177.

37 Healy, J., and Kidd, M. P. (2013). Gender-based undervaluation and the equal remuneration powers of Fair Work Australia. *Journal of Industrial Relations*, 55(5), p. 760

38 *ibid.*

# Achieving Equal Remuneration

Equal pay for work of equal or comparable value, regardless of gender, or other attributes, is a fundamental value of contemporary societies.<sup>39</sup> Despite this, the gap in pay advantaging men over women has proven both persistent and universal. The most recent statistics capturing wage inequality in the Australian workforce are stark. For the 2016–2017 financial year Australia’s full-time gender pay gap was 15.3 percent, and women earned on average \$253.70 less than men each week.<sup>40</sup> Women’s average full-time base salary across all industries and occupations is 17.3 percent less than men’s (\$16,183 p.a.).<sup>41</sup> Accounting for full-time total remuneration, men still take home 22.4 percent a year more than women on average (\$26,527).<sup>42</sup>

While these figures are confronting, they provide limited information on gender pay equity, as they are based on average-wage data. The gap differs between industries and sectors, and from State to State.<sup>43</sup> Standard measurements also exclude from the analysis the 46 percent of employees who work on a part-time or casual basis, the majority of whom are women.<sup>44</sup> Therefore, as a high-level indicator, the gender pay gap is likely to mask conflicting trends in gender pay equity. Improvements in pay equity amongst some groups will not be apparent if there is a comparable deterioration for other groups. That causal complexity means that any attempt to close the gender pay gap must include a wide spectrum of strategies.<sup>45</sup>

The determinants of the current gender pay gap are complex. Women’s disproportionate representation in lower wage occupations is a crucial contributor. Wage growth in Australia has, of late, been the lowest in two decades.<sup>46</sup> Workers reliant on minimum wage, the majority of whom are women, are no longer guaranteed to be spared from poverty.<sup>47</sup> In the public sector, low wage growth is compounded by current trends toward economic rationalist thinking that encourages restraint expenditure, and increasing practices of downsizing, privatisation and subcontracting, which pose inherent risks to overall wage levels and decrease employment prospects.<sup>48</sup> Workers are now prioritising job security over pay raises, contributing to the lack of growth.<sup>49</sup> In 2016, 24 percent of Australian jobs were paid at the minimum or ‘award’ rate.<sup>50</sup> This rate is set by the Fair Work Commission in most cases. Research has found that award-reliant women earn approximately 10 percent less per hour than award-reliant men, a disadvantage that is not explained by differences between men and women in their skills and abilities, as measured by their work experience and education.<sup>51</sup> This suggests a broader issue across industries.

39 Amado, C. A., Santos, S. P., and São José, J. M. (2018). Measuring and decomposing the gender pay gap: A new frontier approach. *European Journal of Operational Research*, 271(1), p. 360

40 Workplace Gender Equality Agency (2017), Australia’s gender equality gender pay gap statistics, Sydney: Australian Government, p. 1

41 Workplace Gender Equality Agency (2017), Australia’s gender equality scorecard: Key findings from the Workplace Gender Equality Agency’s 2016-17 reporting data, Sydney: Australian Government, p. 10

42 *ibid*, p. 4

43 Todd, P., and Preston, A. (2012). Gender pay equity in Australia: Where are we now and where are we heading? *Australian Bulletin of Labour*, 38(3), p. 253

44 Workplace Gender Equality Agency (2017), Australia’s gender equality scorecard: Key findings from the Workplace Gender Equality Agency’s 2016-17 reporting data, Sydney: Australian Government, p. 15.

45 Todd, P., and Preston, A. (2012). Gender pay equity in Australia: Where are we now and where are we heading? *Australian Bulletin of Labour*, 38(3), p. 253

46 Chua, C. L., and Robinson, T. (2018). Why has Australian wages growth been so low? A Phillips curve perspective. *Economic Record*.

47 Lemaire, J. (2018). For fair work help Change the Rules. *Education*, 99(2), 7-7.

48 Todd, P. (2010). Gender mainstreaming: The answer to the gender pay gap? In Eveline J. and Bacchi C. (Eds.), *Mainstreaming Politics: Gendering Practices and Feminist Theory* (pp. 163-190). South Australia: University of Adelaide Press, p. 170

49 Preston, A. (2018). *The structure and determinants of wage relativities: evidence from Australia*. Routledge.

50 Australian Bureau of Statistics (2017) 6306.0 – Employee Earnings and Hours, Australia, May 2016,.

51 Broadway, B., and Wilkins, R. (2017). Probing the effects of the Australian system of minimum wages on the gender wage gap. IZA Discussion Papers, No. 11191, Institute for the Study of Labor (IZA), Bonn,



Extensive research demonstrates that one of the key factors in the persistence of the gender wage gap is the limited success in efforts to change masculinist organisational cultures, attitudes and behaviours, such that women are still overrepresented in undervalued industries and occupations.<sup>52</sup> Occupational segregation – the extent to which men and women are distributed across different occupations – increases wage disparity when job types with a higher proportion of women are paid less than traditionally ‘male’ jobs.<sup>53</sup> In Australia, occupational segregation explains part of the gender pay gap by reducing wages in predominantly female fields.<sup>54</sup> Research consistently shows that undervaluation on the basis of gender remains substantial and widespread in the Australian workforce. Recent analyses suggest that this undervaluation accounts for 18 percent of the gender pay gap.<sup>55</sup> Wages for employees in female-dominated occupations are significantly lower than for comparable employees in male-dominated and integrated occupations.<sup>56</sup> This undervaluation is present for both male and female employees, and persists after controlling for industry of employment.<sup>57</sup> As stated above, women remain overrepresented in sectors and occupations which are characterised by high levels of reliance on the employment safety net, low-pay, low-levels of unionisation and high levels of part-time and casual work.<sup>58</sup> Further, award classification pay scales continue to perpetuate the historical under-valuation of work in ‘feminised’ industries and occupations.<sup>59</sup> Indeed, the gender pay gap in Australia remains higher for those whose wage is set by individual arrangement (19.1 percent) than by award or collective agreement (13.1 percent).<sup>60</sup> It follows that inequitable pay outcomes will not sustain women’s participation in the labour market in particular, in such critical sectors as education and health where their work has been undervalued historically.<sup>61</sup>

While more organisations are implementing formal policies and/or strategies on remuneration with specific pay equity objectives, only 58.5 percent of organisations report having a formal policy and/or strategy on remuneration. Of these organisations, the proportion with pay equity objectives in their policy and/or strategy stands at 36.3 percent.<sup>62</sup> Regardless of proportion, equal pay strategies have had limited capacity to address the subtle, historical undervaluation that keep wages low in highly feminised areas of employment.<sup>63</sup> It is clear that addressing this issue cannot be left up to industry.

In Australia, wage determination and conditions as set by the award system and industrial tribunals provide key avenues to address inequality. In this context pay equity reform has resulted in the development of principle-based gender-based undervaluation in several State jurisdictions.<sup>64</sup> In the national system, s. 300 of the Fair Work Act empowers Fair Work Australia to ‘make orders to ensure that there will be equal remuneration for men and women workers for work

52 Kennedy, T., Rae, M., Sheridan, A., and Valadkhani, A. (2017). Reducing gender wage inequality increases economic prosperity for all: Insights from Australia. *Economic Analysis and Policy*, 55, p. 14

53 ibid

54 Miller (1994). ‘Occupational segregation and wages in Australia’, *Economics Letters*, Volume 45, pp.367-371.

55 Healy, J., and Kidd, M. P. (2013). Gender-based undervaluation and the equal remuneration powers of Fair Work Australia. *Journal of Industrial Relations*, 55(5), 760-782.

56 Peetz, D. (2014). Regulation distance, labour segmentation and gender gaps. *Cambridge Journal of Economics*, 39(2), 345-362.

57 Healy, J., and Kidd, M. P. (2013). Gender-based undervaluation and the equal remuneration powers of Fair Work Australia. *Journal of Industrial Relations*, 55(5), p. 760

58 See, for example, Annual Wage Review 2016–17 [2017] FWCFB 3500 at [654]

59 Todd, P. (2010). Gender mainstreaming: The answer to the gender pay gap? In Eveline J. and Bacchi C. (Eds.), *Mainstreaming Politics: Gendering Practices and Feminist Theory* (pp. 163-190). South Australia: University of Adelaide Press, p. 170

60 ABS (2017), Employee Earnings and Hours, Australia, May 2016, cat. no. 6306.0:real factor of expectations that take women away from the workforce without commensurate flexibility neutral to bargaining prac

61 Todd, P., and Preston, A. (2012). Gender pay equity in Australia: Where are we now and where are we heading?. *Australian Bulletin of Labour*, 38(3), p. 251.

62 Workplace Gender Equality Agency (2017), Australia’s gender equality scorecard: Key findings from the Workplace Gender Equality Agency’s 2016-17 reporting data, Sydney: Australian Government, p. 7

63 Cortis, N., and Meagher, G. (2012). Recognition at last: Care work and the equal remuneration case. *Journal of Industrial Relations*, 54(3), p. 377

64 Whitehouse, G., and Rooney, T. (2011). Approaches to gender-based undervaluation in Australian industrial tribunals: Lessons from recent childcare cases.

of equal or comparable value'.<sup>65</sup> Nominally, the concept of undervaluation does not require proof of discrimination against women, nor does it presume strict male/female comparability. Rather, undervaluation may be demonstrated to exist via feminisation indicators, including occupational gender segregation, or via a detailed award history showing how earlier decisions devalued (or failed to properly value) the work.<sup>66</sup> However, attempts to close the gender pay gap through wage determination decisions have been limited in two ways: (a) they have no way of addressing pay rates above the award minimums and (b) aside from the few, albeit important, cases that have been resolved under the Equal Remuneration Principles, they fail to challenge the undervaluation of female-dominated occupations.<sup>67</sup>

Indeed, the knowledge generated from numerous inquiries is often ignored in practice. To date, the pursuit of Equal Remuneration Orders under the existing provisions<sup>68</sup> has proved to be an extremely costly, time-consuming, highly adversarial and overwhelmingly ineffective process. This is demonstrated by the recent decision of the Fair Work Commission<sup>69</sup> to dismiss an application by the Australian Education Union and United Voice for equal pay for the children's services and early childhood education industry. In that case, the Liberal Federal government and employer groups argued – and the Fair Work Commission agreed – that unions should identify 'male comparators', despite the fact that there has been no such requirement in the Fair Work Act since 2009. This decision fails to recognise the systemic undervaluing of women's work and limits the potential of a gender undervaluation approach in future equal remuneration cases. The case also demonstrates that not only is there a need for strong legislative provisions, but they must also be understood, supported and appropriately implemented by key institutional actors, such as the Federal Government and the Fair Work Commission.

It is clear that the rules regarding awards as a wage setting mechanism need to change in order to overcome the historical gender-based undervaluation of work in female-dominated industries. To the extent that the gender wage gap is the result of differences in earnings at the bottom of the wage distribution, minimum wages will act to reduce the gender wage gap.<sup>70</sup> The system has the potential to close the gender wage gap by ensuring equal minimum pay for equal jobs, however it also has the potential to widen it by discriminating against jobs more commonly held by women.<sup>71</sup> Currently, there is little transparency in the reasoning driving the differences in minimums set by the Fair Work Commission. In order to increase confidence that the award system does not put women relying on minimum wages at a disadvantage, wage-setting process that explicitly acknowledges and quantifies the factors considered in determining minimum wages is required.<sup>72</sup>

To this end, parties lodging enterprise agreements with the Fair Work Commission for approval should provide information about the steps taken to provide for equal remuneration for work of equal or comparable value.<sup>73</sup> In addition, and as previously recommended,<sup>74</sup> a key step in

65 Healy, J., and Kidd, M. P. (2013). Gender-based undervaluation and the equal remuneration powers of Fair Work Australia. *Journal of Industrial Relations*, 55(5), p. 767

66 *ibid*

67 Todd, P. (2010). Gender mainstreaming: The answer to the gender pay gap? In Eveline J. and Bacchi C. (Eds.), *Mainstreaming Politics: Gendering Practices and Feminist Theory* (pp. 163-190). South Australia: University of Adelaide Press, p. 169

68 FW Act, s 302-306

69 Application by United Voice and the Australian Education Union [2018] FWCFB 177.

70 Broadway, B., and Wilkins, R. (2017). Probing the effects of the Australian system of minimum wages on the gender wage gap. IZA Discussion Papers, No. 11191, Institute for the Study of Labor (IZA), Bonn, p. 2

71 *ibid*, p. 1

72 *ibid*

73 See s250 of the Queensland Industrial Relations Act 2016

74 Finance and Public Administration References Committee (2017), *Gender segregation in the workplace and its impact on women's economic equality*, Chapter 6, Recommendation 4. s6.28

providing an adequate regulatory framework for gender equality is the establishment of expert Pay Equity Panel, to undertake research into pay equity matters and provide recommendations for consideration by a Full Bench of the Fair Work Commission. This panel should conduct a review of alternative means of making equal remuneration orders, such as conciliation through the Pay Equity Panel, with a view to achieving more timely resolution of equal remuneration applications.<sup>75</sup> A series of transparent Pay Equity Principles for the resolution of all pay equity matters must be legislated and followed by Fair Work Australia. These principles should be based on the model set out in the Queensland Industrial Relations Act 2016, and should expressly confirm that no 'male comparator' is required to prove that work is undervalued on gender grounds. Further, applications to 'revalue' key areas of female employment are likely to play an important role.<sup>76</sup> The Fair Work Commission should be required (rather than just permitted) to make an Equal Remuneration Order when the legislative conditions are met.<sup>77</sup> Work value and Equal Remuneration Orders should be able to be run concurrently. These recommendations represent a crucial opportunity to address an as yet persistent contributory factor to pay disparity.

---

75 *ibid.*

76 Healy, J., and Kidd, M. P. (2013). Gender-based undervaluation and the equal remuneration powers of Fair Work Australia. *Journal of Industrial Relations*, 55(5), 760-782.

77 See s248 and 249 of the Queensland Industrial Relations Act 2016

## Creating work security

The neoliberal philosophy that has guided changes in our industrial relations system over the past three decades has contributed a significant increase in non-standard work.<sup>78</sup> Insecure work, incorporating casual work, fixed term contracts, independent contracting and labour hire, has been steadily increasing in Australia in this period. Historically, the individual and social costs of insecure employment have been overlooked or 'reified' in the workplace and in public political discourse.<sup>79</sup> However, more recent discussion has concerned the ways in which insecure work provides workers with little economic security and a lack of control over their working lives. Identified characteristics of insecure work include: unpredictable or fluctuating pay; inferior rights and entitlements; limited or no paid leave; no certainty over job tenure; and a lack of a say in the workplace.<sup>80</sup> Further, there is increasing recognition that employer reliance on this form of work is excessive and beyond the original intent of non-standard labour.

At present, around four million workers in Australia are in insecure work. Recent analyses demonstrate that women are overrepresented in non-standard work categories, and remain more vulnerable than men to exploitative, casualised and insecure forms of work. At present, 67.9 percent of men and 40.2 percent of women work a standard full-time job.<sup>81</sup> Conversely, women comprise 52.6 percent of all casual employees.<sup>82</sup> 26.9 percent of working women are employed on a casual basis, compared to 21.4 percent of men.<sup>83</sup> Research suggests that the reasons for this overrepresentation are multifaceted and interconnected. The history of women's increased participation in the workforce saw women typically entering into part-time work offered only under casual conditions.<sup>84</sup> Due to carer responsibilities women often engage in insecure employment seeking flexibility. However, transition back or into standard work is hampered by the aforementioned increase in casualisation and a lack of accommodation for ongoing carer responsibilities. This difficulty is compounded by current rules that enable employers to easily deny permanency.

The reality of insecure work goes beyond reduced bargaining power and lower industrial rights and protections. The dramatic expansion of non-standard work in Australia in recent decades is the result of a business model that has shifted economic risks from the employer to the worker.<sup>85</sup> Women remain particularly vulnerable to this risk. There are clear economic consequences of this trend for women – including lower wages, less hours of work, a lack of paid leave, an increased likelihood of periods of unemployment and a reduction in superannuation of the lifespan.<sup>86</sup> In addition, there is growing evidence that insecure work negatively effects both health,<sup>87</sup> and the capacity to make long term life decisions.<sup>88</sup> Immediate action is needed in order reduce the effects of insecure work on women.

78 Australian Council of Trade Unions (2018) Australia's insecure work crisis: Fixing it for the future, Melbourne: Australian Council of Trade Unions, p. 26

79 Tweedie, D. (2013). Precarious work and Australian labour norms. *The Economic and Labour Relations Review*, 24(3), p. 297

80 Howe, B. (2012). Lives on hold: Unlocking the potential of Australia's workforce. *Family Matters*, (91), 113.

81 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 15.

82 ABS (2018), Characteristics of Employment Australia, August 2016, cat. no. 6333.0

83 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 17

84 Campbell, I. (2013). An historical perspective on insecure work in Australia. *Queensland Journal of Labour History, The*, (16), p. 15

85 Australian Council of Trade Unions (2018) Australia's insecure work crisis: Fixing it for the future, Melbourne: Australian Council of Trade Unions, p. 27

86 Sheen, V. (2017). The implications of Australian women's precarious employment for the later pension age. *The Economic and Labour Relations Review*, 28(1), 3-19.

87 Kim, T. J., and von dem Knesebeck, O. (2015). Is an insecure job better for health than having no job at all? A systematic review of studies investigating the health-related risks of both job insecurity and unemployment. *BMC Public Health*, 15(1), 985.

88 Chan, S., and Tweedie, D. (2015). Precarious work and reproductive insecurity. *Social Alternatives*, 34(4), 5.



The aim of gender equality in the workforce requires the restoration of basic rights and security for women in non-standard forms of work. To this end, the Campaign offers a number of key recommendations to enhance the conditions of those in casual employment, reduce reliance on insecure work, and increase access to industrial rights. As a matter of urgency, the Campaign calls for a reversal of the current trend towards reduction and removal of penalty rates. A high proportion of those in insecure work are in those industries and occupations that are increasingly subject to cuts in weekend and holiday pay, including hospitality, pharmacy, retail and fast food workers. It is noted that since the penalty rates were cut, consumer spending has declined and the jobs that were promised have not materialised. The Campaign seeks a restoration of penalty rates to the pre-July 2017 levels, and legislative restrictions on the ability of businesses to impose future cuts.

With respect to reducing employer reliance on insecure work, a central issue tackled by the Campaign is that casual employment lacks a statutory definition. The legal definition of casual employment is thus highly variable across award jurisdictions. A shared understanding denotes the main feature of casual work as employment and pay on an hourly basis, such that the employer need only offer employment to the casual employee if they choose to do so.<sup>89</sup> Resultantly, there exists no requirement for employers to consider the employees desire for permanency of work. Casual employment needs to be properly defined so that casual workers cannot be so easily exploited by employers.

In addition, while some awards have limited the extent of casual employment, they have typically excluded casual workers from the conditions of permanent employees, creating an officially sanctioned gap in protection.<sup>90</sup> In order to fill this gap, casual employees, and those on rolling contracts, need access to basic rights. Awards need to be subject to improvement to reflect community standards. All workers, regardless of their status, should have the same basic rights to access the minimum wage, paid leave, public holidays, occupational health and safety protections and collective bargaining. Those who have worked on a regular or systematic basis for six consecutive months, deserve the right to convert to permanent work if they choose.

An additional issue confronting women in Australia with respect to secure work is the lack of uniform workplace support for those experiencing family violence. Family violence is a major health and welfare issue in Australia, occurring across all ages, and all socioeconomic and demographic groups.<sup>91</sup> Australian women are nearly three times more likely than men to experience violence from an intimate partner.<sup>92</sup> The majority of women experiencing family violence are in paid employment.<sup>93</sup> However, research suggests that women experiencing family violence are more likely to be in part-time or casual work,<sup>94</sup> and subject to higher rates of job instability.<sup>95</sup> Over the life course, women who have experienced family violence suffer impediments to career progression and lower superannuation. The experience of family violence has economic repercussions for women in terms of lifetime earnings, in addition to an immediate cost associated with leaving an abusive relationship.<sup>96</sup> The compounding economic stress of family violence can keep people in abusive

89 Wooden, M. (2001) 'How Temporary are Australia's Casual Jobs?', *Work, Employment and Society*, 15(4), pp. 875-883.

90 Tweedie, D. (2013). Precarious work and Australian labour norms. *Economic and Labour Relations Review*, 24(3), p. 303

91 Australian Institute of Health and Welfare (2018). Family, domestic and sexual violence in Australia 2018. Cat. no. FDV 2. Canberra: Australian Institute of Health and Welfare.

92 Australian Bureau of Statistics (2017) Personal Safety, Australia, 2016, ABS cat. no. 4906.0. Canberra: Australian Bureau of Statistics

93 McFerran, L. (2011). Safe at home, safe at work. *National domestic violence and the workplace survey* (2011). Australia: Australian Domestic and Family Violence Clearinghouse.

94 McFerran, L. (2016). Domestic violence is a workplace issue; Australian developments 2009-2016. Sydney: Workplace Gender Equality Agency. Accessible at: <https://www.wgea.gov.au/sites/default/files/mcferran-domestic-violence-workplace-issue-australian-developments.pdf>

95 Adams, A. E., Tolman, R. M., Bybee, D., Sullivan, C. M., & Kennedy, A. C. (2012). The impact of intimate partner violence on low-income women's economic well-being: The mediating role of job stability. *Violence Against Women*, 18(12), 1345-1367.

96 Hughes, M. M., and Brush, L. D. (2015). The price of protection: A trajectory analysis of civil remedies for abuse and women's earnings. *American sociological review*, 80(1), 140-165.

relationships. Conversely, job security is a critical facilitator for those experiencing violence to leave violent relationships.<sup>97</sup> As such, workplaces have a key role to play in addressing family violence and assisting those experiencing it.<sup>98</sup>

Australia has long been a world leader in family violence workplace provisions, and was the site for one of the first clauses providing paid family violence leave. In 2010, clauses providing paid leave and other entitlements to workers experiencing family violence were included in union negotiated enterprise agreements registered for the first time with the Australian Fair Work Commission.<sup>99</sup> In the years that followed, the number of agreements with family violence leave and associated provisions has grown exponentially. In addition, all but one Australian government has extended paid leave and other provisions to their public servants, and the right to request flexible work arrangements due to family violence has been included in the Fair Work Amendment Act 2013.<sup>100</sup> Most recently, a decision by the Fair Work Commission provides those covered under modern awards access to five days unpaid leave to deal with the impact of family violence.<sup>101</sup>

Despite these advancements, workplace responses to family violence remain inconsistent and inadequate. Collective bargaining has produced a level of variability of family violence entitlements however a standard approach and the provision of clear and consistent entitlements for all workers is needed.<sup>102</sup> Research has found that key facilitators of equality bargaining in relation to these entitlements were the contributions from external forces, the availability of a 'model clause' and the commitment of Union representatives, in addition to the bargaining relationship and the reputation of the parties.<sup>103</sup> Further, while an improvement upon the absence of guaranteed leave, the recent provision for five days unpaid leave does not adequately address the financial hardship experienced by those seeking to leave abusive relationships nor the time required to safely leave. Immediate financial costs include truck hire, bond and rent, furnishings and appliances, childcare, counselling and solicitors fees, totalling upwards of \$18,000. Workers experiencing family violence are further burdened with the tasks of finding a new home, moving, attending court, and engaging with support organisations and groups. Conservative estimates place the time-cost of leaving at over 140 hours.<sup>104</sup>

Workers require adequate support to ensure that they are able to leave abusive relationships without unnecessary economic loss. This support cannot be solely dependent on bargaining and negotiated enterprise agreements. Nor can this support ignore the link between financial insecurity and the ability to leave abusive relationships. For this reason, a minimum of ten days paid leave should be provided for in the National Employment Standards. This provision would mean that those experiencing family violence do not have to choose between necessary support and financial security.<sup>105</sup> Failing to provide paid family violence leave further entrenches social and workplace disadvantages that contribute to the gender pay gap as discussed above.

97 UN Women National Committee Australia (2017) Taking the first step: Workplace responses to domestic and family violence, Canberra: UN Women; Renzetti, C (2009) Economic Stress and Domestic Violence, University of Kentucky: CRVAW Faculty Research Reports and Papers

98 Holmes, S., and Flood, M. G. (2013). *Genders at Work: Exploring the role of workplace equality in preventing men's violence against women*. Victoria: White Ribbon Research Series

99 Baird, M., McFerran, L., and Wright, I. (2014). An equality bargaining breakthrough: Paid domestic violence leave. *Journal of Industrial Relations*, 56(2), pp. 190-207.

100 McFerran, L. (2016). Domestic violence is a workplace issue; Australian developments 2009-2016. Sydney: Workplace Gender Equality Agency. p. 1. Accessible at: <https://www.wgea.gov.au/sites/default/files/mcferran-domestic-violence-workplace-issue-australian-developments.pdf>

101 See 4 yearly review of modern awards – Family and Domestic Violence [2018] FWCFB 1691

102 McFerran, L. (2016). Domestic violence is a workplace issue; Australian developments 2009-2016. Sydney: Workplace Gender Equality Agency. p. 9. Accessible at: <https://www.wgea.gov.au/sites/default/files/mcferran-domestic-violence-workplace-issue-australian-developments.pdf>

103 Baird, M., McFerran, L., and Wright, I. (2014). An equality bargaining breakthrough: Paid domestic violence leave. *Journal of Industrial Relations*, 56(2), pp. 190-207.

104 SBS World News (2017) Cost of fleeing violent relationship is \$18,000 and 141 hours, 13 November 2017. Accessible at: <https://www.sbs.com.au/news/cost-of-fleeing-violent-relationship-is-18-000-and-141-hours-actu>

105 Farhall, K (2018) Why family violence leave should be paid, *The Conversation*, March 28 2018. Accessible at: <https://theconversation.com/why-family-violence-leave-should-be-paid-94113>

## Accommodating carer responsibilities

As articulated earlier, the persistent gender gaps in labour force participation over the past few decades highlight the limitations of standard labour supply arguments, which neglect the role of social norms on women's ability to enter, and remain in, the labour market.<sup>106</sup> The differential treatment of the institution of the family in capitalist societies is a key contributor to gender inequality in the workforce. While the vast majority of working people have a responsibility to perform unpaid domestic work and to care for children, a sick relative, or an elderly parent, deep-rooted social norms see women facing more disruptions over their working life by undertaking a disproportionate share of unpaid domestic and care-related labour.<sup>107</sup> In Australia, men perform on average less than five hours of unpaid domestic labour per week compared to between five and 14 hours performed by women.<sup>108</sup> Women face disproportionate disruption when having children, utilising 74.3 percent of all periods of paid parental leave.<sup>109</sup> Further, working women continue to shoulder the majority of child-care responsibilities, with non-working men devoting less time to childcare than working women.<sup>110</sup>

In the work context, having and caring for children negatively impacts women's wages and progression over the career span, particularly for those in low income careers.<sup>111</sup> Child bearing has been shown have an ongoing negative impact on women's wages, but a positive impact on men's wages.<sup>112</sup> The gender gap in unpaid care work has significant implications for women's ability to actively take part in the labour market, in addition to limiting the employment opportunities available to them. Carer responsibilities are also related to the quality of female employment with the unequal amount of time spent by women on unpaid care work increasing the probability that they will be engaged in vulnerable employment.<sup>113</sup> This is structured by gendered social norms which reinforces the 'naturalness' of men's full-time presence in the workplace.<sup>114</sup> Women who want to increase their hours again after their caring responsibilities lessen or cease are often unable to do so. Finally, women are frequently forced to take a lower quality job or leave the workforce altogether because they are unable to access adequate paid parental leave or reduced hours working arrangements in their jobs. Indeed, women are seven times as likely as men to cease employment during parental leave.<sup>115</sup>

- 
- 106 Ferrant, G., Pesando, L. M., and Nowacka, K. (2014). Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes. Issues Paper, OECD Development Centre, Accessible at: [www.oecd.org/dev/developmentgender/unpaid\\_care\\_work.pdf](http://www.oecd.org/dev/developmentgender/unpaid_care_work.pdf), p. 4
- 107 Charlesworth, S., Strazdins, L., O'Brien, L., and Sims, S. (2011). Parents' jobs in Australia: Work hours polarisation and the consequences for job quality and gender equality. *Australian Journal of Labour Economics*, 14(1), 35.
- 108 Australian Bureau of Statistics (2017) 2071.0 - Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016 Accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Employment%20Data%20Summary~67>
- 109 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 9
- 110 Miranda, V. (2011). Cooking, caring and volunteering: Unpaid work around the world. Paris: OECD, p. 19
- 111 Budig, M. J., and Hodges, M. J. (2010). Differences in disadvantage: Variation in the motherhood penalty across white women's earnings distribution. *American Sociological Review*, 75(5), 705-728.
- 112 Pocock, B., and Alexander, M. (1999). The price of feminised jobs: New evidence on the gender pay gap in Australia. *Labour and Industry: a journal of the social and economic relations of work*, 10(2), 75-100.
- 113 Ferrant, G., Pesando, L. M., and Nowacka, K. (2014). Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes. Issues Paper, OECD Development Centre, Accessible at: [www.oecd.org/dev/developmentgender/unpaid\\_care\\_work.pdf](http://www.oecd.org/dev/developmentgender/unpaid_care_work.pdf), p. 6
- 114 Kennedy, T., Rae, M., Sheridan, A., and Valadkhani, A. (2017). Reducing gender wage inequality increases economic prosperity for all: Insights from Australia. *Economic Analysis and Policy*, 55, 14-24.
- 115 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 9

It is clear that workplaces play a key role in enforcing indirect discrimination with respect to carer responsibilities, including the failure of employers to offer adequate leave and flexibility in working arrangements. As found by the Fair Work Commission, workplace culture and norms play a significant role in the treatment of requests for flexible working arrangements, and the attitudes of individual managers and supervisors can be powerful barriers to, or enablers of, flexibility.<sup>116</sup> In Australia, fewer than half of employers (45.9 percent) offer paid parental leave for primary carers in addition to the government scheme, and a meagre 39.3 percent of employers offer paid parental leave for secondary carers. The most recent analyses reveal that just over half of workplaces have non-leave based family-friendly initiatives in place, representing a decline over the past two years.<sup>117</sup> A significant proportion of employees are not happy with their working arrangements but do not make a request for change (known as 'discontented non-requestors'), for reasons including that their work environment is openly hostile to flexibility. Men are more likely to be discontented non-requestors than women. This suggests that there is a significant unmet employee need for flexible working arrangements.<sup>118</sup> While 68.3 percent of employers have a policy or strategy for flexible working, only about a quarter offer manager training on flexibility.<sup>119</sup> Given the inconsistent implementation of good practice initiatives, family-friendly working arrangements, and access to paid parental leave, it is clear that strong, consistent and enforceable policies are needed.

Gender inequality in unpaid care work has often been the missing link in the analysis of gender gaps in labour outcomes, such as labour force participation, wages and job quality. Tackling entrenched gender norms and stereotypes is a first step in redistributing responsibilities for unpaid domestic work and care between women and men,<sup>120</sup> and policy has a key role to play. How society and policy makers address issues concerning care has important implications for the achievement of gender equality in that they can either expand the capabilities and choices of women and men, or confine women to traditional roles associated with femininity and motherhood.<sup>121</sup> Thus, while policy and legislation form only part of an adequate response to gender inequity in relation to unpaid labour and carer responsibilities, they have the capacity to be structuring factors in the context-specific system of the resources and constraints within which individuals, households, and families develop their strategies and make choices with respect to labour division.<sup>122</sup>

Previous analyses have found a lack of coherence and integration between various work/family related policies and the need for a wider range of reforms.<sup>123</sup> In particular, recent history has demonstrated dangers in invoking gender equality within deregulatory or flexibility discourses.<sup>124</sup> The gendered use of flexibility rights, such as the 'right to request' flexible working arrangements works,

116 4 yearly review of modern awards – Family friendly working arrangements [2018] FWCFB 1692 at [392]

117 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 9

118 Skinner N, Cathcart A and Pocock B (2016), 'To ask or not to ask? Investigating workers' flexibility requests and the phenomenon of discontented non-requestors', Labour and Industry, Vol. 26, No. 2, pp. 103-119.

119 Workplace Gender Equality Agency (2017), Australia's gender equality scorecard: Key findings from the Workplace Gender Equality Agency's 2016-17 reporting data, Sydney: Australian Government, p. 5

120 Ferrant, G., Pesando, L. M., and Nowacka, K. (2014). Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes. Issues Paper, OECD Development Centre, Accessible at: [www.oecd.org/dev/developmentgender/unpaid\\_care\\_work.pdf](http://www.oecd.org/dev/developmentgender/unpaid_care_work.pdf),

121 *ibid*, p. 1

122 Saraceno, C., and Keck, W. (2011). Towards an integrated approach for the analysis of gender equity in policies supporting paid work and care responsibilities. *Demographic Research*, 25, 371-406.

123 Pocock, B., Charlesworth, S., and Chapman, J. (2013). Work-family and work-life pressures in Australia: advancing gender equality in "good times"? *International Journal of Sociology and Social Policy*, 33(9/10), 594-612.

124 Rubery, J. (2011) 'Gender and regulation: the use and misuse of the gender equality cause', paper presented to the 2nd Conference of the Regulating for Decent Work Network, ILO, Geneva, 6-8 July 2011.



in many ways, to entrench gender inequality in the face of strong gendered workplace and societal norms and practices around work and care.<sup>125</sup> Without robust, multi-faceted and integrated reform around work and family, in which gender equality outcomes are a central objective, policy reforms will fail to achieve a more equal sharing of paid and caring work between men and women, and greater equality between women and men more generally.<sup>126</sup> Two key elements of effective policy are the degree to which policies allow women with family responsibilities to remain in the labour market regardless of their carer responsibilities (through, for example, paid leave entitlements), and the degree to which policies support men's uptake of carer responsibilities (through both access to leave and encouragement toward family-friendly work arrangements).<sup>127</sup> As such, the benchmark for progress to gender equality needs to be the extent to which policies actually enable men and women to make genuine choices about their workforce participation and to share work and care.<sup>128</sup>

A first step is the provision of adequate care leave through standardised leave provisions. Indeed, parental leave entitlements are a means of supporting labour market participation, of acknowledging the need and value of providing care, and of rebalancing childcare responsibilities between fathers and mothers.<sup>129</sup> However, the period of leave must strike an important balance. Excessive leave can hamper an employee's ability to keep up with changing job conditions and professional development, while inadequate leave can cause difficulties in balancing work and carer responsibilities. For the individual, what is constructed as 'excessive' or 'inadequate' is subject to cultural and socio-economic contexts.<sup>130</sup> However, an assessment of extensive research has determined that optimal parental leave for the well-being of the child is one year with 50 percent of earnings.<sup>131</sup> This translates to a minimum of 26 weeks paid parental leave. This leave should be equally accessible to men or women based on a shareable family entitlement apportioned according to family needs. In order to support implementation of best practice, paid parental leave should be an industrial right in the National Employment Standards.

Secondly, family-friendly working conditions enable parents and carers to balance their working hours and caring responsibilities. A flexible work schedule allows women and men to choose working hours that better accommodate their caring responsibilities.<sup>132</sup> There is significant evidence of the benefits for businesses associated with the provision of flexible working arrangements, including increased staff retention and attendance.<sup>133</sup> In order to address the current disproportionate use of family-friendly working arrangements, all employees require the right to part time or reduced hours and the right to return when their caring responsibilities have reduced or ended. With respect to legislative assistance for employees to balance work and family

125 Pocock, B., Charlesworth, S., and Chapman, J. (2013). Work-family and work-life pressures in Australia: advancing gender equality in "good times"?. *International Journal of Sociology and Social Policy*, 33(9/10), 594-612.

126 Ibid.

127 Saraceno, C., and Keck, W. (2011). Towards an integrated approach for the analysis of gender equity in policies supporting paid work and care responsibilities. *Demographic research*, 25, p. 374

128 Charlesworth, S. (2013). Women, work and industrial relations in Australia in 2012. *Journal of Industrial Relations*, 55(3), p. 382

129 Saraceno, C., and Keck, W. (2011). Towards an integrated approach for the analysis of gender equity in policies supporting paid work and care responsibilities. *Demographic Research*, 25, p. 374

130 ibid, p.375

131 UNICEF (2008). The child care transition. Florence: UNICEF Innocenti Research Centre.

132 Ferrant, G., Pesando, L. M., and Nowacka, K. (2014). Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes. Issues Paper, OECD Development Centre, Accessible at: [www.oecd.org/dev/developmentgender/unpaid\\_care\\_work.pdf](http://www.oecd.org/dev/developmentgender/unpaid_care_work.pdf), p. 9

133 See for example, Productivity Commission, Childcare and Early Childhood Learning Inquiry Report No. 73, (2014); Yasbek, Phillipa, 'The Business Case for Firm-Level Work-Life Balance Policies: A Review of the Literature', Labour Market Policy Group, Department of Labour N.Z., (2004); Bloom, N., Kretschmer, T. and van Reenen, J, 'Are Family-friendly Workplace Practices a Valuable Firm Resource?' *Strategic Management Journal*, (2011), 32: 343-367; Business Council of Australia, 'Realising the Potential of People and Workplaces', Action Plan for Enduring Prosperity, (2013)

responsibilities, many exploitable ambiguities remain. Current provisions fall woefully short of the above aims. Indeed, the 'right to request' flexible work arrangements as enshrined in s65 of the Fair Work Act 2009 (Cth) does not provide employees with the right to shift to part-time work, or reduce their hours to meet carer responsibilities. Rather, s65 codifies an employee's existing ability to ask their employer for a change to their working arrangements. The provisions in s65 are neither guaranteed nor enforceable. Further, there is currently no capacity for an employee to challenge an adverse decision. As such, these provisions do not represent a 'minimum' condition or standard, and there remains a substantial gap in the safety net regarding family-friendly working arrangements. This gap must be filled by a strong and enforceable right to family-friendly working hours for parents and carers. It is suggested that where an employee meets minimum eligibility and notice requirements, the provision must grant a right to reduced or part-time working hours.

It is acknowledged that the provision of these arrangements is only part of the picture. A sound legislative and policy approach must support and incentivise men to share care responsibilities in order to reduce women's disproportionate use of part-time or reduced-hours arrangements. As such, the conditions of these arrangements must be robust and attractive. This includes security of status, role and remuneration and the ability to increase working hours when responsibilities lessen. This improvement in quality would encourage equal access to these arrangements by both women and men. These rights for secure family-friendly working arrangements ensure disruptions to women's careers, earnings and superannuation are minimised.

## Ensuring adequate superannuation for women

Increasing life expectancies and the aging of the baby boomer generation have contributed to a steady increase in the number of people above the age pension entitlement age of 67 in Australia.<sup>134</sup> Currently, of people aged 65 years and older receiving the aged pension, 55.6 percent are women.<sup>135</sup> Despite this growing population, women are increasingly locked out of a secure retirement. The average superannuation balances for women at retirement (age 60–64) are 42 percent less than those for men.<sup>136</sup> The median women’s superannuation balance immediately prior to retirement is currently less than \$80,000.<sup>137</sup> This is unlikely to fund any more than three years of retirement even on the most basic living standard. As a result, many women are retiring in poverty despite a lifetime of work. The most recent analyses suggest that women account for 70 percent of homelessness in people aged 55 years and over.<sup>138</sup>

It is clear that the current superannuation system is failing women. Extensive research confirms that there are many structural and systemic causes of the gender gap in retirement savings. At its conception, superannuation was predicated on a model of employment that is rapidly losing relevance in the modern context. This model assumed that household income was provided by a sole (usually male) breadwinner, working in a full-time and dependable job.<sup>139</sup> A sole breadwinner model no longer matches the reality of women’s increased participation in the workforce. Factors covered in this paper including the undervaluation of women’s paid work compared with men’s, and the rise in insecure work, significantly contribute to the disadvantage faced by women within the superannuation model.<sup>140</sup> Research suggests that, in addition to discrimination in the paid workforce, factors outside the workforce prevent women from accessing well-paid work and inhibit accumulation of superannuation. External factors include unpaid care, disability, ill-health and older age, and violence.<sup>141</sup> Further, the large tax expenditures on superannuation favour the economic opportunities and wellbeing of individuals with unbroken patterns of workforce participation and high earnings. As such, they add to, rather than correct for, the substantial gender pay and earnings gaps that characterise the Australian labour market.<sup>142</sup>

Given this multiplicity of contributing factors there is no singular solution to the issue of gender disparity in superannuation. However, ensuring superannuation is part of the industrial system creates an avenue of ensuring women no longer retire in poverty. Indeed, while the recommendations made thus far in this paper will improve superannuation outcomes for women by addressing systemic disadvantages and increasing women’s workforce participation and earnings, specific legislative, regulatory and employer-focused changes are also needed.

One avenue is to seek improvements in the rate of the age pension in order to bring it closer to community standards for comfortable living. Current policy frames the age pension as a fall-back source of income for those with minimal retirement savings. This individualised approach, which ties retirement income to a person’s earnings, consumption and savings “choices” over the life

134 Chomik, R. (2012, June). Australian census: Women are living longer, and on less. *The Conversation*. Accessed at [http:// theconversation.com/australian-census-women-are-livinglonger-and-on-less-7904](http://theconversation.com/australian-census-women-are-livinglonger-and-on-less-7904)

135 DSS (2014), Statistical Paper No. 12: Income support customers: a statistical overview 2013

136 Clare R. (2017), Superannuation account balances by age and gender, December 2017, ASFA Research and Resources Centre

137 Smith, W., and Hetherington, D. (2018). Not so super, for women: Superannuation and women’s retirement outcomes. *Precedent* (Sydney, NSW), (144), p. 7

138 Australian Bureau of Statistics (2016) 2049.0 - Census of Population and Housing: Estimating homelessness. Accessed at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>

139 Smith, W., and Hetherington, D. (2018). Not so super, for women: Superannuation and women’s retirement outcomes. *Precedent* (Sydney, NSW), (144), p. 6

140 *ibid* p. 5.

141 Weiss, C., Parkinson, D., and Duncan, A. (2015). Living longer on less: Women, paid work, and superannuation in Victoria, Australia. *Sage Open*, 5(3), 2158244015597966.

142 Austen, S., Sharp, R., and Hodgson, H. (2015). Gender impact analysis and the taxation of retirement savings in Australia. *Austl. Tax F.*, 30, p. 779

course, fails to take account of the unpaid contributions of women.<sup>143</sup> This is mirrored with respect to superannuation, in which income – and therefore accumulation pathways – are disrupted by unpaid contributions. Reform must focus on removing the structural disadvantages faced by low income earners, particularly women, in order to provide a basic living standard in retirement based on a combination of superannuation and the age pension.<sup>144</sup>

In addition to the recommendations made thus far, two key areas of reform proposed by the Campaign concern changes to compulsory employer contributions and the right to superannuation accrual on paid parental leave. The current superannuation system disadvantages women whose paid work falls outside the compulsory superannuation system including low-income and casual workers, those subject to sham contracting in women-dominated industries (such as cleaning and textiles),<sup>145</sup> in addition to those who do not perform paid work for a sufficient length of time.<sup>146</sup> As previously established, women are overrepresented in these two, often overlapping, cohorts. In order to reduce the disadvantage faced by women in insecure, part-time and short-term work, the minimum threshold for compulsory employer contributions of \$450 per month must be abolished.<sup>147</sup> Such a reduction would see a cumulative increase in superannuation for those workers in insecure working arrangements.

It is imperative that superannuation schemes accommodate common disruptions to paid work associated with parenting and caring responsibilities. As early as 2009, the Productivity Commission recommended that employers pay superannuation contributions (at the statutory amount) for the period of the parental leave benefit.<sup>148</sup> A key purpose of this recommendation was that entitlement to these benefits would be consistent with the goal of making a statutory paid parental leave scheme mirror, as much as possible, leave arrangements more generally. It would 'emphasise that the statutory scheme is a work-based benefit (with potential retention benefits) and that a period of caring for children while employed is a normal feature of employment.'<sup>149</sup> As such, this payment would address both a structural and systemic disadvantage for women, providing a continuity of accrual and partially addressing the disadvantage experienced by assuming carer responsibilities. To date, the failure to require payment of superannuation during leave continues women's income inequality into retirement.<sup>150</sup>

---

143 ibid, pp. 780-781

144 Smith, W., and Hetherington, D. (2018). Not so super, for women: Superannuation and women's retirement outcomes. *Precedent* (Sydney, NSW), (144), p. 21

145 Bletsas, A., and Charlesworth, S. (2013). Gender equality and decent work in Australia. *Australian Journal of Political Science*, 48(1), 44-56.

146 Sadiq, K. (2010). Equity for taxpayers within Australia's retirement savings regime: A dissenting opinion. *Pandora's Box*, 7-12.

147 Smith, W., and Hetherington, D. (2018). Not so super, for women: Superannuation and women's retirement outcomes. *Precedent* (Sydney, NSW), (144), p. 23

148 Productivity Commission (2009), *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, Canberra.

149 Ibid, p. 76

150 Broomhill, R., and Sharp, R. (2012). *Australia's parental leave policy and gender equality: An international comparison*. Adelaide: Australian Workplace Innovation and Social Research Centre, p. 16



## Change the Rules for working women

The past four decades has seen increasing public policy attention on women's unequal labour representation and gender pay inequality. Contemporarily, clearer understandings of the structural and systemic factors that contribute to gendered disadvantage in the workplace enable more effective and holistic responses to the issue. As described in this paper, extensive research suggests that gender discrimination in the workforce is linked to pay differences and employment practices, including hiring, promotion and access to training. Career breaks affect pay as child bearing and carer responsibilities impose a penalty on women in terms of career and salary progression, and in turn, on their ability to generate retirement incomes linked to employment continuity.<sup>151</sup> It is evident that gender inequality at work is multidimensional. It is not sufficient to increase female labour market participation rates to achieve gender pay and other equalities.<sup>152</sup> The continued reality of women's disadvantage over the lifespan demonstrates that historical attempts at redress have thus far failed to account for the complexity of the issue. There remains much scope for progress with respect to legislation, policy, and social norms that perpetuate women's disadvantage at work.

Due to fragmented attempts at redress and the lack of proper rules that allow for highly unionised workplaces, women continue to be strongly over-represented in the lowly paid award-only stream. The research is clear that women in highly unionised workplaces can get a more equitable outcomes.<sup>153</sup> Gender equality must be an objective of bargaining practice, industrial relations policy and legislation. There is a clear need for a number of mechanisms through the Fair Work Commission to address gender inequality. Requiring the Fair Work Commission to promote gender equity is essential to closing the gender pay gap and ensuring gender equality. As an additional measure to centralise the issue, the Fair Work Commission should be required to promote gender equity in performing all its functions and exercising all its powers. In addition to these features of an overarching industrial relations framework, the Change the Rules Campaign (the Campaign) suggests a number of critical and interconnected changes to current legislation and policy.

Firstly, the system has the potential to close the gender wage gap by ensuring equal minimum pay for equal work. Currently, there is little transparency in the reasoning driving the differences in minimums set by the Fair Work Commission. To this end, parties lodging enterprise agreements with the Fair Work Commission for approval should provide information about the steps taken to provide for equal remuneration for work of equal or comparable value. These matters must be considered by an expert Pay Equity Panel, in order to close the current gaps between legislative intent and practice. Further, a series of transparent Pay Equity Principles for the resolution of all pay equity matters must be legislated and followed by Fair Work Australia. The Fair Work Commission should be required to make an Equal Remuneration Order when the legislative conditions are met.

Secondly, the aim of gender equality in the workforce requires the restoration of basic rights and security for women in non-standard forms of work. A number of key steps must be taken to improve the conditions of women in casual employment, reduce reliance on insecure work, and increase access to industrial rights. As a matter of urgency, a reversal of the current trend towards

151 Chang, J., Connell, J., Burgess, J., and Travaglione, A. (2014). Gender wage gaps in Australian workplaces: are policy responses working?. *Equality, Diversity and Inclusion: An International Journal*, 33(8), p. 764

152 Kennedy, T., Rae, M., Sheridan, A., and Valadkhani, A. (2017). Reducing gender wage inequality increases economic prosperity for all: Insights from Australia. *Economic Analysis and Policy*, 55, p. 14

153 Checchi, D., Visser, J., and Van De Werfhorst, H. G. (2010). Inequality and union membership: The influence of relative earnings and inequality attitudes. *British Journal of Industrial Relations*, 48(1), 84-108.

reduction and removal of penalty rates is required. There must be a restoration of penalty rates to the pre-July 2017 levels, and legislative restrictions on the ability of businesses to impose future cuts. Further, casual employment needs to be properly defined so that casual workers cannot be so easily exploited by employers. In addition, in order to fill the current gap in protection, casual employees, and those on rolling contracts, need access to basic rights. Awards need to be subject to improvement to reflect community standards. All workers regardless of their status should have the same basic rights to access the minimum wage, paid leave, public holidays, occupational health and safety protections and collective bargaining. Those who have worked on a regular or systematic basis for six consecutive months, deserve the right to convert to permanent work if they choose.

**In addition, steps must be taken to ensure that those experiencing family violence are not subject to the impacts of insecure work. The progressive, yet inconsistent introduction of paid family violence leave in Australia has left many women vulnerable. Workers who are experiencing violence should not have to choose between making themselves, and often their children, safe and a secure job and economic security. Paid family violence leave must be incorporated into the National Employment Standards in order to address the systemic job insecurity and economic hardship experienced by those seeking to leave an abusive relationship.**

Thirdly, tackling entrenched gender norms and stereotypes is a first step in redistributing responsibilities for unpaid domestic work and care between women and men,<sup>154</sup> and policy has a key role to play. In order to support implementation of best practice, paid parental leave should be an industrial right in the National Employment Standards. In addition, family-friendly work schedule allows women and men to choose working hours that better accommodate their caring responsibilities.<sup>155</sup> At present, the 'right to request' flexible work arrangements as enshrined in s65 of the Fair Work Act 2009 (Cth) does not provide employees with the right to shift to part-time work, or reduce their hours to meet carer responsibilities. This gap must be filled by a strong and enforceable right to family-friendly working hours for parents and carers. It is suggested that where an employee meets minimum eligibility and notice requirements, the provision must grant a right to reduced or part-time working hours.

Finally, it is clear that the current superannuation system is failing women. Ensuring superannuation is part of the industrial system creates an avenue of ensuring women no longer retire in poverty. Reform must focus on removing the structural disadvantages faced by low income earners, particularly women, and provide a basic living standard in retirement based on a combination of superannuation and the age pension.<sup>156</sup> In order to reduce the disadvantage faced by women in insecure, part-time and short-term work, the minimum threshold for compulsory employer contributions of \$450 per month must be abolished.<sup>157</sup> Such a reduction would see a cumulative increase in superannuation for those workers in non-standard working arrangements. Further, in order to partially address the disadvantage experienced by assuming carer responsibilities, employers must pay superannuation contributions for the period of the parental leave benefit payment.

---

154 Ferrant, G., Pesando, L. M., and Nowacka, K. (2014). Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes. Issues Paper, OECD Development Centre, Accessible at: [www.oecd.org/dev/developmentgender/unpaid\\_care\\_work.pdf](http://www.oecd.org/dev/developmentgender/unpaid_care_work.pdf),

155 *ibid*, p. 9

156 Smith, W., and Hetherington, D. (2018). Not so super, for women: Superannuation and women's retirement outcomes. *Precedent* (Sydney, NSW), (144), p. 21

157 *ibid*, p. 23

While industrial relations policy and legislation form only part of an adequate response to gender inequality in the working lives of Australian women, these mechanisms have the capacity to be structuring factors in the context-specific system of the resources and constraints within which individuals, households, and families develop their strategies and make choices with respect to labour division.<sup>158</sup> Research suggests that given adequate political and financial resources, the industrial relations system can assist in narrowing the gender pay gap and provide other equalities.<sup>159</sup> The Change the Rules Campaign, as described in this paper, provides a framework for addressing the complex, structural and systemic factors that continue to maintain women's disadvantage. It is evident that the need for action is urgent. It is time to Change the Rules for working women.

---

158 Saraceno, C., and Keck, W. (2011). Towards an integrated approach for the analysis of gender equity in policies supporting paid work and care responsibilities. *Demographic research*, 25, 371-406.

159 Todd, P. (2010). Gender mainstreaming: The answer to the gender pay gap? In Eveline J. and Bacchi C. (Eds.), *Mainstreaming Politics: Gendering Practices and Feminist Theory* (pp. 163-190). South Australia: University of Adelaide Press, p. 187.



**This research is by Dr Nicole Bluett-Boyd,  
commissioned by the Australian Council of Trade Unions.**



Australian  
Unions  
Join. For a  
better life.