

“The Australian Experience”

Speech for the
Finance Sector Symposium
Pay Equity: A Way Forward

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Thanks to Sue and others for inviting the Human Rights and Equal Opportunity Commission (HREOC) to speak to you today about the ongoing campaign for pay equity in Australia and the ways we might move forward in the current environment of our reformed workplace relations system.

This is certainly an issue that has been at the forefront of our minds us since we first saw the Government's proposed workplace relations package last year.

As you well know, and have heard from previous speakers this morning, Australia is still a work in progress in terms of equal remuneration for work or equal value. In February 2006 women's pay equity ratio compared to men's was:

- 84.4 per cent for full time adult ordinary time earnings
- 80.8 per cent for full time adult total earnings and
- 66.3 per cent for all employees total earnings.

However, it is important to emphasise that these are just the averages. Measures of the gender wage gap depend on not only on what measure is taken of wages but will depend on factors such as

- the method of wage determination (collective vs individual),
- points in the wage structure¹,
- whether the ratio includes wages data for different types of employees – full time, part time, casual, permanent, and
- variations in different industries and occupations, across different regions of Australia and among different groups of women. For example, some recent international research has suggested a useful measure of pay inequity would be to consider the gap between workers with family responsibilities and those without.

In your own sector, there are still some significant issues with pay equity. The current gender wage gap in the finance and insurance sector stand at 23 cents in the dollar – around seven cents lower than the Australian average for full time adult non managerial employees. I understand that this is the lowest ratio of all white collar industries. And I wonder what the ratio would be if managers were also included in the finance sector – an area frequently in the media in relation to enormous executive salary packages.

But whatever the specific numbers, it is clear that the important point is that women, in Australia still earn consistently less than men. Previous speakers have highlighted the reasons why this is so, so I will not go over that again.

This morning I would like to focus on the pay equity implications of the recent WorkChoices reforms and where we might usefully look in terms of future work in this area.

HREOC has not surprisingly had a long standing interest in pay equity, not only because of our general mandate to look at areas of interest to women, but because of the particular provisions of our governing legislation.

HREOC has legislative responsibilities to consider Australia's compliance with a range of international human rights instruments including a number that specifically address the issue of pay equity. In particular the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which is a Schedule to the *Sex Discrimination Act*, and the ILO's equal remuneration conventions.ⁱⁱ

Australia is obliged under these Conventions to *ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.*ⁱⁱⁱ And it is important to note that remuneration in the conventions is very specifically defined to include not just basic salary and wages but other elements such as non monetary benefits like cars, mobile phones or computers, performance payments, bonuses or discretionary payments.^{iv}

WorkChoices

There are a number of significant elements of the WorkChoices package that concern HREOC in relation to pay equity. The most significant of these are:

1. The removal of State industrial jurisdictions
2. The removal of wages and classification scales from awards
3. The setting of minimum wages by the Australian Fair Pay Commission (AFPC)
4. The removal of the powers of the AIRC to make determinations in relation to minimum wage employees
5. The federal award rationalisation process
6. The impact of increasing individual bargaining on the wages of women workers and
7. The impact of increasing individual bargaining on workers with family responsibilities.

I know that many of these issues will not be news to Victorians who have been operating within the federal industrial system for some time now, however the changes will certainly pose some significant broader concerns for the future of pay equity. I would just like to highlight some of these concerns in more detail.

1. The removal of state jurisdictions

It is pretty clear that the existing equal remuneration provisions of the Workplace Relations Act - and the previous *Industrial Relations Act* for that matter – have not been particularly useful ways of improving pay equity for Australian women. To date, there have been no orders made in the Australian Industrial Relations Commission (AIRC).^v It is no accident that cases like the federal childcare workers cases brought on behalf of workers in a number of states by the ASU and LHMU^{vi} were brought as work value rather than equal remuneration cases.

On the other hand, State industrial tribunals have seen some real progress in addressing the historical undervaluation of women's skills. From 1998, a number of States have undertaken inquiries into pay equity for women with equal remuneration wage fixing principles now adopted in NSW, Queensland and Tasmania.

As you would be well aware, inquiries have also recently been carried out in both Victoria and Western Australia. While Victoria obviously did not have the option like other states of introducing wage fixing principles specifically focused on equal remuneration into a state industrial tribunal, other states have certainly used these to their advantage.

While there have not been a great number of decisions to date in the state jurisdictions, and there is no doubt that these cases were complex and often expensive to run, we had begun to see the ball starting to roll. The Librarians, Archivists and Library Technicians case in NSW^{vii}, the Dental Assistants^{viii} case in Queensland and most recently, the Childcare workers cases in both NSW and Queensland^{ix} have all produced significant wage rises, and possibly more importantly, better career paths and opportunities for advancement for these women employees.

HREOC is deeply concerned about the impact that the restriction of State industrial jurisdictions will have in removing an important avenue of redress for women employees, and their unions, seeking equal remuneration.

2. The removal of wages and classifications from awards

The removal of wages and classification scales from awards will mean that there is no capacity for unions to bring award cases about pay equity to the Federal Commission, even though the federal Equal Remuneration Principle remains.

These pay and classification scales are to be removed from awards and will be set by the AFPC, which has no legislation, or even guidelines, to suggest how it might deal with the question of pay equity.

3. The role of the AFPC

In a number of respects, HREOC welcomes the introduction of a statutory Federal Minimum Wage (FMW). We are hopeful that the FMW will, for the first time, provide a wage safety net to those employees currently working in award-free areas and will decrease under-payment by making it easier for employers to comply with minimum pay rates across the board. Evidence from Britain for example demonstrates that the introduction of a minimum wage can have significant implications for improving wages for working women who are often found in award free and informal sectors of the labour market.

However, the removal of this wage setting function from a judicial style body such as the AIRC to a purely administrative body like the AFPC is of great concern.

The Workplace Relations Act does provide that anti-discrimination principles be taken into account by the AFPC and that it "...apply the principle that men and women should receive equal remuneration for work of equal value..."^x

This is all very nice however, two key obstacles emerge: firstly, anti-discrimination considerations are not included in the AFPC's wage setting parameters; and secondly there is no detail provided either in the legislation or regulations about *how* the AFPC is to take these matters into consideration.

A real potential exists for indirect discrimination to permeate the setting of minimum wages. For example though unstated biases about the value of certain skills or attributes.

There are important equity considerations for minimum wage determinations for a range of low waged workers. There is clear evidence to show that a number of groups of workers are overrepresented among the low paid – these are women, Indigenous employees, young people, people with disability, migrant workers, those employed in small business and non-unionised employees.^{xi}

While minimum wage workers do not tend to be found in white collar sectors like the finance and insurance industries, but the role of the AFPC in terms of progress toward pay equity generally will be critical.

4. Restrictions on the AIRC in relation to minimum wage employees

Under the WorkChoices legislation, the AIRC will no longer be able to make determinations that conflict in any way with decisions of the APFC. This is clearly designed to ensure that the AFPC's role can not be in any way undermined. But it will have really important implications for future work value cases.

Many of the really significant areas in terms of low pay for women are in the minimum wage award areas. Childcare workers, cleaners, hospitality and restaurant workers and retail employees are all key occupations in terms of women's employment.

Changes to the Workplace Relations Act^{xii} now specifically restrict the AIRC from dealing with equal remuneration applications for not only these minimum wage workers, but from making comparisons with other workers who might be on minimum wages, for example the standard comparison to base grade manufacturing workers.

5. Award rationalisation

The process of award rationalisation set up in the WorkChoices legislation is an important one for women. Coverage of awards currently in Australia is very gendered: while only 16 per cent of men rely on awards to set their rate of pay, nearly a quarter per cent of women are award dependent and a third of women employed in the private sector. Award reliance is high amongst part time employees (34 per cent), casual employees (45 per cent) and employees in female dominated industries such as the accommodation, cafes and restaurant industry (60 per cent).^{xiii}

The award rationalisation process currently being carried out by the Award Review Taskforce will by its very nature involve combining award conditions and removing current entitlements (including wage rates and classifications). The Taskforce will need to ensure that new awards do not contain discriminatory provisions. Examples could be by changing working hours arrangements to affect workers with family responsibilities or by including clauses which permit bonus payments which particular groups of workers, such as part time workers or those with a disability, would be unable to access.

The award rationalisation process will also be required to compress wage and classification scales. Decreasing classifications to a bare minimum scale with a limited number of salary points will be really problematic in terms of skill based career paths for award workers. Recent state and federal pay equity cases have shown the importance of detailed classification structures for improving pay equity in female dominated professions.

5. The impact of increasing individual bargaining on the wages of women workers

With agreement making increasingly focussed on individual bargaining, there must be real concerns about the future of pay equity.

Women are already less likely to engage in enterprise bargaining than men. Nearly one third of women in the private sector depend on awards to determine their wages as opposed to only 17 per cent of men.^{xiv} And for those women on enterprise agreements, the level of wages negotiated tends to be lower.^{xv}

While wages for men on registered collective agreements and AWAs are not significantly different, women on AWAs (not including managers) currently earn 11 per cent less than women on collective agreements.^{xvi}

Evidence also indicates that women have more difficulty in striking strong bargains on pay than men do. A recent study from the US found that women tended to shy away from competitive environments while men were keener to compete, despite there being no gender difference in their performance levels. Men were also more confident about their talent with three quarters believing they were the best in a group, compared to slightly more than 40 per cent of women.^{xvii} In the context of individual bargaining in the workplace, such research must be of concern.

A further American study into salary negotiations showed that many women found it difficult to negotiate for themselves - they undervalued themselves and their worth and they felt they lacked skills and experience.^{xviii} Recent surveys of MBA graduates in Australia suggest that similar patterns emerge with women receiving substantially lower salaries than men for comparable jobs.^{xix} This is particularly worrying when you consider that MBA students are specifically trained in the development of negotiation skills and in negotiating job offers in particular.

Evidence, found in HREOC's 1992 research into sex discrimination in over-award payments,^{xx} also showed that women have not been able to effectively bargain for over-award payments and that these kind of payments are often paid in a discriminatory manner.

At the time the research was conducted, women earned only slightly more than half of the over-award payments made to their male counterparts. With the growth of in-kind payments over the past decade, over-award payments have become increasingly difficult to quantify. The most recent statistics show that 52 per cent of women compared to 84 per cent of men receive non-leave employment benefits in their main job including goods and services, transport and shares.^{xxi}

The other concern about individual bargaining is the confidentiality of AWAs. Should a woman suspect she is being paid less than her male colleague, she has really limited options to find out if this is indeed the case. She could potentially launch a discrimination based legal action, but it could be a rather expensive fishing expedition if she was paying her own legal team.

In the new environment we must rely on the Office of the Employment Advocate, who without condemning them, are not experts in discrimination law, to find any discriminatory provisions in their agreements, and remove them. From our recent conversations with the OEA it certainly appears that such provisions are there to find – clauses appear to be creeping in which propose bonuses for employees who take no sick or carers leave for example, something which would be clearly discriminatory against an employee with a disability or with family responsibilities.

7. The impact of increasing individual bargaining on workers with family responsibilities.

Flowing on from this are concerns about the impact of individual bargaining on workers with family responsibilities, who are of course largely women.

The WorkChoices Bill removed maternity and parental leave from allowable award matters and converted these entitlements into part of the minimum Standards. This means that women will now need to bargain for these conditions, particularly paid maternity leave. In a collective bargaining environment, an employer is able to spread the costs of an entitlement like paid maternity leave across their workforce, but with individual bargaining there is a real concern that women will either miss out on paid maternity leave or will end up trading off their pay or other conditions.

Additional entitlements such as those established in the AIRC's Family Provisions Test Case decision,^{xxii} have also been excluded from awards.

As well as access to leave to help balance work and family demands, one of the most critical conditions of employment for workers with family responsibilities is hours of work. Certainty of working hours, both in length and regularity, and limits to a reasonable length of hours are crucial. Especially so for parents accessing childcare services and carers relying on disability support and aged care services.

AWAs are often used by employers to increase 'hours flexibility', that is to increase the ordinary operating hours of a businesses. An analysis of working hours in AWAs demonstrates that AWAs often provide for longer working hours than collective agreements, many of which are paid at single ordinary time rates, not overtime rates.^{xxiii} A 2003 study of AWAs found that around a third allowed employers unilaterally to require additional hours to be worked, more than a quarter provided no set ordinary hours of work, almost 15 per cent provided that hours could be worked at any time and a similar number allowed the employer to unilaterally vary hours of work.^{xxiv}

While the AWAs included in this study may well have incorporated overtime into the employee's total remuneration, the open-ended nature of the hours frequently worked are a source of great uncertainty and instability for the families involved.

So, as you can see, HREOC has a range of concerns about the future of pay equity in the brave new WorkChoices world. And the logical question is what can we all do about it?

Well firstly, I must commend both the employers and the union here today who appear to be making tremendous efforts to address the question of persistent pay gaps in this sector. I am looking forward to hearing from both the union and NAB today about their projects, but without hearing all the details, it certainly seems you are very much on the right track.

If the WorkChoices changes demonstrate nothing else, it is that we can no longer rely on a centralised industrial environment to deliver us across the board improvements to pay equity. There are of course broader efforts that governments and the community can make to address some of the larger causes of continued pay inequity such as gender segregation in the workforce, the poor quality of much part time work and the continuing role of women's unpaid family responsibilities. But there is no doubt that responses at an individual workplace level and as a result of bargaining by unions and employers will be critical.

Pay equity audits and reviews in individual organisations, developing pay equity action plans, monitoring on-going gender wage gaps and education campaigns targeting employers and unions, are the kind of work that will be extremely important to moving pay equity forward in Australia.

We at HREOC have been focused on just one of the reasons for the continuing gender wage gap recently with our work on workers with family responsibilities. Addressing issues of work and family balance not only assists in improving women's labour market participation and attachment, but as a result increased their lifetime earnings. This of course enhances women's financial independence and their life choices.

While many younger Australian couples aspire to a more equal sharing of work and family roles, and themselves as moving away from traditional male breadwinner/female carer roles, simple economics mean that it is still overwhelmingly the lower paid woman in a couple who reduces her commitment to the paid workforce when the couple are struggling to balance paid work and family responsibilities.

This creates a vicious circle in terms of pay equity. Women on lower wages, spend increasing periods out of the paid workforce and often return to poorer quality, lower paid jobs.

We will be releasing our final paper on our project *Striking the Balance: Women, men, work and family* in a few months time. This paper will put forward a comprehensive and integrated blueprint for how governments, employers, communities, families and individuals might better work together to improve the

ability of Australian men and women to get a better balance between their paid work and family life. And we hope that one of the results will be some improvement in the gender wage gap.

Just to conclude, I haven't really got time today to also give a thorough discussion about how individuals might use anti-discrimination laws at a state and federal level to address the question of pay equity. But I would just like to make a couple of points.

The recent decision in the High Court for the Amery case illustrates some of the difficulties in using the discrimination jurisdiction to address what is probably better considered as an industrial matter. As you may know, this case concerned a group of women who were NSW casual school teachers being paid less than their permanent counterparts for the same work. The women had resigned from the permanent teaching workforce largely because of family responsibilities, but on their return were paid at the casual rate, of significantly less than their colleagues. After many years of litigation, the case was recently lost in the High Court due to a range of reasons.

However, as I have stressed, the current environment gives us few other options for advancing pay equity. Certainly discrimination laws will remain extremely important for individuals seeking redress. Especially so in an environment with little protection against unfair dismissal – even the Government has recognised this and has increased funding to HREOC to cope with the expected increase in demand. We certainly want unions to keep their eyes out for discrimination against individual members. But also for discrimination in industrial agreements. HREOC retains our ability to refer any award or agreement, including AWAs, that appear to be discriminatory to the AIRC for a review and the Commission may vary the terms of the agreement.

I would encourage you to spread the word among your colleagues both from an employer and union perspective and remember that we are always happy to speak to you about issues that might arise in terms of potential discrimination. Our website at www.humanrights.gov.au contains not just a lot of information, but our contact details, so please don't hesitate to call.

Thanks for your time this morning and congratulations again on the great work you are doing about pay equity in the finance sector. I look forward to hearing more about it after lunch.

ⁱ Hiau Joo Kee ANU Centre for Economic Policy Research, March 2005 'Glass Ceiling or Sticky Floor? Exploring the Australian Gender Pay Gap Using Quantile Regression and Counterfactual Decomposition Methods' Discussion Paper No. 487

ⁱⁱ These are:

- ★ The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which is a Schedule to the *Sex Discrimination Act 1984*
- ★ the International Labour Organization (ILO) Convention concerning Discrimination in respect of Employment and Occupation, which is a Schedule to the *Human Rights and Equal Opportunity Commission Act 1986*;
- ★ the ILO Convention 100: Equal Remuneration for Work of Equal Value (the Equal Remuneration Convention)
- ★ the ILO Equal Remuneration Recommendation, 1951 (Recommendation 90);

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- ★ the ILO Discrimination (Employment and Occupation) Recommendation, 1958 (Recommendation 111); and
- ★ Articles 3 and 7 of the International Covenant on Economic, Social and Cultural Rights.
- ⁱⁱⁱ Article 2(1) ILO Convention 100: Equal Remuneration for Work of Equal Value (the Equal Remuneration Convention)
- ^{iv} Article 11 of CEDAW further requires that States Parties take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women:
- The right to free choice of profession and employment, the right to promotion, job security **and all benefits and conditions of service** and the right to receive vocational training and retraining;
 - The right to **equal remuneration, including benefits**, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.
- ^v The only cases ultimately dealt with under the provisions thus far, the HPM and Age cases, were eventually settled as a result of the introduction of a new enterprise agreement and by consent respectively. Cf: *AMWU vHPM Industries* P9201 and Print Q1002 and *AMWU and David Syme & Co Limited* Print R3273
- ^{vi} See for example AIRC Full Bench Decision in Australian Liquor, Hospitality and Miscellaneous Workers Union Application for variation in respect of the *Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998* 13 January 2005 PR954938.
- ^{vii} *Crown Employees (Librarians, Library Assistants, Library Technicians and Archivists) Award 2002*, NSW IRC: applications under the Equal Remuneration Principle NSW IRCComm 55
- ^{viii} Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees and The Australian Dental Association (Queensland Branch) Union of Employers Application for variation in respect of the *Dental Assistants' (Private Practice) Award – State (Qld)* QIRC B2003/2082 7 September 2005
- ^{ix} *Miscellaneous Workers Kindergartens and Child Care Centres &c (State) Award*, Re [2006] NSWIRComm 64 and Liquor Hospitality And Miscellaneous Union, Queensland Branch, Union Of Employees and Children's Services Employers Association Queensland Union Of Employers And Others (B/2003/2133) 27 June 2006 Application for variation in respect of the *Child Care Industry Award – State 2003*
- ^x Section 222 1(a)
- ^{xi} Peter Brosnan *Can Australia Afford Low Pay?* University of Sydney 2005.
- ^{xii} Workplace Relations Act section 622 *Relationship of this Division to AFPC decisions and the Australian Fair Pay and Conditions Standard*
- ^{xiii} ABS *Employee Earnings and Hours* Cat No 6306.0 May 2004.
- ^{xiv} Victorian Pay Equity Working Party *Advancing Pay Equity: Their Future Depends On It* Report to the Minister for Industrial Relations, February 2005.
- ^{xv} In May 2004, women on registered collective agreements received average hourly earnings of \$22.50 compared to men's \$25.10, and on unregistered collective agreements received \$20.30 compared to \$22.00: ABS *Employee Earnings and Hours* Cat No 6306.0 May 2004. See also Marian Baird and Patricia Todd 2005 *Government Policy, Women and the New Workplace Regime: A contradiction in terms and Policies*, paper presented to the workshop Federal Government's Proposed Industrial Relations Policy, University of Sydney, June 20-21 2005.
- ^{xvi} David Peetz *The Impact of Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage Test'* 2005 University of Sydney
- ^{xvii} Muriel Niederle and Lise Vesterlund *Do Women Shy Away From competition? Do Men Compete Too Much?* Draft Working Paper June 2005 Department of Economics Stanford University.
- ^{xviii} Deborah M. Kolb, Carol Frohlinger, and Judith Williams "Why Don't People Get Paid What They're Worth? (And Some Ideas About What To Do About It)" in *The Negotiator Magazine* January, 2003 at www.negotiormagazine.com.
- ^{xix} Mara Olekans "Harder for women on industrial front" in *The Age* 7 November 2005.
- ^{xx} Elizabeth Fletcher *Just Rewards: A Report of the Inquiry into Sex Discrimination in Over-award Payments* AGPS Canberra 1992.
- ^{xxi} ABS *Employee Earnings Benefits and Trade Union Membership* Cat No 6310.0 August 2004.
- ^{xxii} AIRC Family Provisions Case Decision 8 August 2005 PR082005.
- ^{xxiii} David Peetz *The Impact of Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage Test'* University of Sydney

^{xxiv} Richard Mitchell and Joel Fetter 2005 'Human resource management and individualisation in Australian law' *Journal of Industrial Relations* 45 (3) September pp 292-325.