

## **Submission to the *Inquiry into women's equal opportunities in the workforce including pay equity***

*“The advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a women’s issue. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic and environmental security among all peoples<sup>1</sup>”*

### **Introduction**

1. The National Foundation for Australian Women (NFAW) welcomes the opportunity to provide this submission to the House of Representatives’ Standing Committee on Employment and Workplace Relations Inquiry into the causes of potential disadvantage in relation to women’s participation in the workforce.
2. The NFAW is a politically independent feminist organisation, which works in partnership with other women’s organisations to achieve its aims. NFAW’s aims are:
  - a. To advance and promote the interests of Australian women
  - b. To record and make accessible the histories of Australian women and
  - c. To ensure women’s achievements are handed on to future generations.
3. Our credibility in documenting and commenting on the impact of Government policies on the interests of women and girls is well established. Recent submissions and reports commissioned and published by NFAW include:
  - a. *Submission to the Inquiry of the Senate Legal and Constitutional Affairs Committee into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (July 2008)
  - b. *Submission to the Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave* (June 2008)
  - c. *Women and WorkChoices: Impacts on the Low Pay Sector* (2007) with WEL Australia and YWCA Australia
  - d. *Women’s Pay and Conditions in an Era of Changing Workplace Regulations: Towards a ‘Women’s Employment Status Key Indicators’ Database* (2006) with HREOC and WEL Australia
  - e. *Options for Reducing the Adverse Impact of the Proposed Welfare-to-Work Reforms upon People with Disabilities and Sole Parents* (2005), National Centre for Social and Economic Modelling

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<sup>1</sup> United Nations, Fourth World Conference on Women, Beijing, September 1995

## Aim of the NFAW submission

4. NFAW believes that pay equity is a human right and that the failure to provide pay equity strongly influences the decision women make regarding their participation in the workforce.
5. For some time pay equity has been recognised as important, but efforts to achieve it have led to little change. Depending on which of the various statistical measures are quoted, the current difference between male and female earnings identified by the Australian Bureau of Statistics (ABS) can vary from 10 percent to 35 percent.
  - a. Table 8.5 in the Australian Bureau of Statistics Yearbook 2008 shows that, “In May 2007 the difference between male and female average weekly earnings was lowest for full-time adult AWOTE (where female earnings were 84% of the male figure of \$1,158) and highest for all employees total earnings<sup>2</sup> (where female earnings of \$676.50 were 65% of the male figure of \$1,038).”
6. Some of the difference is often attributed to occupational segregation leading to certain jobs being identified as ‘women’s work’ and therefore paid at lower rates than other industries/occupational groupings. Researchers have argued that the devaluation of women’s work can be caused by women self selecting for low paid work, discrimination or both.
7. The question is: does lower pay occur because of the type of work that women choose to perform, or because women perform the work? Equally interesting is the question of how higher pay occurs, and why women do not receive it.
  - a. Men achieve significantly higher pay outcomes than women when discretionary pay components are taken into account. Are men choosing to work longer hours or are they more likely to have the hours they work recognised and rewarded?
8. Previous explanations for pay inequity have included differences between the education levels of men and women. These differences have been reversed, but pay differences have not.
9. NFAW recognises there are major impediments to achieving pay equity, which include, amongst other things:
  - a. Entrenched attitudes to women and resulting practices.
  - b. Invisibility of women’s skills.
  - c. Lack of ‘presence’ in the industrial machinery.
  - d. The misguided belief that if men and women are subject to the same laws, rules and conditions, then equality will result.
  - e. Unconscious acceptance of women’s subordination.
10. Other substantial impediments arise from multiple causes, some of which are briefly discussed in this submission, such as:
  - a. Consequences of women’s low retirement savings.
  - b. Movement away from awards and collective agreements.
  - c. Gender segregation of work.

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<sup>2</sup> Includes part-time employees (44% of all females employees and 14% of all male employees work part time) and overtime pay (men earn more than women).

- d. Undervaluing of women's work.
- e. Primary caring responsibilities undertaken by women.
  - i. Exacerbated by inadequate provision of out of school hours care, which means that many women choose to work part time<sup>3</sup>.
11. Recognising the importance of these questions and difficulties, NFAW believes there is a risk that debate can deflect the need for action to address the inescapable problem of pay inequity.
12. NFAW is emphatically of the view that pay inequity exists, and is a significant problem as it directly causes many social and economic problems. This is stated in anticipation of the arguments the Inquiry may receive denying the very existence of pay inequity. These arguments are often accompanied by claims that workplace discrimination has been eradicated and today's disparate wages are simply a result of market forces and working women's choices.
13. NFAW notes that women preparing for their careers incur the same costs as men and they pay the same for goods and services. They also should be paid the same rate for the work they do.
14. Other arguments may be put to the Inquiry linking the causes of pay inequity to the choices made by women to step out of the workforce, and then return to it. Often these decisions relate to childbirth and child rearing. Provision of more family friendly work environments for both men and women, and the availability of paid maternity, paternity and parental leave have the capacity to mitigate these potential disadvantages to women.
  - a. This issue being addressed by the Productivity Commission's Inquiry into Paid Maternity, Paternity and Parental Leave<sup>4</sup>.
15. NFAW's submission to this Inquiry aims to provide some discussion on the issues that impede pay equity in Australia, and to propose actions that are within the power of this Government to improve pay equity.
16. NFAW's primary objective is to urge the Government to define, develop and deliver on a Pay Equity Policy, supported by a National Action Plan, that will bring to bear the skills and commitment of Government to what has been a long-standing and highly vexed issue, and will act to influence an increase in women's participation in the workforce.

### **Current pay equity obligations**

17. The Inquiry is referred to the Collaborative Submission from leading women's organisations and women's equality specialists to the *Inquiry into the effectiveness of the Sex Discrimination Act*, which provides a full description of equity obligations.
18. It states "individuals' right to be treated equally to others, without discrimination, is a central concept in the UN human rights treaty system (UN HRTS) and is incorporated in the majority of treaties in the UN HRTS. The International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CROC) all establish obligations to prevent discrimination on the basis of sex and achieve equality.

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<sup>3</sup> See separate submission by NFAW, WIRE and Security for Women

<sup>4</sup> See the NFAW Submission to the Productivity Commission Inquiry

19. In the view of the CEDAW Committee, to fully realise CEDAW rights, parties need to ensure that they are not simply achieving formal equality for women, but also **substantive** equality for women.
20. The CEDAW Committee has elaborated their understanding of substantive equality in four key paragraphs of their general recommendation on temporary special measures which articulate an obligation to ensure that legislative protections pursue a substantive equality agenda which takes into account:
  - a. Biological differences between women and men;
  - b. The ongoing impact of historical inequalities between women and men;
  - c. The importance of non-identical treatment of women and men in certain circumstances as a mechanism to achieve substantive equality; and
  - d. The transformation of harmful social, political, economic and cultural mores, based on stereotypical assumptions about women and men.”
21. In addition to our international obligations, there are the obligations arising from Australian legislation. Like many other countries, Australia now *presents a complex mix of legislation and policies related to gender equity*<sup>5</sup>. Discrimination on the grounds of sex, pregnancy and marital status and sexual harassment is prohibited by legislation and other equity obligations are contained in many pieces of Australian legislation, ranging from Commonwealth and States’ Industrial Relations laws which promote equal pay and guarantee unpaid parental leave for workers, and the laws that are administered by HREOC and EOWA, to laws related to education, health and other public services.
22. The reliance on discrimination tests in the industrial legislation is also vexed. Under the Workplace Relations Act 1996 (Commonwealth) the AIRC has the power to see that men and women receive equal remuneration for work of equal value. This applies to all employees in Australia unless a Federal, State or Territory law provides an adequate alternative remedy. If an application is lodged with the Commission and it decides that discrimination has occurred, it can make orders to ensure that equal rates of remuneration for work of equal value will apply. Remuneration includes basic wages or salary, over-award payments and other work-related benefits in cash or kind such as private use of a company car.
23. These cases are difficult to mount, particularly by individuals, and few have been brought to the AIRC. The State jurisdictions have demonstrated their ability to prosecute equal pay without a discrimination test, and have also demonstrated that there is no need for applicants to:
  - a. Demonstrate that where work is of equal value and different in pay it is discriminatory, and
  - b. To prove that there was discriminatory intent.
24. Explicit reference in the legislation to the use of ‘comparator group of employees’ has also increased complexities in access to the regulation of pay equity.

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<sup>5</sup> See Strachan, G, Burgess, J and Henderson, L (2007) *Equal employment opportunity legislation and policies: the Australian experience* in Equal Opportunities International, Vol 26, Issue 6 for a detailed description of equal opportunity legislation and policies within the Australian context.

25. NFAW also draws the Inquiry's attention to the problem we are advised by other women's groups is created by the Constitutional power under which Australian labour law has been established, and which has constrained the ability of the full bench to make decisions related to discrimination cases. Only one case (HPM) has been brought to the full bench and no decision has been made<sup>6</sup>. These cases have been expensive and ineffective.

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<sup>6</sup> The case suggested that the 1993 provisions favoured resolution of gender pay inequity at the workplace level - previous phases of equal pay reform have been applied through multi-employer industry awards capable of application across all workplaces falling within the scope and incidence of that award. See the Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the Workplace Relations Amendment Bill by Dr Michael Lyons and Ms Meg Smith, University of Western Sydney, February 2008.

## **Recommendations**

26. NFAW believes that, in the first instance, the Commonwealth government should set the example regarding pay equity, and take steps to address pay inequity in its own employment. This will help to highlight the problem, which is currently largely ignored. We therefore recommend that the Commonwealth government should
  - a. Increase the representation of women on government boards and committees.
  - b. Make government funding to rural entities contingent on improved board diversity.
  - c. Conduct pay audits and address the problems recently raised by the CPSU regarding an increasing gender pay gap in APS employment<sup>7</sup> and identified by the Public Service Commissioner<sup>8</sup>.
27. We also recommend that the Government consider and adopt the recommendations of the NFAW/WIRE/S4W Submission to this Inquiry on Out of School Hours Care policy and programs.
28. In addition, the following recommendations are made for each of the terms of reference of the Inquiry.

### **TOR 1: The adequacy of current data to monitor employment changes impacting on pay equity and**

29. Conduct and publish the results of national workplace relations surveys to monitor gender differences in changes in wages and employment conditions in conjunction with key stakeholders including State and Territory Governments, employers and unions.
30. Commission research into the causes of pay inequity that includes a focus on the reasons men earn higher pay.
31. Monitor and publish annually information about wages and employment conditions with emphasis on gender differentiated data, with particular attention paid to vulnerable groups of women employees with limited bargaining power.
32. Provide and publicise access to a clearinghouse for research and information on pay equity.
33. Conduct annual national workplace industrial relations surveys of the type undertaken in Queensland, New South Wales and Victoria.
34. Provide open reports relevant to industry and occupational classifications disaggregated by gender, age and cultural background on the use of individual workplace agreements.
35. Standardise reporting formats to enable comparisons of information between collective and individual agreements.

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<sup>7</sup> The CPSU examined APS agencies whose maximum pay points, in any of the 8 grades examined, were in the lowest 10 of all APS Collective Agreements. The results were cross-referenced against the workforce size and gender data for these agencies. It is clear that small agencies with a high proportion of female employees are more likely to be at the bottom of the pay pile. All of those agencies with 3 or more grades in the bottom 10 for collective agreements had greater than 70% female workforce.

<sup>8</sup> See the Public Service Commission's submission to the Productivity Commission's inquiry into paid maternity leave.

36. Develop a common definition of ‘family friendly’ for the purpose of comparing conditions of employment between jurisdictions and forms of employment contract.
37. Implement the recommendations made in the report *Women’s pay and conditions in an era of changing workplace regulations: Towards a ‘Women’s Employment Status Key Indicators (WESKI) database*<sup>9</sup>

## **TOR 2: The need for education and information**

38. Education on wages policy, career/wage prospects and financial skills for women should be introduced into schools, universities and vocational education programs.
39. Provide case studies (including financial cost and benefit analyses) for employers and employees on the impact of pay equity.
40. Support small to medium enterprises (SMEs) through education programs and small grants to encourage role sharing and permanent part time employment opportunities for men and women.
41. Improve women’s negotiation skills through education and training programs.
42. Fund SME mentoring programs through the Business Council of Australia (BCA), the Australian Chamber of Commerce and Industry (ACCI), the Australian Institute of Management (AIM) etc.
43. Encourage/fund universities/vocational education providers to develop mentoring programs in courses where there is an under-representation of women.

## **TOR 3: Current structural arrangements in the negotiation of wages impacting disproportionately on women**

44. Increase support for jobseekers with special needs, e.g., fund Centrelink to educate and support employers to provide job sharing opportunities and partner women returning to work from welfare into job sharing opportunities.
45. Improve women’s negotiation skills through education and training programs.
46. Fund SME women’s mentoring programs through BCA, ACCI, AIM etc.
47. Encourage/fund universities/vocational education providers to develop mentoring programs where there is an under-representation of women.
48. Research implications of child care, out of school care and other policies on pay equity.
49. Require employers to clearly articulate pay levels for employees and prospective employees.
50. Provide paid maternity leave<sup>10</sup> and ‘use it or lose it’ paid paternity leave.
51. Provide superannuation contribution systems that continue during periods of paid maternity leave.
52. Require comparable worth policies to provide equal pay for equivalent work through gender-neutral job evaluations.

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<sup>9</sup> See [http://nfaw.org/assets/socialpolicy/indsec\\_ir/WESKISep2006.pdf](http://nfaw.org/assets/socialpolicy/indsec_ir/WESKISep2006.pdf)

<sup>10</sup> See NFAW Submission to Productivity Commission’s Inquiry on Maternity, Paternity and Parental Leave

**TOR 4: Adequacy of recent/current remuneration provisions in State/Federal workplaces relations legislation**

53. Require employers to provide actual pay levels (not pay ranges) to employees and prospective employees.
54. Provide paid maternity leave<sup>11</sup> and ‘use it or lose it’ paid paternity leave.
55. Include preventing and eliminating discrimination in the workplace and ensuring equal remuneration for men and women doing work of equal or comparable value as Objects of the new Federal Industrial Relations Act.
56. Include an Equal Remuneration Principle in industrial legislation, which features a test of undervaluation as opposed to discrimination, flexibility in comparative benchmarks and contemporary assessment of work value not prejudiced by previous assessments.
57. Ensure the Fair Pay Commissioner has the powers to address unequal remuneration in Awards and agreements.
58. Require comparable worth policies to provide equal pay for equivalent work through gender-neutral job evaluations.
59. Provide clear information about classifications and pay scales in awards, particularly in industries dominated by women.
60. Provide clear information about wages and classifications so that women can make comparisons.
61. Require employers to provide information that is available to all staff about male and female wages as a basis for wage increase proposals.
62. Give Fair Work Australia a role in gender assessment and equity;

**TOR 5: The adequacies of current arrangements to ensure fair access to training and promotion for women who have taken maternity leave and/or returned to work part time and/or sought flexible work hours.**

63. Improve the provision of out of school hours care.
64. Provide superannuation contribution systems that continue during periods of paid maternity leave.
65. Require employers to find and report on new business models that include:
  - a. Researching the representation of women in feeder position and senior roles;
  - b. Changing the nature of jobs;
  - c. Encouraging training/networking/mentoring;
  - d. Valuing women’s skills;
  - e. Recognising and rewarding performance based on gender neutral definitions;
  - f. Recognising hours worked by males and females;
  - g. Using merit selection processes;
  - h. Providing part-time work at all levels;
  - i. Defining job requirements using gender free job evaluations;

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<sup>11</sup> Ibid



- j. Recognising and fixing disparities;
- k. Undertaking and publishing pay equity audits in order to be accepted as a provider of good/services to Government.
- l. Provide business awards/recognition programs for pay equity improvements.

## **TOR 6: The need for further legislative reform to address pay equity in Australia**

- 66. Commit to an action plan on pay and employment equity that identifies targets, appropriate strategies including inbuilt evaluation, Ministerial responsibilities and allocates resources.
- 67. Change the Sex Discrimination Act so that it:
  - a. Encompasses indirect discrimination at all stages and forms of work;
  - b. Places proactive obligations on employers to eradicate pay differences;
  - c. Provides HREOC with the power to redress inequity both at individual and systemic levels by extending enforcement powers to HREOC and expanding non-compliance orders so that HREOC can regulate more responsively and without complaints;
  - d. Provides a broader definition of disadvantage;
  - e. Eliminates vague concepts of reasonableness;
  - f. Makes undervaluation of jobs a cause of sex discrimination; and
  - g. Removes the need for male comparisons
- 68. Change the EOWW Act so that it:
  - a. Sets a clear standard for gender neutral job evaluation;
  - b. Requires reporting on standards and principles (such as those provided in the Queensland legislation);
  - c. Addresses occupational segregation through employment equity programs that include desegregation targets for low paid, part-time, casual female dominated work (that is, affirmative action to increase the number of male employees in particular industries); improved access for women to high paid male dominated work; and transparent reporting by employers on actual salaries, not salary ranges (see NZ approach);
  - d. Establishes a pay equity unit to report and reward for all employers regardless of size using different approaches for different organisational size (e.g., 10-49 employers, 50 – 100 employees and +100) organisations/industries for closing gender pay gap;
  - e. Makes EOWA responsible for training HR and small business, assisting with audits;
  - f. Requires gender neutral job evaluation (based on skill, effort, responsibility and working conditions);
  - g. Requires equity plans/management; and
  - h. Requires union accountability arrangements.

## Discussion

### Definition – what is pay equity?

69. For NFAW, pay equity means that men and women should be paid equally for work that is of equal or comparable value.
70. Pay is defined as any form of remuneration, including employers' contributions to superannuation and other non-wage benefits.
71. Pay equity should not be confused with equal pay for equal work, which requires that women be paid the same as men when they do the same job or a substantially similar job. Pay equity is broader, and incorporates equal pay for work of equal value.
72. Jobs do not need to be the same or similar in order to be compared. Instead, comparisons can be made on the basis of the relative value of different jobs. The value of work should be assessed based on the combination of the skill, effort and responsibility required to do the job and the working conditions under which the job is performed.
73. In summary, *“Gender pay equity is a simple idea: men and women should receive equal remuneration for work of equal value. It means that the gender of a worker is irrelevant when their work is valued and paid for with wages and other benefits.*
74. *If you are a woman, the pay equity principle may apply to you if are doing work or a job that is:*
- The same or similar to that of a man*
  - Different, but involves skills, knowledge and abilities that are of equal worth or comparable*
  - You are remunerated with less wages, benefits, or entitlements, such as a car, or a laptop computer*
75. *This is even if you are working part-time, on a contract, or you are ‘casual’”<sup>12</sup>*

### Why should we improve pay equity?

76. Table 1: *Some reasons for improving pay equity*

Pay equity is a human right	Industrial and anti-discrimination laws, which call for pay equity, are underpinned by human rights principles.
Pay equity is critical to increasing the participation of women in employment	Women are an increasingly educated and skilled part of the talent pool available to employers, but pay inequity acts as a disincentive to their employment.
Pay equity helps women to succeed at work	Pay inequity reflects the failure of classification structures and pay scales to reflect the real skills being performed. For example, outworkers who make a whole garment from beginning to end without supervision are paid far lower rates than factory workers who work under supervision, performing only small parts of a job. Gender bias in work value assessments predominates in industries and occupations comprised

<sup>12</sup> From Business Victoria, website



	predominantly of women. Female dominated industries need to be reviewed for comprehensive equitable work value assessments.
Pay equity is crucial to work/life balance	<i>Pay inequity is a symptom of an unsupportive workplace culture which creates less incentive for women to press for work-life balance.</i> <sup>13</sup>
Pay equity encourages men to take a greater role in childrearing	<i>“We hear men argue for a greater work/family balance but the lack of affordable childcare combined with the pay gap forces most families to forfeit the earnings of the lower paid mother. If we had equal pay, more men could spend time with their children without losing out financially. We will never achieve work and family balance until we have equal pay.”</i> <sup>14</sup>
Pay equity makes women and children less vulnerable to poverty	In Australia, more women than men live in poverty, and a woman living on a low income heads the majority of single parent households. This has health and social consequences; women and children in these situations are more likely to suffer poor nutrition, inadequate housing, poor performance at school and social isolation.
Pay equity leads to higher retirement incomes for women.	Women with lower pay as they age are also subject to the poorer health and social consequences arising from low incomes that are mentioned above.
Pay equity is related to economic independence	Women who are economically dependent are more like to remain in violent relationships.
Pay equity is good for business and for the economy	<p>Women’s wages are essential to family incomes, and lower wages can mean loss of adequate health care, or tertiary education opportunities for children.</p> <p>Women influence or make purchasing decisions in most families. As consumers they have increasing power in the economy, and pay inequity can influence the way women perceive business and make economic decisions, including purchasing decisions.</p> <p>Evidence shows that diverse groups make better and more innovative business decisions than non-diverse groups. The lower participation of women in business decision-making means that businesses are not taking advantage of the benefits of diverse decision-making.</p> <p>Provides more equal incentives for men and women welfare recipients seeking transition to employment.</p>

<sup>13</sup> Barbara Pocock and Natalie Skinners, *Work, Life and Workplace Culture* which found unsupportive organisational cultures have more work-life conflict and are less likely to provide working arrangements that suit women

<sup>14</sup> 8 March 2005, Dr Helen Szoke, (Victorian Equal Opportunity Commission Chief Executive) media comment on the Victorian Pay Equity Inquiry.

## **What causes pay inequity?**

77. For many years, Australia has been a leader among nations in reducing the wage equity gap and the OECD data<sup>15</sup> continues to support that assessment.
78. More recently the gender wage gap has widened, partly as a result of the move away from award and collective agreements to individual agreements, and as a consequence of other aspects of WorkChoices.
  - a. There are also specific pay equity problems that are unique to some jurisdictions, such as Western Australia.
  - b. Some States, e.g., South Australia and Tasmania, also experience lower wages overall.
79. Under existing legislative structures women have still not gained pay equity and Australia has amongst the highest rates of occupational segregation in the OECD, with female workers concentrated in a narrow band (namely service industries) of occupations.
80. NFAW is of the view that one reason women are paid less than men is because of systemic wage discrimination resulting from occupational segregation and the historical undervaluing of women's work.
  - a. A current example has been reported by NFAW members in retail bakery franchises, where employment for young males and females differs significantly; boys are almost solely being assigned to baking apprenticeships and girls to the shop front customer service role. This puts girls at a disadvantage because the career path for a customer service role has lower pay prospects than an apprenticed baker.
81. Pay inequity exists at every point of the employment spectrum. Retirement savings for women are less than half that of men. Entry-level graduate women earn about \$3000 pa less than male graduates.
  - a. Women are more likely to work less than the 40 years men are expected to work, earn less than required to attract employer contributions to superannuation, not plan for super, not see superannuation as a high priority, take more breaks from work when they are not paying superannuation, and live longer than men therefore needing to stretch their retirement savings further.
82. At the top end of organisational career structures, women are struggling to participate fully as directors. ASX companies provide a benchmark, but as resource and resource services companies increasingly make up the majority of new entrants to the ASX200 the challenges are increasing. New companies are often registered in Queensland and Western Australia, and comprise relatively fewer female directors.
  - a. Women comprise 8% of directorships and 11-13% of senior executive roles in ASX200 companies.
  - b. 38% of the appointees to the thousands of Government boards and committees across Australia are women. SA is leading the group with 45%
  - c. 30% of directorships, trustees, council members in third sector, variously known as the not for profit sector and most recently the public benefit sector, are women.

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<sup>15</sup> See the ABS 2005 Year Book

83. Women top earners in ASX200 companies earn 58% of male top earners for comparable roles. This compares unfavourably with women earning 86% of males in AWE (Average Weekly earnings).
84. The Queensland Industrial Relations Commission's September 2007<sup>16</sup> report conducted a comprehensive study into the causes of pay inequity. The report says that the causes of pay inequity are complex and generally embedded in organisational and societal structures. They included:
- a. Gender segregation of the Australian work force. For example, more women work in hairdressing than as plumbers;
  - b. Undervaluation of work predominantly performed by women. Pay inequity can occur as a result of established compensation practices that unconsciously favour and reward the work done by predominantly male workers. These distinctions are most often a legacy of old attitudes and practices;
  - c. Concentration of women in lower level classifications with fewer opportunities for training and skill development;
  - d. Caring responsibilities being undertaken by women and the effect of breaks in workforce participation;
  - e. Concentration of women in part-time and casual employment leading to fewer opportunities for skill development and advancement; and
  - f. Reliance of women on awards as their primary wage setting arrangement.
85. Many men and women work long hours, but there are significant discrepancies in the pay received by men and women. Some of the causes include:
- a. Subjective performance evaluations;
  - b. Biased bonus schemes;
  - c. Lack of mentors for women;
  - d. Women are more likely to be employed on the Federal Minimum Wage than men;
  - e. The often unconscious interpersonal and organizational dynamics that create inequality regardless of the myth that all that matters is how well the job is done (often summarised by the term "boys' network");
  - f. The difficulty of measuring individual contributions in some jobs;
  - g. The fact that women's performance faces higher levels of scrutiny than men's; and
86. Access to published data analysis from the Population Censuses providing evidence on Australian women's pay equity/inequity experiences is limited. For example, the Canadian census demonstrated that women younger than 30 earn less in Canada today than women in that age group earned two decades ago. Similarly, an historic gender segregated analysis should to be undertaken and published by the ABS after every Australian Census.
87. The data that is available does not paint an encouraging picture in Australia. In a recently released report by the Equal Employment for Women in the Workplace Agency a survey of the top 200 companies listed on the Australian Stock Exchange showed that female chief financial officers and chief operating officers earned on average 50 per cent less than men in the same positions.

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<sup>16</sup> See [http://www.qirc.qld.gov.au/inquiry/pay\\_equity/final/pay%20equity%20report.pdf](http://www.qirc.qld.gov.au/inquiry/pay_equity/final/pay%20equity%20report.pdf)

88. Commentators have suggested that pay inequity is a result of the persistence of the ‘male breadwinner myth’ in Australia, where senior management assumes that men will have longer careers than women, and therefore men are given access to higher salaries and more promotion opportunities.

### **Actions to improve pay equity and women’s participation in the workforce**

89. NFAW believes there would be no pay equity problem if employers paid workers strictly according to the skill, effort, responsibility and working conditions of the job.

90. NFAW also believes that the causes of pay inequity contribute significantly to the relatively low participation rate of Australian women in the workforce. The less women work, the more the hours worked by men will increase. Better work-life balance is needed for both men and women, and this will require changes in policies that provide incentives for employers and employees. For example, the decision made by a woman returning after childbirth to work part time depends on education levels, family commitments, age, expectations of employers and employment policies.

91. Overall, attitudinal change is needed to achieve social change. Wage structures still reflect legacy thinking where men worked to support the family and women to earn ‘pin money’ – the more women in an occupation, the less it is paid, but research also shows that the in both the highest paid and the lowest paid jobs, women are paid less.

92. NFAW believes that legislation is only one aspect of remedying pay inequity. Options and mechanisms go more broadly to cultural and social issues including transparent decision-making, targeting female dominated occupations with gender equity programs, requiring gender-neutral job evaluations, building an appropriate and effective compliance regime, as well as effective complaints and conciliation mechanisms, education, and providing more part-time employment.

93. Employers are critical to changing the pay equity culture, as they are responsible for most of the remedies needed to address the problem.

94. However, the persistence of wide differences in male and female pay leads NFAW to conclude that employers will only make these changes when encouraged and required by greater transparency requirements, stronger definitions about requirements and accountability about progress achieved.

95. To achieve change at this level will require a multi-layered approach, with responsibility for change being accepted at all levels; individual, business and Government.

96. Without a clear pay equity policy that is supported by a comprehensive national action plan for women stating goals, targets and allocation of resources Ministerial responsibilities,<sup>17</sup> pay equity in Australia will continue to be a problem.

97. Suggestions for the strategies that could be included in this action plan are provided below, in Table 2.

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<sup>17</sup> See NFAW Submission to the Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act, para. 8.1



Table 2: Strategies to improve pay equity

	Goal	Suggested strategies
<b>Individuals</b>	To help women understand wages policy	Require clearly articulated pay levels provided by employers for all employees and potential employees. Provide education in schools, universities and vocational education programs on wages policy. Provide school career programs that incorporate wage prospects and financial planning.
	To encourage and support women to put forward to employers a strong case for role sharing jobs	Provide case studies (including financial cost and benefit analyses) for employers and employees. Support small to medium enterprises by providing education programs and small grants to support role sharing. Increase support for jobseekers with special needs, e.g., fund Centrelink to educate and support employers to provide job sharing opportunities and partner women returning to work from welfare into job sharing opportunities.
	To help women put themselves forward for pay and career advancement	Improve women's negotiation skills through education and training programs.
	To encourage women to take on training mentoring opportunities	Fund SME mentoring programs through BCA, ACCI, AIM etc. Encourage/fund universities/vocational education providers to develop mentoring programs where there is an under-representation of women.
	To encourage women to think carefully about career choices	Education provided in schools, universities and vocational education programs on implications of career choices.
<b>Business</b>	To find pathways that meet clearly articulated pay equity requirements	Strategies undertaken by companies may include: <input type="checkbox"/> Researching the representation of women in feeder position and senior roles; <input type="checkbox"/> Changing the nature of jobs; <input type="checkbox"/> Encouraging training/networking/mentoring; <input type="checkbox"/> Valuing women's skills; <input type="checkbox"/> Recognising and rewarding performance based on gender neutral definitions; <input type="checkbox"/> Recognising hours worked by males and females; <input type="checkbox"/> Using merit selection processes;



	Goal	Suggested strategies
		<input type="checkbox"/> Providing part-time work at all levels; <input type="checkbox"/> Defining job requirements using gender free job evaluations; <input type="checkbox"/> Recognising and fixing disparities. Other strategies might include: <input type="checkbox"/> Incorporating requirement for companies to undertake and publish pay equity audits in order to be accepted as a provider of good/services to Government. <input type="checkbox"/> Changed legislative requirements (see below) <input type="checkbox"/> Business awards/recognition programs for pay equity improvements <input type="checkbox"/> Equal representation of men and women on Boards of Directors of Companies
	Recruit more women in director positions	<input type="checkbox"/> Advertise vacancies more widely <input type="checkbox"/> Think broadly about the skill sets for board members. <input type="checkbox"/> Use existing tools to seek skilled women candidates (e.g., the WOB data base, senior women members of industry associations) <input type="checkbox"/> Use head-hunters who are have recruited women to similar roles and who can demonstrate knowledge of emerging women directors. <input type="checkbox"/> Include women in the organisation in existing 'male' networks. <input type="checkbox"/> Increase exposure of women employees to important networks, events, etc. <input type="checkbox"/> Develop women.
	Modify ASX corporate governance principle 2	Include diversity and pay equity.
<b>Government</b>	Ensure a whole of Government approach to pay equity	Commit to action plan on pay and employment equity that identifies targets, appropriate strategies including inbuilt evaluation, Ministerial responsibilities and allocates resources.
	Improve equity outcomes through the Sex Discrimination Act	Changes should enable the legislation to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Encompass indirect discrimination at all stages and forms of work;</li> <li><input type="checkbox"/> Place proactive obligations on employers to eradicate pay differences;</li> <li><input type="checkbox"/> Provide HREOC with the power to redress inequity</li> </ul>





	Goal	Suggested strategies
		<p>both at individual and systemic levels by extending enforcement powers to HREOC and expanding non-compliance orders so that HREOC can regulate more responsively and without complaints;</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide a broader definition of disadvantage;</li> <li><input type="checkbox"/> Eliminate vague concepts of reasonableness;</li> <li><input type="checkbox"/> Make undervaluation of jobs a cause of sex discrimination; and</li> <li><input type="checkbox"/> Remove the need for male comparisons.</li> </ul>
	Improve equity outcomes through the EOWW Act	<p>Changes should enable the legislation to:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Set a clear standard for gender neutral job evaluation;</li> <li><input type="checkbox"/> Require reporting on standards and principles (such as those provided in the Queensland legislation);</li> <li><input type="checkbox"/> Address occupational segregation through employment equity programs that include desegregation targets for low paid, part-time, casual female dominated work (that is, affirmative action to increase the number of male employees in particular industries); improved access for women to high paid male dominated work; and transparent reporting by employers on actual salaries, not salary ranges (see NZ approach);</li> <li><input type="checkbox"/> Establish a pay equity unit to report and reward for all employers regardless of size using different approaches for different organisational size (e.g., 10-49 employers, 50 – 100 employees and +100) organisations/industries for closing gender pay gap;</li> <li><input type="checkbox"/> Make EOWA responsible for training HR and small business, assisting with audits;</li> <li><input type="checkbox"/> Give Fair Work Australia a role in gender assessment and equity;</li> <li><input type="checkbox"/> Require gender neutral job evaluation (based on skill/effort/responsibility/working conditions);</li> <li><input type="checkbox"/> Require equity plans/management; and</li> <li><input type="checkbox"/> Require union accountability arrangements.</li> </ul>
	Improve equity outcomes through industrial relations and other	<p>Provide paid maternity leave<sup>18</sup> and ‘use it or lose it’ paid paternity leave.</p> <p>Include preventing and eliminating discrimination in the workplace and ensuring equal remuneration for men</p>

<sup>18</sup> See *NFAW Submission to Productivity Commission’s Inquiry on Maternity, Paternity and Parental Leave*



	<b>Goal</b>	<b>Suggested strategies</b>
	legislation	<p>and women doing work of equal or comparable value as Objects of the new Federal industrial relations Act.</p> <p>Remove the need for applicants to demonstrate that where work is of equal value and different in pay it is discriminatory, and to prove that there was discriminatory intent.</p> <p>Include an Equal Remuneration Principle in industrial legislation that features a test of undervaluation as opposed to discrimination, flexibility in comparative benchmarks and contemporary assessment of work value not prejudiced by previous assessments.</p> <p>Ensure the Fair Pay Commissioner has the powers to address unequal remuneration in Awards and agreements.</p> <p>Require comparable worth policies to provide equal pay for equivalent work through gender-neutral job evaluations.</p> <p>Provide clear information about classifications and pay scales in awards, particularly in industries dominated by women.</p> <p>Provide clear information about wages and classifications so that people can make comparisons.</p> <p>Require employers to provide information that is available to all staff about male and female wages as a basis for wage increase proposals.</p> <p>Review the impact of other Commonwealth legislation on women and girls, with particular attention paid to vulnerable groups.</p> <p>Address inequities in the taxation system for married women on low incomes.</p> <p>Increase the powers of the Ombudsman and similar authorities to investigate pay inequity without waiting for individual complaints.</p>
	Improve and make available information and research into equity	<p>Conduct and publish the results of national workplace relations surveys to monitor gender differences in changes in wages and employment conditions in conjunction with key stakeholders including State and Territory Governments, employers and unions.</p> <p>Commission research into the causes of pay inequity, that includes a focus on the reasons men earn higher pay.</p> <p>Monitor and publish annually information about wages and employment conditions with emphasis on gender differentiated data, with particular attention paid to</p>



	Goal	Suggested strategies
		<p>vulnerable groups of women employees with limited bargaining power.</p> <p>Provide and publicise access to a clearinghouse for research and information on pay equity.</p> <p>Research implications of child care and out of school hours care policies on pay equity.</p>
	<p>Improve monitoring systems</p>	<p>Conduct annual national workplace industrial relations surveys of the type undertaken in Queensland, New South Wales and Victoria.</p> <p>Provide open reports relevant to industry and occupational classifications disaggregated by gender, age and cultural background on the use of individual workplace agreements.</p> <p>Standardise reporting formats to enable comparisons of information between collective and individual agreements.</p> <p>Develop a common definition of ‘family friendly’ for the purpose of comparing conditions of employment between jurisdictions and forms of employment contract.</p> <p>Implement the recommendations made in the report <i>Women’s pay and conditions in an era of changing workplace regulations: Towards a ‘Women’s Employment Status Key Indicators (WESKI) database</i><sup>19</sup></p>
	<p>Raise awareness of differences in male/female pay</p>	<p>Prosecute pay equity cases and publicise prosecutions.</p> <p>Publish data about differences in pay from graduates to superannuation.</p> <p>Publish gender disaggregated employment data about earnings by different employment arrangements including different hours worked.</p> <p>Provide regular public reports on progress of large employers/industry.</p> <p>Celebrate achievements on a National Pay Equity Day.</p>
	<p>Increase women’s retirement incomes</p>	<p>Provide flexible superannuation systems that apply to women when they are unemployed.</p> <p>Provide superannuation contribution systems that continue during periods of paid maternity leave.</p> <p>Pay the employer’s contribution to superannuation funds for women on welfare benefits.</p>

<sup>19</sup> See [http://nfaw.org/assets/socialpolicy/indsec\\_ir/WESKISep2006.pdf](http://nfaw.org/assets/socialpolicy/indsec_ir/WESKISep2006.pdf)



	Goal	Suggested strategies
		<p>Educate women and girls from school age on the importance of savings and the need to contribute to superannuation at an early age.</p> <p>Adopt strategies to increase the participation of women in employment, such as improving care arrangements (many women stop paid work to become carers for family members – parents, grandchildren, etc.).</p> <p>Improve pay equity so that women earn more while participating in employment.</p> <p>Increase support for financial literacy programs for women.</p>
	Set an example	<p>Increase the representation of women on government boards and committees</p> <p>Make government funding to rural entities contingent on improved board diversity.</p> <p>Conduct pay audits and address the problems recently raised by the CPSU regarding an increasing gender pay gap in APS employment<sup>20</sup></p>
	Other actions	<p>Fund the development of innovative projects to increase the number of girls and women in non-traditional occupations.</p> <p>Develop resources to assist women with workplace negotiations and work life balance.</p> <p>Establish a pay equity unit.</p> <p>Fund women’s legal services to target pay equity and matters relating to Sex Discrimination.</p>

<sup>20</sup> The CPSU examined APS agencies whose maximum pay points, in any of the 8 grades examined, were in the lowest 10 of all APS Collective Agreements. The results were cross-referenced against the workforce size and gender data for these agencies. It is clear that small agencies with a high proportion of female employees are more likely to be at the bottom of the pay pile. All of those agencies with 3 or more grades in the bottom 10 for collective agreements had greater than 70% female workforce.

## What action has already been taken?

98. Some action on pay inequity in Australia has been taken already.
99. In May 2008, NFAW instigated a panel discussion further the debate on pay inequity at the National Press Club, on the topic of *Equal Pay: The Bottom Line*. The panel consisted of Minister Tanya Plibersek, Minister for the Status of Women, Heather Ridout, Chief Executive of the Australian Industry Group, Ilona Charles, General Manager, People Services, National Australia Bank and Professor Mark Wooden, Deputy Director of the Melbourne Institute of Applied Economic and Social Research and a Professorial Research Fellow at the University of Melbourne.
100. NFAW, Security for Women and the Australian Federation of University Women, have also been instrumental to the Australian Bureau of Statistics' decision to establish a Statistical Working Group on Pay Equity in September 2008.
101. Strategies to mitigate the impacts of increasing gaps in pay equity are also currently occurring at the State Government level, and within some large enterprises.
102. The Queensland Industrial Relations Commission 2007 report into pay equity<sup>21</sup> recommended, inter alia, that the Queensland Government enact a Pay Equity Act, which has as its principal object the achievement of pay equity by the promotion of equal opportunity and the prevention of discrimination.
103. In 2004, the Minister for Industrial Relations, Victoria, announced a Pay Equity Inquiry to identify the extent of the gender pay gap in Victoria and to investigate the factors contributing to differences in pay rates between men and women in Victoria. This Inquiry found that the reasons for the pay gap are related to:
- The fact that women are more reliant on awards for their wage increases, and are less likely to engage in enterprise bargaining than men;
  - A large proportion of women work in low-paid occupations and industries like child care and retail;
  - A large proportion of women work in part-time work, which doesn't offer as many opportunities for training or promotion;
  - Difficulty accessing child care or flexible working arrangements limit the job options for working mothers;
  - Difficulty of access to processes that remedy pay inequity (e.g. bringing a case against an employer under the Federal Workplace Relations Act 1996 or the Victorian Equal Opportunity Act 1995) and the uncertainty regarding the interpretation of current legislation.
104. As a result of this Inquiry, in 2005<sup>22</sup> it was recommended that the Victorian Government should develop a Plan of Action for Pay Equity to ensure that pay equity measures were carried forward, monitored, developed and integrated with other Government initiatives that may affect pay equity. The content of the Plan was recommended to include:
- Education and promotion strategies;
  - Strategies to address the undervaluation of 'feminised' work;

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<sup>21</sup> See [http://www.qirc.qld.gov.au/inquiry/pay\\_equity/final/pay%20equity%20report.pdf](http://www.qirc.qld.gov.au/inquiry/pay_equity/final/pay%20equity%20report.pdf)

<sup>22</sup> See [http://www.business.vic.gov.au/busvicwr/\\_assets/main/lib60047/04\\_payequityurcot.pdf](http://www.business.vic.gov.au/busvicwr/_assets/main/lib60047/04_payequityurcot.pdf)

- c. Strategies to improve relative income;
  - d. Legislative action;
  - e. Gender pay equity audits; and
  - f. Infrastructure to implement the Plan of Action.
105. Other State Governments including New South Wales and Western Australia were also looking at expanding the powers of State commissions. Western Australia (where there is a 28% pay gap) has established a Pay Equity Unit in its Department of Consumer and Employment Protection, which is responsible for education, audits and policy on pay equity for the WA Government.
106. Another approach is based on States persuading large enterprises to develop pay equity strategies.
107. The best known of these approaches is the current Enterprise Agreement facilitated by the Victorian Department of Industrial Relations between the National Australia Bank and the Financial Services Union, which provided for a pay equity audit that was completed in February 2008<sup>23</sup>. The Department participated in the audit, and hopes to use the audit as a case study for other large firms. This approach is likely to be less useful with medium to small enterprises.
108. The determination of minimum wages is critical to women's substantive pay position. Pay equity audits and the various State approaches may not be adequate alone.
109. The narrow functions of the Australian Fair Pay Commission, together with the reduced role for minimum rate industry awards, render the equitable and timely determination of minimum wages problematic. The equal remuneration provisions in Federal legislation (which were inserted by Labor in 1993) lack the capacity to address gender pay equity because they rely on a narrow test of sex discrimination. The constraint of this necessity to prove discrimination limits the utility of appeal to the Human Rights and Equal Opportunities Commission.

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<sup>23</sup> See

[http://www.business.vic.gov.au/busvicwr/\\_assets/main/lib60013/nabfsupayequityauditcasestudy.pdf](http://www.business.vic.gov.au/busvicwr/_assets/main/lib60013/nabfsupayequityauditcasestudy.pdf)

## Conclusion

110. Like many other social problems that are addressed by Government, a ‘whole of Government’ approach is needed to address the relatively low participation of women in the workforce. Women will not willingly enter employment while their remuneration is insufficient to provide adequate support for themselves and their families, nor while the work family balance is such that it threatens their well being and that of their families.
111. The preamble to the ILO Constitution, established in 1919 includes a reference to the principle of equal pay for work of equal value. In 1949 the United Nations declared equal pay a human right. Since that time, further conventions and laws have also adopted these principles in Australia but progress has been slow. Despite the commitment of many individuals, many politicians and many Governments, a reasonable balance between the pay provided to men and women who work has not been achieved.
112. In the past, poorer education levels were attributed as a cause of pay inequity. This is no longer the case. Women now are, on the whole, better educated than men, but they are not paid as well as men when they enter the workforce.
113. The complexity of the pay equity challenge cannot be ignored, nor can it be underestimated. However, employment increases alone justify action, while economic and social benefits of taking action are also of great significance.
114. Achieving pay equity is about much more than a few simple solutions. Historical notions of the value of work will need to be challenged. Robust alternatives that value employment according to the work performed, the knowledge required (whether or not accreditation is involved), the recognition of soft skills, working conditions and market considerations will need to be taken into account. The inadequacy of current comparators will also need to be addressed. This will involve legislative change, as well as clear thinking on the part of Government.
115. NFAW salutes the revival of Government interest in pay equity, and strongly recommends that this should be followed through by a successful policy campaign to achieve better outcomes, starting with a transparent and successful pay equity campaign in Commonwealth government employment.