

**Change**  
**THE RULES**

FOR WORKING WOMEN

# Gender Equality

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CHANGING THE  
RULES FOR  
WORKING WOMEN

# Gender Equality



## Introduction

Thirty years of experimenting with trickle down economics has failed to provide secure jobs, a living wage and fair pay rises for working people.

For women, the situation is even worse.

Because of our broken rules, women get paid less. Women are increasingly locked out of a secure retirement, women make up the majority of workers reliant on the minimum wage, women are more vulnerable to exploitative, casualised and insecure forms of work and due to deep-rooted social norms women face more disruptions over their working life by taking on the majority of the responsibility for caring for children, family members and/or ageing parents.

Our broken rules entrench the gender pay gap, at the heart of this the failure to adequately value the work women have traditionally done – both paid and unpaid.

One of the core components of the Change the Rules campaign is to address gender equality. We need to campaign on and win systemic change for working women.

### *We need to change the rules:*

- By winning a living wage 2.3 million workers will get a pay rise – the majority of whom are women
- By winning rights for casual, labour hire and temporary contract workers we will ensure women have secure work and contribute to closing the pay and superannuation gap
- By winning the ability to bargain where the power is, we can close the gender pay gap
- By winning the restoration of penalty rates, working women will benefit the most
- By winning a return to a fairer and more accessible independent umpire, women will benefit
- By winning strong rights for secure “flexible” working arrangements for parents & carers, we can ensure disruptions to women’s careers, pay and superannuation are minimized
- By winning changes to the superannuation system and ensuring superannuation is part of our industrial system, we can start the pathway to ensuring women no longer retire in poverty
- By winning 10 days paid family and domestic violence leave as a universal entitlement, we can ensure that women and children experiencing violence have job & economic security while making themselves safe.

# The Problems:

## Pay Equity

### *Segregation & Undervaluation*

At the heart of the gender pay gap is the failure to adequately value the work women have traditionally done – both paid and unpaid.

Women are overrepresented in sectors and occupations which are characterised by high levels of reliance on the employment safety net, low-pay, in many areas low-levels of unionisation and high levels of part-time and casual work.<sup>1</sup>

Award classification pay scales continue to perpetuate the historical under-valuation of work in ‘feminised’ industries and occupations.

The pursuit of Equal Remuneration Orders (EROs) under the existing provisions<sup>2</sup> has proved to be an extremely costly, time-consuming, highly adversarial and, with a few exceptions, an overwhelmingly ineffective process.<sup>3</sup>

## Work Life Collision

Another one of the key causes of the gender inequality is that women work fewer paid hours than men, largely because of their disproportionate responsibility for unpaid caring/parenting responsibilities. Women are often 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. And often, women who want to increase their hours again after their caring/parenting responsibilities cease are unable to do so.

The ‘right to request’ flexible work arrangements in s 65 of the Fair Work Act 2009 (Cth) (FW Act) does not provide employees with a right to anything at all. It simply codifies an employee’s existing ability to ask their employer for a change to their working arrangements, with no capacity for an employee to challenge an adverse decision. The provisions in s 65 are neither guaranteed nor enforceable. They do not represent a ‘minimum’ condition or standard in relation to flexible working arrangements. As a result, there is a real and substantial gap in the safety net regarding flexible working arrangements, which is disproportionately disadvantaging women.

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

2 FW Act, ss 302-306

3 For example, the FWC recently dismissed an application by the AEU and United Voice for equal pay for the children’s services and early childhood education industry Application by United Voice and the Australian Education Union [2018] FWCFB 177

## Superannuation

Women have 42% less superannuation than men on retirement. There are many structural and systemic causes of the gender gap in retirement savings including the gender pay gap, superannuation not being paid for both paid and unpaid parental leave or superannuation contributions being reduced for periods when women temporarily adjust their hours downwards to meet their carer responsibilities (etc), superannuation not being paid to under 18's or when workers earn less than \$450 per month. Women make up the majority of workers in highly vulnerable, insecure and casualised forms of work and this has a direct negative impact on their capacity to accumulate sufficient superannuation balances over a working lifetime.

## Insecure Work

Insecure work, in the form of casualisation, fixed term or temporary contracts, sham contracting and labour hire has been on the rise in Australia.

Women are more likely to be in insecure work and make up the majority of the workforce in precarious or vulnerable employment arrangements.

Insecure work as a business model, , inevitably contributes to gender inequality because it predominately effects women. This is especially apparent as a contributing factor to the gender pay gap and superannuation gap.

## Family and Domestic Violence

One in four women and one in twenty men experience family and domestic violence every year.

Family and domestic violence costs our economy \$12 billion per year, however the real cost is that borne by women and children who are subjected to violence.

Workers who are experiencing violence, predominately women, should not have to choose between their safety, and often the safety of their children, and a secure job with economic security at a time in their life where they are most vulnerable.

Most employees subjected to family and domestic violence have no access to paid leave.

## Paid Parental Leave

Working families are finding it harder and harder to make ends meet. Working additional hours, and not being able to afford to take time to care for children is a significant pressure.

The issue of paid time to care only being available to women workers is compounding the issue of gender pay inequity for working women. Taking time out from paid work as well as consequently spending more years in casual, part-time or more flexible roles impacts on worker's ability to progress their career and adequately save for a dignified retirement.

We must also recognise that same-sex couples raise children and need paid time to care.

# The Solutions:

Providing an effective mechanism for unions to pursue pay equity claims, requiring the FWC to promote gender equity, making structural changes to the superannuation system and strengthening minimum employment rights for women is essential to closing the gender pay gap and ensuring gender equality.

Following are our specific solutions for working women which contribute to the core solutions package being campaigned on through the Change the Rules framework:

## Pay Equity Principles

A set of clear Pay Equity Principles (PEPs) for the resolution of all pay equity matters, including Equal Remuneration Orders (ERO) applications, should be legislated.

### Equal Remuneration Orders

These principles should be based on the model set out in the Queensland Industrial Relations Act 2016. The PEPs should expressly confirm that no 'male comparator' is required to prove that work is undervalued on gender grounds. The FWC should be required (rather than just permitted) to make an ERO when the legislative conditions are met. [See sections 248 and 249 of the Queensland Act]. Work value cases and EROs should be able to be run concurrently.

## Bargaining

The Fair Work Commission (FWC) must have the power to intervene in bargaining to ensure gender equity issues are resolved. Agreements should not be approved if they do not afford equal remuneration for work of equal or comparable value.

### *Other matters before the FWC:*

- The achievement of gender equity should be included as an object of industrial legislation.
- The FWC should be legislatively required to promote gender equity in performing all its functions and exercising all its powers.
- The FWC should establish a gender equity panel, comprised of Commissioners with the skills and experience to ensure gender equity is considered in all matters before the FWC.

## Superannuation

Ensuring superannuation is an industrial right and that it should be reflected in workplace laws is a key part in the pathway to ensuring women no longer retire in poverty.

The Superannuation Guarantee entitlement to superannuation contributions must be included in the NES.

*There are many structural barriers to increasing women's retirement balances which the ACTU will campaign to remove. Key structural reform includes:*

- Removing the \$450/month Ordinary Time Earnings (OTE) threshold for SG eligibility;
- Increasing the Low-Income Superannuation Tax Offset to a maximum payment of \$1,000;
- Establishing a Low-Income Superannuation Accumulation Pathway (LISAP) which will assist workers earning below the threshold gain a superannuation balance adequate for retirement. Account holders more than 5% below the LISAP will receive a co-contribution of 2.5% of their annual income; those more than 10% below the pathway will not pay tax on their contributions;
- Ensuring the SG is paid on carers payments;
- Ensuring that the SG is paid on parental leave, carers leave and domestic violence leave;
- Ensuring that the SG is paid on the lost wages component workers compensation payments; and
- Ensuring the inclusion of a superannuation component in Family Tax B.
- These reforms are in addition to reforms which would see an increase in the superannuation guarantee, improvement of the age pension eligibility asset taper rate and extending the SG to all workers.

## Paid Parental Leave

Equal access to paid parental leave recognizes that relying on a primary care giver to take responsibility for unpaid care of children or other family members has had a disproportionate impact on women's financial independence, career progression and retirement savings.

Equal access to paid parental leave must be included in the minimum safety net of entitlements for all working Australians.

*Key structural reforms include:*

- Dispensing with the notion of primary and secondary carer's leave in the Commonwealth Paid Parental Leave Act 2010 (i.e. 18 weeks Paid Parental Leave and 2 week Dad and Partner Leave)
- Mandating a shareable 26 week family entitlement apportioned according to family needs
- A minimum of 26 weeks paid parental leave in the NES.

## Minimum Standards

*The NES should be amended to include:*

1. A minimum of 10 days paid Family & Domestic Violence leave in the employment safety net;
2. A strong and enforceable right to family friendly working hours for parents and carers;<sup>4</sup>
3. The right to superannuation.
4. A minimum of 26 weeks paid parental leave.

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<sup>4</sup> Where an employee meets minimum eligibility and notice requirements, the provision must grant a right (not just a right to request) to reduced working hours; employees should have a right to revert to former hours after parenting/caring responsibilities cease; if a right of refusal of an employee's proposal is permitted at all, the test should be stronger than "reasonable business grounds"; employees should have the right to appeal a refusal; the qualifying period should be no more than 6 months.