

ACTU Submission to Labor's Pay Equity
Consultation 2017

Gender Segregation in the Workplace and
its Impact on Women's Economic
Equality

24 October 2017

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Introduction

- 1) The Australian Council of Trade Unions is the peak body representing almost two million working Australians. The ACTU and its affiliated unions have a long and proud history of representing women workers and advocating for pay equity.
- 2) The ACTU welcomes the opportunity to provide feedback on the recommendations of the Senate Committee inquiry into *Gender segregation in the workplace and its impact on women's economic equality* and the matters raised in Labor's Pay Equity Consultation paper.
- 3) This submission should be read in addition to the detailed written and oral submissions the ACTU made to the Senate Committee inquiry.
- 4) The ACTU is committed to the achievement of gender equality in every Australian workplace for women, including the elimination of the gender pay gap. Pay equity cannot be achieved without significant social policy and regulatory reform. The rules for working women need to change. The ACTU strongly supports the development and implementation of a comprehensive, properly resourced, long-term action plan to meaningfully address the gender pay gap in Australia, including the retirement income gap.

Make it Fair: Change the Rules for Working Women

- 5) The ACTU's overarching policy priorities for achieving gender equality at work for women are as follows:
 - a) A minimum of 10 days paid Family & Domestic Violence leave in the employment safety net;
 - b) A guaranteed right to reduced hours to accommodate parenting and careering responsibilities, with a right to revert to former hours afterwards;
 - c) The elimination of the gender pay gap;
 - d) A minimum of 26 weeks paid parental leave, plus superannuation;
 - e) A minimum of 4 weeks paid parental leave for fathers and partners;

- f) Workplace strategies to address sexism and gendered violence in the workplace, including strengthening anti-discrimination laws.

A National Policy Framework for Pay Equity

- 6) The ACTU strongly supports the development of a comprehensive, clear and coordinated strategy to eliminate the gender pay gap.
- 7) Inquiry after inquiry has confirmed that a long-term, multi-faceted, multi-level approach is necessary to address this ingrained structural problem.
- 8) The ACTU agrees that a national, uniform, coordinated approach is urgently required. It is imperative that a new national approach be developed and implemented in close consultation with key stakeholders, as well as properly funded and staffed over the long-term. A new policy framework must contain detailed, measurable and achievable targets and outline the regulatory reform measures necessary to achieve them. It will be important for State and Territory governments to sign on to any national plan.

Content of National Policy Framework

- 9) A new National Policy Framework (NPF) should comprehensively address the following three causes of pay inequity: 1) gender segregation in the workplace, 2) the undervaluation of work performed by women, and 3) other barriers to women's workforce participation, such as discrimination, access to early childhood education and care, paid parental leave and family friendly working arrangements.
- 10) The relevant Senate Committee recommendation sets out a non-exhaustive list of four factors for inclusion in the NPF:
 - a) Reforms to flexible work provisions;
 - b) Paid parental leave, plus superannuation;
 - c) Early childhood education and care;
 - d) Recognition of career paths and qualifications for feminised industries, particularly the care industry.

11) The ACTU agrees that these are some of the priority areas that should be addressed by the NPF. However, while acknowledging the need for the NPF's aims to be achievable, it is important that the NPF consider *all* the key factors contributing to the gender pay gap, including in particular:

- a) Reforms to the Fair Work Act 2009 to address the inadequacy of the employment safety net (including minimum wages), strengthen equal remuneration provisions and address shortcomings in the bargaining framework and award review process;
- b) Terms and conditions in modern awards, in light of historical gender-based under-valuation of work in female-dominated industries, including not only salaries but penalty rates and overtime payments, rostering arrangements and working hours, skills, training, education and non-cash benefits.
- c) Additional government funding to support meritorious equal remuneration claims;
- d) Additional government funding to increase actual rates of pay in underpaid, feminised sectors such as nursing, ECEC and aged care, and ensure that NDIS funding protects the wages and job security of workers in the sector, including the provision of future wage increases from the equal pay case and workforce bargaining outcomes;
- e) Proactive strategies to increase the superannuation savings of women, including endorsement of an extra 2% superannuation for women workers and other initiatives;
- f) Significant increases to the powers and resources of the Workplace Gender Equality Agency to ensure that it can meaningfully pursue pay equity, including strengthening reporting by requiring employers to publicly report remuneration data and empowering the Agency to conduct gender pay audits;
- g) Significantly increased funding for ECEC services (to a minimum of 1% of GDP), including the provision of at least 15 hours per week, 40 weeks a year of high-quality early childhood education by a university-trained teacher for every child in the year before school;

- h) Address sexual harassment, discrimination and victimisation of women at work, including through:
 - a. A minimum of 10 days paid Family and Domestic Violence Leave;
 - b. Amendments to strengthen the Sex Discrimination Act, including stronger protections for parents and carers and a more accessible and effective complaints process.
- i) Adoption of State and Federal procurement standards which require employers to have a pay equity plan and demonstrate implementation of that plan if they are to receive government contracts and/or funding.

Interim pay equity targets

12)The ACTU submits that consideration should be given to including interim pay equity targets. Target-setting is complex and should be the subject of further analysis in consultation with stakeholders. As discussed below, one of the challenges faced currently is the lack of a robust monitoring and reporting framework, which limits the amount and quality of data available to properly determine realistic pay equity targets. The ACTU supports the strengthening of relevant data through measures such as increased power to WGEA to conduct detailed remuneration and gender equity audits, and the reinstatement of the ABS Time Use Survey. It may be that a broad overall pay equity target – in the form of, for example, a reduction in the gender pay gap of x% by x date - should be set initially, with more detailed interim targets considered after a set review period involving additional consultation, consideration and assessment.

13)Although they are interrelated, there is a difference between *gender equity* targets and *pay equity* targets. Gender inequity is the cause of pay inequity, but they are separate matters. Gender equity targets, such as increased women's participation, should not be substituted for or confused with hard equal remuneration targets, such as a percentage increase in the pay of ECEC workers for example.

14)It is also crucial that the NPF include targets and reforms aimed at low-paid sectors of the workforce as well as highly-remunerated employees. While

important, quotas for women in leadership positions and on boards are not capable of addressing the systemic undervaluing of work in underpaid, feminised sectors. Consideration must be given to whether and how the success of initiatives aimed at the low-paid, including reforms to the Fair Work Act to strengthen the employment safety net and the minimum wage, could be measured in pay equity terms if implemented.

15) It goes without saying that there is little point in setting targets if the regulatory and policy reform necessary to achieve such outcomes is not implemented in a comprehensive or timely manner.

16) The ACTU recommends further consideration and consultation in regards to setting overall and interim pay and gender equity targets.

Pay equity advisory body

17) The ACTU supports the appointment of an appropriate advisory body to guide the implementation of the NPF. It will be important for the members of any advisory body to understand both the anti-discrimination and industrial approaches to addressing pay inequity. Members should have appropriate levels of seniority and expertise in social and economic policy, gender issues, discrimination, employment law and industrial relations. The government agency responsible for the NPF should be represented at a senior level, as well as employer and employee representatives from both the public and private sectors. A cross-section of small, medium and large businesses should be represented, as well as a range of industries. Unions should be represented, particularly those ACTU affiliates with direct experience running pay equity matters. Academics with directly relevant research experience should also be represented.

Lead agency

18) It is crucial that any agency overseeing this work has the power, the authority, the resources and the expertise to work effectively with both internal and external stakeholders to develop and implement the NPF.

19) A centrally-located agency in the federal public service would be best placed to develop and implement the NPF. Any team given this responsibility must be

staffed appropriately in terms of expertise and seniority and be properly resourced over the long-term given the entrenched nature of the problem and the likelihood that a long-term commitment will be required. The team should have expertise in social and economic policy, gender issues, discrimination, employment law and industrial relations. Relevant staff must be capable of building and maintaining strong and productive relationships with key stakeholders in both the development phase and the implementation phase of the NPF.

20) While the Office for Women is in many ways the obvious choice of agency to lead this work, it would be important to guard against the risk that the NPF is seen as 'a women's issue' and de-prioritised by internal and external stakeholders on that basis. Alternatively, the work could be led by a team within the Department of Employment or the Treasury. Whichever agency leads the work, the project team must be adequately resourced over the long term, appropriately skilled and equipped with the required power and authority to bring stakeholders along and ensure the success of the NPF.

Gender equity success stories

21) The ACTU recommends that the Queensland pay equity principles¹ be used as a guide for any similar reform of the Fair Work Act. Under these principles, the Queensland Services Union ran a successful case to increase the rates of pay in the Queensland Community Sector Award on pay equity and work value grounds.

22) In 2007 and 2012, the Finance Sector Union partnered with NAB and the Pay Equity Unit in the Victorian Department of Industrial Relations to conduct two comprehensive pay equity audits in response to the large gender pay gap in the sector – the highest of any industry. Implementation of the recommendations from these audits resulted in a reduction in the pay gap of 8% between 2007/08 and 2012 (from 37% to 29%).²

¹ <http://www.qirc.qld.gov.au/resources/pdf/rulings/equalremunprincip.pdf>

² See Final Report NAB and FSU: working together for gender equity- *An investigation into gender pay equity at NAB*, August 2012. At September 2016, NAB were reporting a gender pay gap of 25.6%.

Reforms to the Fair Work Act 2009

23) Industrial legislation currently does not adequately recognise the right to equal pay in awards, enterprise agreements and minimum wages. The requirement to simply 'take into account' the principle of equal remuneration in award reviews and minimum wage decisions does not provide an effective mechanism to address the gender pay gap. The majority of women work in low-paid, part-time or casual work in sectors with low-levels of unionisation, and are disproportionately reliant on the employment safety net. This means that fully and effectively integrating the right to pay equity into federal industrial regulation is essential to closing the gender pay gap. While the insertion of an explicit objective relating to pay equity and improvement of the equal remuneration orders provisions are crucial reforms which are strongly supported by the ACTU, they are not in themselves sufficient to address the problem of pay inequity.

24) The ACTU advocates reform of the *Fair Work Act 2009* to:

- i) Address the inadequacy of the employment safety net, including:
 - (1) the persistence of historical under-valuation in modern award classification pay scales;
 - (2) the exclusion of large numbers of employees from the safety net due to the growth of casualisation and insecure work, a disproportionate number of whom are women;
 - (3) the decreasing relevance of minimum and award rates of pay;
 - (4) shortcomings in the award review process, including the ability of the Fair Work Commission to further *reduce* minimum employment standards; for example, recent cuts to penalty rates which will reduce the income of many low-paid women.
- ii) Strengthen the equal remuneration provisions by:

<http://news.nab.com.au/the-one-big-thing-we-need-to-do-to-close-the-gender-pay-gap/>

- (1) Including the promotion of gender pay equity as an explicit objective of the Fair Work Act and the Fair Work Commission's role;
 - (2) Amending s 302 of the *Fair Work Act* to *require* (rather than just permit) the making of an equal remuneration order by the Fair Work Commission when the legislative conditions are met;
 - (3) Amending s 156(4) to include historical gender-based undervaluation as a ground for an application to vary awards for work-value reasons;
 - (4) Including clear pay equity principles for pursuing claims in the Fair Work Commission based on the successful Queensland model, with clarification that no 'male comparator' is required to bring a claim;
 - (5) Establishing an appropriately skilled, qualified and experienced Pay Equity Panel within the Fair Work Commission empowered to resolve equal remuneration matters, including through the use of inquisitorial and non-adversarial methods;
 - (6) Allowing work value and equal remuneration claims to be run concurrently.
- iii) Address shortcomings in the bargaining framework which impact on pay equity including:
- (1) Unreasonable limitations on strike action;
 - (2) Restrictions on pattern bargaining;
 - (3) The lack of an obligation on parties to negotiate on equal remuneration;
 - (4) The lack of an obligation on the Fair Work Commission to consider pay equity before registering an Agreement.

Low rate of applications under equal remuneration provisions

25)As previously submitted, the pursuit of Equal Remuneration Orders (EROs) under the existing provisions has proved to be an extremely costly, time-consuming,

highly adversarial and overwhelmingly ineffective process. In these circumstances, the low rate of applications for EROs is unsurprising.

26) As submitted by affiliates with direct experience with EROs, the process is characterised by:

- a) Unnecessary legal complexity and uncertainty;
- b) Cost and delay;
- c) A lack of support or assistance (financial or otherwise) for parties bringing such applications;
- d) A lack of familiarity/expertise within the national industrial relations tribunal on pay equity matters;
- e) An onus on low-paid applicants to bring expensive and complex legal proceedings;
- f) The funding of any pay increases (if won) being entirely dependent on political will.

Additional guidance for the Commission

27) As submitted above, the ACTU strongly supports reform to the Fair Work Act to improve the effectiveness of the ERO provisions.

28) The regulatory framework should provide an explicit statement of the appropriate equal remuneration principles and provide detailed direction on how equal remuneration matters are to be handled, in a similar manner to the Queensland jurisdiction.

Involvement of other parties

29) The ACTU would support the consideration of reform which allowed other interested parties, such as the Australian Human Rights Commission, WGEA or the Fair Work Ombudsman, to apply to the Fair Work Commission to bring a pay equity case on behalf of individuals or groups.

30) The ACTU also supports the FWC having stronger 'own-motion' inquisitorial powers as outlined above.

Simultaneous equal remuneration and work value applications

31)The ACTU supports this recommendation as it is often difficult, if not impossible, to separate out these two matters

Non-salary and non-cash benefits

32)The ACTU would support reform which improved monitoring and reporting on non-salary and non-cash benefits. For example, the WGEA reporting requirements should be amended to re-include reporting of both base salary and total remuneration packages (including cash and non-salary benefits) of all employees, including CEOs.

Reforms to the Fair Work Commission

Measures to support applicants' claims for equal remuneration

33)The ACTU supports the proper funding and resourcing of the Pay Equity Unit in the Fair Work Commission.

34)The ACTU also supports the establishment of a discretionary fund to support the pursuit of equal remuneration cases.

Expert Pay Equity Panel

35)The ACTU supports this recommendation.

Non-adversarial approaches

36)The ACTU agrees that the government should consider establishing a less adversarial process to address the undervaluing of women's work. For example, a conciliation process administered by a new, expert Pay Equity Panel in the Fair Work Commission could assist parties to narrow the matters in dispute in equal remuneration litigation, including drafting agreed statements of facts with the assistance of research, data and reports prepared by a properly funded Pay Equity Unit.

Conclusion

37)The ACTU is happy to expand on the matters raised in this submission if required.

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