



Australian  
Human Rights  
Commission

*everyone, everywhere, everyday*

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Submission of the  
Australian Human Rights Commission  
to the  
House of Representatives Standing Committee on  
Employment and Workplace Relations  
on the  
Inquiry into pay equity and associated issues related  
to increasing female participation in the workforce  
23 September 2008

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## Introduction

1. The Australian Human Rights Commission ('the Commission')<sup>1</sup> makes this submission to the House of Representatives Standing Committee on Employment and Workplace Relations in its Inquiry into pay equity and associated issues related to increasing female participation in the workforce ('the Inquiry').
2. The Commission is Australia's national human rights institution.<sup>2</sup>
3. The Commission administers the *Sex Discrimination Act 1984* (Cth) ('SDA'). The SDA makes unlawful discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy in many areas of public life including employment, education, and the provision of goods, services or facilities. The SDA makes unlawful discrimination on the ground of family responsibilities only in dismissal from employment.
4. The SDA also aims to promote recognition and acceptance within the community of the principle of the equality of men and women.<sup>3</sup>
5. The Commission has examined issues related to pay equity between women and men in a variety of reports and submissions.<sup>4</sup>
6. Most recently, the Commission made an extensive submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender equality ('*SDA Submission (2008)*').<sup>5</sup> The *SDA Submission (2008)* draws on the findings of the Sex Discrimination Commissioner's nation-wide Listening Tour, *Gender equality: what matters to Australian women and men* ('*Listening Tour Community Report (2008)*').<sup>6</sup>
7. The Commission draws on its previous work in relation to pay equity and associated workforce participation issues in making this submission. The Commission has not had the capacity to undertake recent detailed analysis and consultation on pay equity issues in the changing industrial relations landscape, and following the election of the new Australian Government in 2007.
8. This submission will focus on four main areas:
  - Australia's international human rights obligations in relation to pay equity;
  - the expansion of protection from discrimination on the ground of family responsibilities as a key tool in addressing the gender pay gap;
  - the Commission's existing powers in relation to the equal remuneration provisions of the *Workplace Relations Act 1996* (Cth) ('*Workplace Relations Act*') and new powers proposed by the Commission in the *SDA Submission (2008)*; and
  - data collection and monitoring issues.

## Summary

9. This submission summarises the current situation in relation to pay equity and women's participation in the workforce more broadly.

10. While the Commission has not had the capacity to undertake recent detailed analysis in this area, this submission sets out the Commission's key concerns with a particular focus on the role of family responsibilities legal protection as a tool for addressing pay equity and related workforce issues.
11. This submission reviews the adequacy of current legislative arrangements for addressing pay equity by drawing on recent work undertaken by the Commission to make a number of recommendations for change.
12. Data collection and monitoring of the gender pay gap and women's employment conditions needs to be improved.
13. This submission also outlines a number of options for strengthening legal and institutional arrangements for reducing the gender pay gap.

### **The gender pay gap in Australia**

14. There have been many improvements in employment for Australian women since the introduction of the SDA. However, Australian women continue to be marginalised in the workforce with lower participation rates than men and lower earnings than their male counterparts.
15. One of the major indicators of women's economic inequality is the ratio of women's to men's earnings – commonly known as the gender pay gap. The gap between men's and women's ordinary full time earnings is currently 16%.<sup>7</sup> The gender pay gap is even greater when women's part-time and casual earnings are considered, with women earning two thirds what men earn overall.<sup>8</sup>
16. Pay equity simply means that women and men should receive the same pay, benefits and conditions for work of equal or comparative value. However the causes of pay inequity are complex and multifaceted as they are embedded in industrial, organisational and socio-historical structures.<sup>9</sup>
17. One of the reasons for the gender pay gap is women's continuing greater responsibility for the care of dependent family members such as children, elderly parents or people with disability requiring care.<sup>10</sup> More time spent in the unpaid work of care inevitably means less time available for paid work. Although mothers of young children in particular work very long combined paid and unpaid hours of work.<sup>11</sup>
18. After the birth of a child, a woman may take on paid work which allows her to accommodate her family responsibilities. However, women may typically take on paid work which does not fully reward their skills and experience in order to work part-time or secure flexible working arrangements. Such trade-offs between conditions and pay were reported to the Commission throughout the Women, Men, Work and Family project, as reported in *It's About Time* (2007).<sup>12</sup>
19. Workplace structures have evolved around an 'ideal worker' norm of the traditional male breadwinner who is supported by a wife at home full time raising children.<sup>13</sup>
20. Work that is predominantly performed by women tends to be undervalued and women are concentrated in lower level work classifications with few opportunities for training and skill development.

21. Australia's progress on closing the gender pay gap has stalled in recent years despite the continued movement of women into universities and vocational education and training.<sup>14</sup>
22. In Australia, women constitute a higher proportion of casual workers, are more likely to be working under minimum employment conditions and be engaged in low paid occupations and industries. Women are under-represented in senior and decision-making roles across business, government and the community. Australian women continue to experience workplace discrimination on the basis of sex, pregnancy, potential pregnancy and family responsibilities.<sup>15</sup>
23. Industries and occupations in Australia remain highly segregated by gender and women's work is still often undervalued.<sup>16</sup>
24. Employment rates also vary considerably between different groups of women, such as women with disability,<sup>17</sup> Indigenous women<sup>18</sup> and mothers,<sup>19</sup> who experience particular economic disadvantage as a result.
25. Barriers to women's full and equal participation in the workforce include, but are not limited to:
  - limited availability of quality part time work;
  - limited access to secure, flexible working arrangements;
  - patchy availability of family-friendly workplace policies;
  - a lack of access to quality, affordable child care facilities;
  - lack of access to paid maternity, paternity and/or parental leave.
26. The effects of this persistent gender inequality are far reaching and the gender pay gap has a number of critical flow-on effects. For example, having earned less than men and carrying a significantly greater share of unpaid caring work, on average women retire with significantly less retirement savings compared to men.<sup>20</sup>
27. The Commission has also found that pay inequity is a major factor in determining who undertakes care in couple families, creating limited choices and opportunities for both women and men.<sup>21</sup>
28. Along with an often unspoken assumption that women will undertake the majority of unpaid caring work, pay inequity in effect forces the higher earner to take on the majority of paid work while the lower earner is left with the majority of unpaid caring work. This occurs regardless of skill levels, preferences or the needs of those requiring care.
29. Closing the gender pay gap is a national priority in eliminating discrimination and promoting substantive gender equality in Australia.
30. Australia has an international obligation to take all reasonable steps to respect, protect and fulfil the right of all workers to receive equal pay for work of equal value, regardless of their gender.
31. The Commission makes the following recommendations to address the gender pay gap and fulfil Australia's international human rights obligations.

## Recommendations

32. **Recommendation 1: Extend family and carer responsibilities protection under the SDA**  
(1) Make direct and indirect family and carer responsibilities discrimination unlawful in all areas covered by Part II Div 1 of the SDA.  
(2) Extend the definition of family responsibilities in the SDA to include family and carer responsibilities, which is inclusive of same-sex families, and provide a definition of family members and dependents which ensures adequate cover for both children and adults to whom care is being provided.
33. **Recommendation 2: Positive duty to reasonably accommodate the needs of workers who are pregnant and/or have family or carer responsibilities**  
Introduce into the SDA a positive obligation on employers and other appropriate persons to reasonably accommodate the needs of workers in relation to their pregnancy or family and carer responsibilities. Failure to meet this obligation would be an actionable form of discrimination.
34. **Recommendation 3: Strengthen the *Workplace Relations Act 1996 (Cth)***  
(1) Review the adequacy of the equal remuneration provisions under the Workplace Relations Act with respect to:
- removing the threshold test of discrimination which requires applicants to prove that disparities in earnings have a discriminatory cause
  - removing reference to a comparator group of employees and
  - developing new equal remuneration provisions based on the construction of undervaluation as opposed to discrimination (in line with recent developments at the State level).
- (2) Review the adequacy of the resources available for persons able to initiate applications, including the resources of the Commission.
35. **Recommendation 4: Funding to the Commission**  
Increase funding to the Commission to perform its policy development, education, research, submissions, public awareness and inquiry functions to eliminate discrimination and promote gender equality, including in addressing the gender pay gap.
36. **Recommendation 5: Broad inquiry function in the SDA**  
Amend the SDA to include a broad formal inquiry function in relation to the elimination of discrimination and the promotion of gender equality in Australia.
37. **Recommendation 6: Self-initiated complaints under the SDA**  
(1) Insert a function in the SDA for the Sex Discrimination Commissioner to commence self-initiated complaints for alleged breaches of the SDA, without requiring an individual complaint. The new function would include the ability to enter into negotiations, reach settlements, agree enforceable undertakings, and issue compliance notices.  
(2) Insert a function in the SDA for the Commission to commence legal action in the Federal Magistrates Court or Federal Court for a breach of the SDA.
38. **Recommendation 7: Certification of special measures**

Amend s 7D of the SDA to give the Commission power to certify temporary special measures for up to five years.

39. **Recommendation 8: Extend the *amicus curiae* function under the SDA**  
Amend s 46PV of the HREOC Act to include appeals from discrimination decisions in the Federal Court and Federal Magistrates Court.
40. **Recommendation 9: Intervening or appearing as *amicus curiae* as of Right under the SDA**  
Consider empowering the Commission to intervene, and the Sex Discrimination Commissioner to appear as *amicus curiae*, as of right.
41. **Recommendation 10: Broadening the intervention power under the SDA**  
Consider redrafting s 48(1)(gb) of the SDA to operate more broadly.
42. **Recommendation 11: Independent monitoring of national gender equality indicators and benchmarks**
  - (1) Insert into the SDA a specific function for the Commissioner, on behalf of the Commission, to undertake periodic, independent monitoring of gender equality indicators and benchmarks and report to the Australian Parliament, subject to appropriate and specific funding being made available.
  - (2) Consider the merits of inserting this function as a statutory duty, taking into account the concerns of the Commission about the need for tied funding.
43. **Recommendation 12: Data Collection and Monitoring**  
Revisit previous recommendations made by the Commission in relation to data collection and monitoring of women's pay and employment conditions in order to:
  - (1) address gaps in data collection through resourcing the ABS to collect and publish regular gender disaggregated data in areas of need identified by the *WESKI Report (2006)*
  - (2) fund DEEWR to conduct an annual national workplace relations survey to monitor gender differences in changes to pay and conditions and
  - (3) establish a comprehensive set of indicators for measuring achievement towards gender equality in this area over time, either independently or as part of a broader set of indicators and monitoring to be developed by the Commission, subject to recommended legislative change to the SDA and appropriate, tied funding.
44. **Recommendation 13: Strengthen legal and institutional arrangements to reduce the gender pay gap**  
Consider the range of alternative approaches for achieving pay equity as previously recommended by the Commission, including workplace audit processes, monitoring and enforcement processes. Possible options include:
  - (1) setting up a specialist unit in the new wage setting body of Fair Work Australia to develop and monitor pay equity mechanisms
  - (2) requiring Fair Work Australia to undertake investigations focused on undervaluation and comparative worth in female dominated occupations and industries

- (3) amending legislation to require pay equity audits and action plans to be carried out at the workplace level
- (4) introducing the ability for EOWA and/or the Commission to receive gender equality action plans, from bodies other than employers currently covered by the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) ('EOWW Act'), including specific plans on pay equity
- (5) amending the EOWW Act or the SDA to provide for an auditing function for gender equality action plans which is properly resourced
- (6) inserting into the SDA the ability to adopt legally-binding standards
- (7) introducing specialised pay equity legislation.

### **The Commission's work in this area**

45. The Commission has undertaken a variety of work relevant to the area of pay equity and associated workforce participation issues. This work includes:
- the *SDA Submission* (2008);<sup>22</sup>
  - the *Listening Tour Community Report* (2008);<sup>23</sup>
  - the *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* ('*Paid Leave Scheme for Parents Submission* (2008)');<sup>24</sup>
  - *Striking the Balance: Women, men, work and family: Discussion Paper* ('*Striking the Balance* (2005)');<sup>25</sup> and *It's About Time: Women, men, work and family* ('*It's About Time* (2007)');<sup>26</sup>
  - the *Submission to the Queensland Industrial Relations Commission Pay Equity Inquiry* (2007);<sup>27</sup>
  - the *Submission to the Australian Fair Pay Commission for consideration in determining the first national wage decision* ('*AFPC Submission* (2006)');<sup>28</sup>
  - the *Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005* ('*Work Choices Submission* (2005)');<sup>29</sup>
  - intervention in the 1998 Pay Equity Case *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries*.<sup>30</sup>
  - intervention in proceedings before the Australian Industrial Relations Commission (AIRC), making submissions on minimum wage levels, particularly as they relate to the protection of living standards and the achievement of pay equity for women;<sup>31</sup>
  - *Stretching Flexibility: Enterprise bargaining, women workers and changes to working hours* (1997),<sup>32</sup> *Glass Ceilings and Sticky Floors: Barriers to the careers of women in the Australian finance industry* (1997)<sup>33</sup> and *The Equal Pay Handbook* (1998);<sup>34</sup> and
  - intervention in the Pay Equity Inquiry before the New South Wales Industrial Relations Commission.<sup>35</sup>



46. In addition, in 2006 the Commission partnered with the Women's Electoral Lobby and the National Foundation for Australian Women to fund a report examining the capacity of existing data collections to monitor women's pay and other employment conditions under the new regulatory framework established by the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices). The report *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database ('WESKI report (2006)')* was prepared by the Women in Economic & Social Research ('WISER') research group from Curtin University.<sup>36</sup>
47. The Commission refers the Inquiry to this body of work.

### **Australia's international human rights obligations**

48. The legal framework for the majority of Australian workplaces is set out in the Workplace Relations Act. One of the objects of the Workplace Relations Act is to assist '... in giving effect to Australia's international obligations in relation to labour standards'.<sup>37</sup>
49. Australia has a range of international obligations in relation to pay equity.

#### **50. ILO 111**

51. The *International Labour Organisation ('ILO') Convention concerning Discrimination in respect of Employment and Occupation ('ILO 111')*,<sup>38</sup> requires Australia to:<sup>39</sup>

pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

52. For the purposes of ILO 111, discrimination is defined as:<sup>40</sup>

[a]ny distinction, exclusion or preference made on the basis of...sex...which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

#### **53. ILO 100**

54. Australia is obliged under the *ILO Equal Remuneration Convention ('ILO 100')* to '...ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value'.<sup>41</sup>

#### **55. CEDAW**

56. The United Nations *Convention on the Elimination of all Forms of Discrimination Against Women ('CEDAW')* is scheduled to the SDA. Under CEDAW, Australia is required to:

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 same rights, in particular:<sup>42</sup>

...

- (c) 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...;

(d) 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.

57. Australia's international human rights obligations require the Australian Government to take steps to protect and fulfil the right of all workers to enjoy equal pay for work of equal value, regardless of their gender.

### **Extending legal protection from family responsibilities discrimination and pay equity**

58. Ensuring that women and men with family and carer responsibilities have reasonable access to flexible work arrangements across industries and occupations is a crucial component of addressing the gender pay gap in Australia.
59. If employees are able to access flexible work arrangements in accordance with their family and carer responsibilities, more women will be able to remain in secure forms of work that are commensurate with their skill levels, retain access to benefits, training and promotional opportunities, and retain pay levels on an equal basis with men.
60. Greater access to flexible working arrangements will also help improve the quality of part time work by eliminating the need to downshift to lower status jobs in order to accommodate family and carer responsibilities.
61. Increasing access to flexible working arrangements for employees within their usual occupation will also increase the ability of both women and men to work part time at all levels, including senior roles.
62. Improving the quality of part time work at senior levels for men and women would in turn create more choice for couples who wish to share their caring responsibilities more equally, thus creating greater opportunities for women to participate in the workforce.
63. These and other features of contemporary work and family life are explored more fully in *It's About Time* (2007), which sets out a range of recommendations to improve the level of support for men and women workers with family and carer responsibilities.

### ***The Commission's It's About Time (2007) findings***

64. *It's About Time* (2007) identified that legislative change to improve protection from discrimination on the grounds of family and carer responsibilities under the SDA is a vital element in addressing gender inequality in Australia.<sup>43</sup> The *SDA Submission* (2008) builds on the findings in *It's About Time* (2007) to set out detailed recommendations for amending the SDA in this area.
65. A key finding of *It's About Time* (2007) was the need for expansion of the family responsibilities provisions of the SDA in order to better support men and women workers with family and carer responsibilities across the life cycle.
66. *It's About Time* (2007) found that the failure of the legislation to provide adequate coverage for workers with family responsibilities effectively locks men into the 'ideal worker' model of working life.<sup>44</sup>

67. The 'ideal worker' norm refers to a traditional male breadwinner pattern of continuous full time work with no recognition of caring responsibilities.<sup>45</sup> Together with inflexible workplace structures and family-hostile workplace cultures, this model maintains the status quo whereby women remain disproportionately responsible for family responsibilities and as a consequence remain disadvantaged in the workplace relative to men.
68. This historical model of working life is at odds with the work and family preferences of the majority of Australian families. As reported in *It's About Time* (2007) and confirmed in *Listening Tour Community Report* (2008), the Commission has found that many men and women workers with family responsibilities want to share the care of children and other dependents more equally. However, they face a number of barriers to doing so.
69. One of the major barriers for men with family responsibilities that the Commission has identified is a lack of support within workplaces either in terms of lack of access to family-friendly policies such as flexible working arrangements and paid paternity/parental leave, or where there is access to such policies, family-hostile workplace cultures prevent their take up.<sup>46</sup>
70. In *It's About Time* (2007), the Commission recommended the expansion of the family responsibilities provisions to broaden its coverage to all forms of family and carer responsibilities across the life cycle and in all aspects of employment. The Commission recommended that this expansion could be implemented through a separate piece of legislation called a *Family Responsibilities and Carers' Rights Act* ('FRCRA'). It was also proposed that the FRCRA include a right to request flexible work arrangements.
71. The Commission's argument was that family responsibilities discrimination is distinct from sex discrimination and that it warrants its own legislative framework. Further, to include expanded family responsibilities protection in the SDA could serve to entrench the idea that caring is women's work and thereby mitigate against the achievement of substantive gender equality.
72. As a separate Act, *It's About Time* (2007) proposed that the FRCRA would expressly encompass both men and women with family responsibilities. Such a specialised piece of legislation would assist in overcoming gendered stereotypes around caring, and be more accessible to men. These broader objectives were less likely to be achieved if the family responsibilities provisions were extended within the SDA.
73. Broadening the family responsibilities provisions within a framework that better assists men would have an important influence on gender equality within the workplace and the home as it would challenge the notion of the 'ideal worker' as one unencumbered by family responsibilities.<sup>47</sup> Broader provisions would not only mean greater access to redress for family responsibilities discrimination by men, it would also influence what both employees and employers consider to be discrimination and potentially have a flow on effect to gendered divisions of unpaid work.<sup>48</sup> If a specialised equality law such as the FRCRA was enacted, *It's About Time* (2007) suggested that it could mirror other Commission legislation by requiring the Commission to conduct relevant educative, research and policy work, and extend *amicus curiae* and intervention functions to a Commissioner.<sup>49</sup>

74. Since the release of *It's About Time (2007)*, the new Australian Government has incorporated a 'right to request flexible working arrangements' in its *National Employment Standards* ('NES').
75. In the *SDA Submission (2008)*, the Commission reiterated its view that protection from discrimination on the grounds of family and carer responsibilities needs to be extended. Increasing legal protection in this area would have a significant impact on pay equity and associated issues for women in the workforce.

### ***The need to amend the SDA***

76. While the SDA provides protection from discrimination on the ground of family responsibilities it is more limited than the other grounds, in that it only provides protection from:
  - direct discrimination; and
  - dismissal (including constructive dismissal) from employment.<sup>50</sup>
77. The fact that the family responsibilities provision is limited to direct discrimination has proved to be a serious restriction.<sup>51</sup> Most unfavourable treatment that people experience in the workplace because of family responsibilities is the indirect effect of inflexible workplace policies and practices. For example, requirements to work full time, overtime or rotating shifts appear to be fair because they apply to all employees equally. However, workers with family and carer responsibilities will often be disadvantaged by them. For example, by being unable to apply for promotion to a position if it requires overtime.
78. As a result of these limitations, the Commission receives relatively few complaints under these provisions of the SDA.<sup>52</sup> Despite the fact that the family responsibilities provisions of the SDA are generally equally available to both men and women, men have not generally made use of them.<sup>53</sup>
79. Women complainants may use the sex and pregnancy discrimination provisions of the SDA to pursue allegations of workplace failure to accommodate family responsibilities rather than relying on the limited family responsibilities provisions. In particular, the indirect sex and pregnancy discrimination provisions of the SDA have proved useful to complainants. In a number of cases, requests for part time work have been considered in the context of the definition of indirect sex discrimination.<sup>54</sup>
80. Restrictions apply to men in their use of some provisions of the SDA.<sup>55</sup> Men are unable to access the indirect sex discrimination provisions to address discrimination on the basis of family responsibilities, as women have done. This is because men cannot argue, as women have, that as a sex they are more likely to take on family care obligations and that less favourable treatment because of family responsibilities is therefore attributable to their sex. Men have not traditionally had primary responsibility for caring work, and so could not argue that such responsibilities were associated with being a man.<sup>56</sup>
81. This in effect restricts men's abilities to seek assistance under the SDA. This is of particular concern in light of the SDA's broader objective of promoting

gender equality. The application of the indirect sex discrimination provisions in these cases may, by protecting women but not men, actually serve to entrench traditional domestic arrangements as the responsibility of women and discourage a more equal sharing of caring and domestic work. This in turn may limit women's workforce participation.

82. Equal access to and use of family friendly work arrangements by men and women is important in promoting gender equality. The protection that currently exists under the SDA for men is an obstacle to achieving this objective.
83. In the Commission's view, the family responsibilities provisions of the SDA provide insufficient protection for men and women workers with family responsibilities, and a limited platform to support and promote systemic change in areas such as pay equity and women's workforce participation.
84. The Commission considers that the SDA should be amended as soon as possible to ensure that all forms of discrimination on the grounds of family and carer responsibilities are unlawful. The amendment should:
  - make unlawful discriminatory treatment *in all aspects of work*, rather than restricting protection to discriminatory treatment in employment that results in dismissal.<sup>57</sup>
  - make unlawful *indirect* family and carer responsibilities discrimination.<sup>58</sup>
  - extend the definition of family responsibilities to include *family and carer responsibilities*, which is inclusive of same-sex families, and provide a definition of family members and dependents which ensures adequate cover for both children and adults to whom care is being provided.<sup>59</sup>
85. This reform may not address the concern that inclusion of family and carer responsibilities in the SDA may entrench the perception that family and carer responsibilities is a 'women's issue' rather than an issue of equality for workers. However, it would significantly improve current protections for both women and men in line with Australia's responsibilities under the *ILO Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers and Family Responsibilities* ('ILO 156'),<sup>60</sup> as was the intention of parliament in 1992, subject to ensuring that the coverage of the SDA for men is as expansive as is constitutionally feasible.
86. The Commission's *SDA Submission (2008)* also recommended a stage two inquiry about federal equality laws, where the Australian Government could then either insert family and carer responsibilities as a distinct protected ground under a federal *Equality Act*, or give consideration to a specialised piece of legislation, such as the FRCRA, proposed in *It's About Time (2007)*.

### ***Positive duty to reasonably accommodate family and carer responsibilities***

87. Introducing a positive duty to reasonably accommodate family and carer responsibilities would provide a greater level of support for women and men who require flexible working arrangements. Introducing a positive duty would also assist in clarifying employer responsibilities in this area.

88. As noted above, the new NES, due to become operational by 2010, have introduced a right to request flexible working arrangements into the industrial relations system.<sup>61</sup>
89. A right to request flexible work arrangements is a form of positive obligation to promote gender equality, in the specific area of family responsibilities.<sup>62</sup>
90. Similar to the current trend in the area of disability discrimination, there has been a sustained push for the introduction of obligations to make reasonable adjustments in other areas of discrimination, including family and carer responsibilities.
91. For example, the decision of the AIRC in the *Family Provisions Test Case*<sup>63</sup> established the right of workers under a relevant federal award to request flexible work arrangements to accommodate their family responsibilities. Employers bound by such awards are required to consider such a request and only refuse 'on reasonable grounds related to the effect on the workplace or the employer's business'.
92. However, the impact of the *Family Provisions Test Case* was blunted by the limited number of awards to which it applied.
93. Whilst the new NES is a positive development, it is insufficient to address the needs of workers with family responsibilities in a number of respects.<sup>64</sup> In particular, the right to request is confined to children under school age, it does not apply to workers unless they have at least 12 months continuous service and also, in the case of casual workers, a reasonable expectation of continuing employment. Regrettably, these limitations disproportionately impact on employment categories dominated by women with family responsibilities. As Sara Charlesworth and Iain Campbell observe:

This qualification requirement will exclude many of the working parents of pre school age children who are most likely to make requests. In 2006 for example, 21 percent of working women of child bearing age (25-44 years) and 44 percent of women employed on a casual basis had less than 12 months service with their current employer.<sup>65</sup>
94. The Commission has also jointly commissioned recent research which shows that parents with children of school age nominate greater flexibility in paid work as a priority for providing better support in balancing their paid work and family responsibilities.<sup>66</sup>
95. The Commission has previously made recommendations to the Australian Government about ways in which the NES could be expanded to better implement international obligations and be more effective in supporting women and men to secure flexible work arrangements to balance their paid work and family and carer responsibilities across the life cycle.<sup>67</sup> These recommendations were not adopted.
96. Accordingly, notwithstanding the promising potential of the relevant NES in assisting workers with family responsibilities, they are an incomplete solution. Scope remains for the SDA to supplement the NES by making the 'unreasonable refusal' of requests for flexible work arrangements an actionable form of unlawful discrimination.

97. The Commission considers that the SDA should be amended to include a positive duty on employers (and other relevant respondents) to reasonably accommodate the needs of their workers in relation to pregnancy and family and carer responsibilities, including an obligation to not 'unreasonably refuse' requests for flexible work arrangements.
98. The move towards an obligation within anti-discrimination legislation to reasonably accommodate workers with family responsibilities has already taken place in Victoria.<sup>68</sup>
99. The Commission also notes that the NSW Law Reform Commission recommended in 1999 that the *Anti-Discrimination Act 1977* (NSW) be amended to introduce an obligation to take reasonable steps to accommodate the needs of women who are pregnant, potentially pregnant or breastfeeding, as well as the needs of persons with carer or family responsibilities, subject to a defence of unjustifiable hardship.<sup>69</sup>
100. A positive duty obligation would not involve a substantial change from the current system under the SDA. At present, as noted earlier, the practical effect of the prohibition against indirect discrimination translates into a prohibition against the unreasonable imposition of barriers that disadvantage, for example, women with family responsibilities.<sup>70</sup> In this respect, the imposition of a positive obligation on an employer (and other would-be respondents) to reasonably accommodate the needs of workers who are pregnant or have family responsibilities would involve a subtle re-positioning of the SDA, rather than a dramatic change.
101. Nevertheless, the change is an important one. Firstly, the current obligation is merely implied and may not be immediately apparent to employers and others unless they or their advisers have considerable experience in the operation of the SDA. By making the obligation clear and mandatory, respondents are therefore on clear notice of what they are required to do, rather than having to fathom their obligations from the case law.
102. Secondly, repositioning the obligation as a positive duty is an important statement of principle that employers must actually take steps to redress discrimination. It is a clear call to action, rather than a muffled warning that doing nothing carries a liability risk.
103. Thirdly, reliance on the indirect discrimination provisions will not assist men with family responsibilities, given that indirect discrimination on the basis of family responsibilities is not presently unlawful and the authorities clearly establish that women bear the dominant burden of family responsibilities.<sup>71</sup>
104. Fourthly, cases such as *Kelly v TPG Internet Pty Ltd*,<sup>72</sup> have cast doubt on the effectiveness of the indirect discrimination route for claims relating to flexible work arrangements and family responsibilities.<sup>73</sup>
105. The Commission has recommended that consideration be given to amending the SDA along similar lines to the Victorian model referred to above, to introduce an obligation on employers, partnerships and principals (and possibly other appropriate categories of respondents) to make reasonable adjustments, or to not unreasonably refuse requests for adjustments, to accommodate the needs of workers who are pregnant or have family responsibilities.

106. Consideration would also be required as to whether an unjustifiable hardship defence would also be necessary, or whether the issues relevant to such a defence would be already accommodated within the limitation that requests for adjustments or accommodation must be reasonable.

**Recommendation 1: Extend family and carer responsibilities protection under the SDA**

(1) Make direct and indirect family and carer responsibilities discrimination unlawful in all areas covered by Part II Div 1 of the SDA.

(2) Extend the definition of family responsibilities in the SDA to include family and carer responsibilities, which is inclusive of same-sex families, and provide a definition of family members and dependents which ensures adequate cover for both children and adults to whom care is being provided.

**Recommendation 2: Positive duty to reasonably accommodate the needs of workers who are pregnant and/or have family or carer responsibilities**

Introduce into the SDA a positive obligation on employers and other appropriate persons to reasonably accommodate the needs of workers in relation to their pregnancy or family and carer responsibilities. Failure to meet this obligation would be an actionable form of discrimination.

**Legislative mechanisms for regulating pay and the Commission's existing powers**

***Workplace Relations Act 1996 (Cth)***

107. Federal equal remuneration provisions are contained in the Workplace Relations Act. Division 3 of Part 12 of the Workplace Relations Act is entitled 'Equal remuneration for work of equal value'. Section 620 states that the object of the Division is to give effect, or further effect, to certain Anti Discrimination Conventions and ILO Recommendations.<sup>74</sup>
108. The Division empowers the AIRC to 'make such orders as it considers appropriate to ensure that, for employees covered by the orders, there will be equal remuneration for work of equal value'.<sup>75</sup>
109. The terms 'employer', 'employee' and 'employment' have their ordinary meaning for the purposes of the Division.<sup>76</sup> This is because the Division has universal application to employees in Australia, regardless of the identity or corporate status of their employer.<sup>77</sup>
110. Equal remuneration for work of equal value is a reference to equal remuneration for men and women workers for work of equal value. This expression is defined as having the same meaning as in the *ILO 100*.<sup>78</sup> Article 1 of *ILO 100* provides that the expression 'equal remuneration for men and women workers for work of equal value' refers to rates of remuneration established without discrimination based on sex. The Explanatory Memorandum to this section of the Workplace Relations Act states:<sup>79</sup>

The Convention is aimed at the elimination of differences in remuneration which are based on sex, whether directly or indirectly. Both the discussions during the negotiation of the Convention and the interpretation of the



Convention by the expert supervisory bodies of the International Labour Organisation since its adoption indicate that the concept of equal remuneration goes beyond a reference to equal pay for the same work. The Convention meaning of equal remuneration for work of equal value turns on an objective comparison of the content of the jobs being done by men and women, and the Convention contemplates that job appraisals will be conducted where necessary to make such a comparison. It is not limited to comparisons between women and men employed in the same enterprise or occupation or performing the same duties or using the same skills or techniques.

111. The AIRC may only make such an order if it has received an application (not on its own motion) from:

- an employee, or a trade union entitled to represent employees to be covered by the order;<sup>80</sup> or
- the Sex Discrimination Commissioner.<sup>81</sup>

The AIRC must, before starting to hear and determine the matter, attempt to settle the matter by conciliation or in certain circumstances, mediation.<sup>82</sup> The AIRC may only proceed to a hearing when conciliation or mediation has been unsuccessful.<sup>83</sup>

112. The AIRC may, after a hearing, make orders to ensure there will be equal remuneration for work of equal value (including orders for an increase in rates of remuneration). However, the AIRC may only make such an order if:

- it is satisfied there is not equal remuneration for work of equal value;<sup>84</sup> and
- the order can reasonably be regarded as appropriate and adapted to give effect to certain Anti Discrimination Conventions or the International Labour Organisation Recommendations.<sup>85</sup>

113. The AIRC must have regard to decisions of the AFPC<sup>86</sup> in making any orders.<sup>87</sup>

114. Further, the AIRC must not deal with an application in certain circumstances. These include:

- if the AIRC is satisfied that an adequate alternative remedy is available to the applicant.<sup>88</sup> A remedy under a law relating to discrimination in employment, that consists solely of compensation for past actions, is not an adequate alternative remedy;<sup>89</sup>
- if proceedings for an alternative remedy have begun;<sup>90</sup> and
- if the employees who would be covered by the order and the comparator group of employees are both entitled to a rate of pay equal to the applicable guaranteed rate of pay under the Australian Fair Pay and Conditions Standard.<sup>91</sup> 'Comparator group of employees' means employees whom the applicant contends are performing work of equal value to the work performed by the employees to whom the application relates. Furthermore, an application cannot be dealt with if the employees to whom the application relates are entitled to a higher rate of pay than the rate of pay the group would be entitled to under the

Standard and the comparator group is entitled to a rate of pay equal to the applicable guaranteed rate of pay under the Standard.

115. Sections 631 - 634 contain a civil remedy provision to protect employees from victimisation by their employer for making or being the subject of an application under this Division. The Federal Court or Federal Magistrates Court, on application by an eligible person, may make orders in relation to a person who has contravened s 631 including the imposition of a pecuniary penalty on a defendant, or requiring the defendant to pay compensation for damage suffered as a result of the contravention.<sup>92</sup> Eligible person includes the Sex Discrimination Commissioner.<sup>93</sup>
116. In addition to the Sex Discrimination Commissioner's role under the Workplace Relations Act, the President of the Commission has the power under s 46PW of the HREOC Act to refer discriminatory industrial instruments to the AIRC.
117. Section 46PW of the HREOC Act provides that a complaint alleging that a person has done a discriminatory act under an industrial instrument may be lodged with the Commission. If it appears to the President that the act is a discriminatory act, the President must refer the industrial instrument to the AIRC.<sup>94</sup> A 'discriminatory act under an industrial instrument' means an act that would be unlawful under Part II of the SDA except for the fact that the act was done in direct compliance with an industrial instrument.<sup>95</sup>
118. The Workplace Relations Act provides that if an award is referred to the AIRC under s 46PW of the HREOC Act, the AIRC must convene a hearing to review the award.<sup>96</sup> The Sex Discrimination Commissioner may intervene in this review.<sup>97</sup>
119. The President has never referred an industrial instrument to the AIRC.

### ***Have the equal remuneration provisions been utilised?***

120. The equal remuneration provisions were introduced in 1993.<sup>98</sup> The provisions were introduced into the *Industrial Relations Act 1988* (Cth) and have been substantially reproduced in the Workplace Relations Act with some amendments.
121. Since the introduction of the provisions, the AIRC has not issued any equal remuneration orders. Only one case has proceeded to final arbitration. This involved an unsuccessful claim by the Australian Manufacturing Workers Union for equal remuneration orders at HPM Industries ('the *HPM proceedings*').<sup>99</sup> The Commission intervened in that case.
122. The underutilisation of the equal remuneration provisions is a result of both the terms of the legislation and its interpretation.
123. The principal deficiency concerns the reference to discrimination in the equal remuneration provisions, and in turn the AIRC's interpretation of the provisions.
124. In the *HPM proceedings*, the AIRC introduced a threshold test of discrimination which required applicants to demonstrate that the disparities in earnings have a discriminatory cause. This overlooks the fact that much of the pay gap results from systemic and often historical biases rather than specific

sex based discrimination. The threshold test of discrimination is likely to make it more difficult for applicants to make a successful application for an equal remuneration order.

125. In addition, the equal remuneration provisions make explicit reference to a 'comparator group of employees'. This amendment was introduced by Work Choices. This approach is problematic as it suggests gender pay inequity can only be proved by comparing a female dominated job with a male dominated job. Such comparator methodology has been historically difficult to prove and fails to incorporate the latest understandings of undervaluation.<sup>100</sup> Recent developments at a State level have resulted in the development of new equal remuneration principles founded on the construction of undervaluation as opposed to discrimination. These new principles exclude a stringent requirement for comparators with masculinised occupations.<sup>101</sup>
126. Finally, it is relevant to note that although the equal remuneration provisions were retained under the post Work Choices regime their utility for collective and industry remedies is uncertain, given that the federal system of industrial regulation is increasingly disposed to workplace and individual regulation.<sup>102</sup> The limitations of the equal remuneration provisions are magnified if an individual and not a collective agreement is involved.<sup>103</sup> Further, Work Choices amended the equal remuneration provisions such that the AIRC is prevented from issuing an equal remuneration order if the employees who would be covered by the order and the comparator group of employees are both entitled to a rate of pay equal to the applicable guaranteed rate of pay under the Australian Fair Pay and Conditions Standard.

### ***Has the Sex Discrimination Commissioner used the provisions?***

127. The Sex Discrimination Commissioner has never made an application to the AIRC under Division 3 of the Workplace Relations Act (or the equivalent provisions in the *Industrial Relations Act 1988*).<sup>104</sup>
128. In its *SDA Submission* (2008), the Commission notes that the overall funding base of the Commission has been reduced and is inadequate to fulfil its existing functions under the SDA.<sup>105</sup> The limited funding base of the Commission has directly impacted on the ability of the Commission to exercise powers such as the power of the Sex Discrimination Commissioner under the Workplace Relations Act. For example, the staffing of the Sex and Age Discrimination Unit of the Commission is five permanent staff, including management and administration.
129. In the Commission's view, the adequacy of the equal remuneration provisions needs to be considered by the Inquiry, including the adequacy of resources available to exercise powers under the Workplace Relations Act, including the powers of the Sex Discrimination Commissioner.

### **Recommendation 3: Strengthen the *Workplace Relations Act 1996* (Cth)**

(1) Review the adequacy of the equal remuneration provisions under the Workplace Relations Act with respect to:

- removing the threshold test of discrimination which requires applicants to prove that disparities in earnings have a discriminatory cause
- removing reference to a comparator group of employees and
- developing new equal remuneration provisions based on the construction of undervaluation as opposed to discrimination (in line with recent developments at the State level).

(2) Review the adequacy of the resources available for persons able to initiate applications, including the resources of the Commission.

### ***Sex Discrimination Act 1984 (Cth)***

130. As detailed in the *SDA Submission (2008)*, the Commission has a range of existing functions under the SDA and HREOC Act which are available to undertake policy development, education, research, submissions, public awareness and inquiry functions to eliminate discrimination and promote gender equality, including in the area of pay equity. This Submission has set out some of the body of work that the Commission has previously conducted in the area of pay equity, using its existing functions.
131. However, as noted above, and explained in the *SDA Submission (2008)*, the Commission is constrained in its effectiveness using these functions generally, in light of its reduced and limited funding.

#### **Recommendation 4: Funding to the Commission**

Increase funding to the Commission to perform its policy development, education, research, submissions, public awareness and inquiry functions to eliminate discrimination and promote gender equality, including in addressing the gender pay gap.

132. In its *SDA Submission (2008)*, the Commission makes a number of recommendations for extending the powers and capacity of the Commission in order to be more effective in eliminating discrimination and promoting gender equality, including in addressing the gender pay gap. The Commission refers the Inquiry to that Submission, and, in particular, to the section titled 'Powers and Capacity of HREOC and the Sex Discrimination Commissioner'. The Commission proposes that its powers be extended immediately in the following areas:
- Broadening the formal inquiry function
  - Initiating complaint and enforcement action, without an individual complaint
  - Certifying special measures
  - Expanding the *amicus curiae* and intervention powers
133. The Commission repeats those Recommendations for the purposes of this Inquiry.
134. The Commission also highlights the need for adequate funding in order to perform additional functions in the area of sex discrimination and gender equality.

**Recommendation 5: Broad inquiry function in the SDA**

Amend the SDA to include a broad formal inquiry function in relation to the elimination of discrimination and the promotion of gender equality in Australia.

**Recommendation 6: Self-initiated complaints under the SDA**

(1) Insert a function in the SDA for the Sex Discrimination Commissioner to commence self-initiated complaints for alleged breaches of the SDA, without requiring an individual complaint. The new function would include the ability to enter into negotiations, reach settlements, agree enforceable undertakings, and issue compliance notices.

(2) Insert a function in the SDA for HREOC to commence legal action in the Federal Magistrates Court or Federal Court for a breach of the SDA.

**Recommendation 7: Certification of special measures**

Amend s 7D of the SDA to give HREOC power to certify temporary special measures for up to five (5) years.

**Recommendation 8: Extend the *Amicus curiae* function under the SDA**

Amend s 46PV of the HREOC Act to include appeals from discrimination decisions in the Federal Court and Federal Magistrates Court.

**Recommendation 9: Intervening or appearing as *amicus curiae* as of Right under the SDA**

Consider empowering HREOC to intervene, and the Sex Discrimination Commissioner to appear as *amicus curiae*, as of right.

**Recommendation 10: Broadening the intervention power under the SDA**

Consider redrafting s 48(1)(gb) of the SDA to operate more broadly.

**Recommendation 11: Independent monitoring of national gender equality indicators and benchmarks**

(1) Insert into the SDA a specific function for the Commissioner, on behalf of HREOC, to undertake periodic, independent monitoring of gender equality indicators and benchmarks and report to the Australian Parliament, subject to appropriate and specific funding being made available.

(2) Consider the merits of inserting this function as a statutory duty, taking into account the concerns of HREOC about the need for tied funding.

### **Data collection and monitoring**

135. Work undertaken for the Commission and partner organisations by researchers at Curtin University has analysed the capacity of existing data collections to monitor women's pay and other employment conditions.<sup>106</sup> The *WESKI Report (2006)* identifies available indicators of women's pay and employment conditions and identifies significant gaps in Australia's data collections.
136. The *WESKI Report (2006)* found that available data sources for monitoring women's employment are fragmented and partial. This is particularly the case in relation to: comparative information on earnings and conditions of employment according to the types of employment contract used, multiple job holding, definitions of family-friendliness and job quality, the capacity to compare trends over time, and the limited production of some data sources by the Australian Bureau of Statistics ('ABS').<sup>107</sup>
137. The *WESKI Report (2006)* also demonstrates that the widely used quarterly source of earnings estimates published by the ABS – *Average Weekly Earnings* – is limited in its potential for monitoring progress in pay equity. This publication is limited in that it does not give details about earnings within different wage setting jurisdictions, different employment contract types and in the absence of occupational information, is unable to provide information on trends for workers in specific types of work.<sup>108</sup>
138. This report, while undertaken in the context of the previous government's changes to the industrial relations system, remains relevant to the current inquiry. The report underscores the need to design new data collections in line with new regulatory frameworks and the need for detailed, gender disaggregated data to inform gender sensitive policy development.
139. Creating a comprehensive set of women's employment indicators is crucial for measuring progress in the area of pay equity and other aspects of women's workforce participation over time. This can only be achieved by providing adequate funding for the development of these indicators, including adequate resourcing of the ABS so that they may undertake more regular key surveys.
140. The Commission has previously recommended a range of improvements in this area. These include the need for the Department of Education, Employment and Workplace Relations ('DEEWR') to establish an annual national workplace relations survey to monitor gender differences in changes to pay and conditions. We have also recommended a role for the AFPC (or in the present context, the development the new wage-setting body of Fair Work Australia) to undertake a program of monitoring and research with respect to the federal minimum wage and its impact on women workers, with a particular focus on vulnerable groups of workers.<sup>109</sup>
141. The Commission has also previously recommended a significant and active role for the AFPC in addressing discrimination and pay inequities, outlined in the following section of this submission.

142. It is not only in the area of pay equity and women's employment that data collection and a set of indicators is needed. While data collection is undertaken by a number of government agencies and some excellent research undertaken by researchers in a variety of institutions, there are many gaps. Regular, independent monitoring and reporting on progress in achieving gender equality does not occur in Australia.
143. Further, there is no institutional arrangement in place for an agency independent of government to report to Parliament and the Australian public, providing a considered, evidence-based assessment of progress against an integrated set of national gender equality indicators and to benchmark progress against those indicators over time.
144. In the SDA Submission the Commission has recommended that a specific function for the Commissioner, on behalf of the Commission, undertake periodic, independent monitoring of gender equality indicators and benchmarks and report to the Australian parliament, subject to appropriate and specific funding being made available.
145. If this recommendation is implemented, the Commission would collaborate with the Australian Government, the ABS, the Equal Opportunity for Women in the Workplace Agency (EOWA) and other key research institutes and gender equality organisations to design an appropriate set of indicators. These indicators would be durable, relevant to the Australian context and consistent with Australia's international reporting obligations under CEDAW and other international instruments.

#### **Recommendation 12: Data Collection and Monitoring**

Revisit previous recommendations made by the Commission in relation to data collection and monitoring of women's pay and employment conditions in order to:

- (1) address gaps in data collection through resourcing the ABS to collect and publish regular gender disaggregated data in areas of need identified by the *WESKI Report (2006)*
- (2) fund DEEWR to conduct an annual national workplace relations survey to monitor gender differences in changes to pay and conditions and
- (3) establish a comprehensive set of indicators for measuring achievement towards gender equality in this area over time, either independently or as part of a broader set of indicators and monitoring to be developed by the Commission, subject to recommended legislative change to the SDA and appropriate, tied funding.

#### **Options for reform**

146. The Commission has previously made a number of recommendations for policy and legislative reform to improve pay equity.<sup>110</sup> While the Commission does not currently have the capacity to revisit and reformulate these recommendations in light of the new industrial relations environment, the Commission refers these recommendations to the Inquiry for its consideration.
147. Previous Commission options and recommendations have included:

- the need for requiring pay audits and/or action plans to be carried out by employers either across the board or in the public sector and by government contractors
  - the need for a specialist pay equity unit in the AFPC
  - the need for the AFPC to undertake investigations focused on undervaluation and comparative worth in female dominated industries and occupations, particularly focussing on recognising ‘soft’ skills involved in caring work, knowledge work and communication, employee qualifications and on-the-job training as well as changing job demands and increased technology.
148. These options could either be incorporated into the structures of the new workplace relations framework, through specialised pay equity legislation, or as part of a second stage of reform of federal discrimination laws, as discussed in the Commission’s *SDA Submission* (2008).
149. In a second stage of reform to the SDA, possibly as part of an inquiry into an *Equality Act* for Australia, the Commission proposed that the Australian Government consider further options for extending the powers and capacity of the Commission and/or EOWA to eliminate discrimination and promote substantive equality, including in the area of pay equity, in the following areas:
- Legally-binding standards
  - Gender equality action plans
  - Auditing of gender equality action plans.
150. The Commission considers that it is important to carefully consider how best to address key elements of gender equality in Australia, including in the area of pay equity, taking into account existing institutional arrangements for the Commission, EOWA, and the new Fair Work Australia, as well as international comparative experience.
151. The Commission encourages the Inquiry to consider comparable international jurisdictions such as the United Kingdom, New Zealand and Canada which offer some alternative approaches to progressing pay equity through specialised pay equity or equality legislation. The Commission has summarised these frameworks in the *SDA Submission* (2008).<sup>111</sup> A range of international initiatives have also been summarised by the report of the Queensland Industrial Relations Commission’s Pay Equity Inquiry, *Pay Equity: Time to Act* (2007).<sup>112</sup>

**Recommendation 13: Strengthen legal and institutional arrangements to reduce the gender pay gap**

Consider the range of alternative approaches for achieving pay equity as previously recommended by the Commission, including workplace audit processes, monitoring and enforcement processes. Possible options include:

- (1) setting up a specialist unit in the new wage setting body of Fair Work Australia to develop and monitor pay equity mechanisms



- (2) requiring Fair Work Australia to undertake investigations focused on undervaluation and comparative worth in female dominated occupations and industries
- (3) amending legislation to require pay equity audits and action plans to be carried out at the workplace level
- (4) introducing the ability for EOWA and/or the Commission to receive gender equality action plans, from bodies other than employers currently covered by the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) ('EOWW Act'), including specific plans on pay equity
- (5) amending the EOWW Act or the SDA to provide for an auditing function for gender equality action plans which is properly resourced
- (6) inserting into the SDA the ability to adopt legally-binding standards
- (7) introducing specialised pay equity legislation.

## Appendix

152. The Human Rights and Equal Opportunity Commission's *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Commonwealth Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008) is available at [http://www.humanrights.gov.au/legal/submissions/2008/20080901\\_SDA.html](http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html) (viewed 15 September 2008).<sup>113</sup>

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<sup>1</sup> The Australian Human Rights Commission was until recently known as the Human Rights and Equal Opportunity Commission. In this submission, all footnote references to documents produced prior to this change retain the name they were originally published under.

<sup>2</sup> The Commission is established by the *Human Rights and Equal Opportunity Commission Act 1986* ('HREOC Act'). Sections 11 and 31 of the HREOC Act set out the Commission's functions relating to human rights and equal opportunity in employment respectively. The Commission also has functions under the *Sex Discrimination Act 1984* (Cth), *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth) and *Age Discrimination Act 2004* (Cth).

<sup>3</sup> Section 3(d). The SDA also prohibits sexual harassment in many areas of public life: s 28.

<sup>4</sup> The Commission's work in this area is detailed at [45].

<sup>5</sup> Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008) ('*SDA Submission* (2008)'). At [http://www.humanrights.gov.au/legal/submissions/2008/20080901\\_SDA.html](http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html) (viewed 15 September 2008). This submission is an Appendix to this submission, although given the length of this document we have only provided the electronic link.

<sup>6</sup> Human Rights and Equal Opportunity Commission, *Gender equality: What matters to Australian women and men The Listening Tour Community Report* (2008). At <http://www.humanrights.gov.au/listeningtour/launch/index.html> (viewed 15 September 2008).

<sup>7</sup> Australian Bureau of Statistics, *Average Weekly Earnings, Australia, May 2008*, Cat no. 6302.0 (2008).

<sup>8</sup> Australian Bureau of Statistics, *Average Weekly Earnings, Australia, May 2008*, Cat no. 6302.0 (2008).

<sup>9</sup> Queensland Industrial Relations Commission, *Pay Equity: Time to Act* (2007), pp 1-2.

<sup>10</sup> See Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007), pp 40-41 and pp 99-122. See also Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* Discussion paper (2005), pp 52-55 and p 57.

<sup>11</sup> See *Striking the Balance: Women, men, work and family* Discussion paper (2005), pp 25-38.

<sup>12</sup> See Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007), pp 76-77.

<sup>13</sup> See discussion of the "ideal worker" norm at pars 66-67.

<sup>14</sup> See *SDA Submission* (2008), par 756.

<sup>15</sup> See Australian Bureau of Statistics, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008); Australian Bureau of Statistics, *Forms of Employment, Australia* Cat No 6359.0 November 2007 (2008); Equal Opportunity for Women in the Workplace Agency, *2006 EOWA*

*Census of Women in Leadership* (2006); and Human Rights and Equal Opportunity Commission, *Annual Report 2006-2007* (2007), pp 75-77.

<sup>16</sup> See Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* Final paper (2007), pp 79-81

<sup>17</sup> Women with disability are less likely to be in the paid workforce than men with disability: See HREOC, Issues paper 1 *Employment and Disability – the Statistics* (2005). At [http://www.humanrights.gov.au/disability\\_rights/employment\\_inquiry/papers/issues1.htm](http://www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm) (viewed 15 September 2008).

<sup>18</sup> Aboriginal and Torres Strait Islander people have a labour market participation rate of 56 per cent. The labour market participation rate for Indigenous men is 65 per cent, while for Indigenous women it is 48 per cent: Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007* Cat No 6287.0 (2008).

<sup>19</sup> The employment rate of mothers with a youngest child under six years of age is 49.6 per cent, compared with the OECD average of 59.2 per cent: Australian Bureau of Statistics, *Australian Social Trends, 2007* Cat No 4102.0 (2007).

<sup>20</sup> Current superannuation payouts for women are one third of those for men: Ross Clare, *Are retirement savings on track?* (2007).

<sup>21</sup> See Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007), p 79 and Human Rights and Equal Opportunity Commission, *Gender equality: What matters to Australian women and men The Listening Tour Community Report* (2008).

<sup>22</sup> See Appendix.

<sup>23</sup> Human Rights and Equal Opportunity Commission, *Gender Equality: What matters to Australian men and women: The Listening Tour Community Report* (2008). At [http://www.humanrights.gov.au/sex\\_discrimination/listeningtour/index.html](http://www.humanrights.gov.au/sex_discrimination/listeningtour/index.html) (viewed 15 September 2008)

<sup>24</sup> Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 15 September 2008).

<sup>25</sup> Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* Discussion paper (2005). At [http://www.humanrights.gov.au/sex\\_discrimination/publication/strikingbalance/index.html](http://www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/index.html) (viewed 15 September 2008).

<sup>26</sup> Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007). At [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 15 September 2008).

<sup>27</sup> Human Rights and Equal Opportunity Commission, *Submission to the Queensland Industrial Relations Commission Pay Equity Inquiry* (2007). At [http://www.qirc.qld.gov.au/inquiry/pay\\_equity/submissions/hreoc%20submissions.pdf](http://www.qirc.qld.gov.au/inquiry/pay_equity/submissions/hreoc%20submissions.pdf) (viewed 15 September 2008).

<sup>28</sup> Human Rights and Equal Opportunity Commission, *Submission to the Australian Fair Pay Commission for consideration in determining the first national wage decision under the WRA* (2006). At <http://www.fairpay.gov.au/NR/rdonlyres/46FD572A-CDD0-4C90-A2FF-BF86382A210D/0/HREOCSubmission.pdf> (viewed 15 September 2008).

<sup>29</sup> Human Rights and Equal Opportunity Commission, *Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005* (Work Choices) (2005). At

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[www.aph.gov.au/Senate/committee/eet\\_ctte/wr\\_workchoices05/submissions/sub164.pdf](http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices05/submissions/sub164.pdf) (viewed 15 September 2008).

<sup>30</sup> *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries* (1998) 94 IR 129.

<sup>31</sup> See [http://www.hreoc.gov.au/legal/submissions\\_court/index.html](http://www.hreoc.gov.au/legal/submissions_court/index.html) (viewed 15 September 2008).

<sup>32</sup> Human Rights and Equal Opportunity Commission, *Stretching Flexibility: Enterprise bargaining, women workers and changes to working hours* (1997). At [http://www.humanrights.gov.au/sex\\_discrimination/publication/archive/stretching.html](http://www.humanrights.gov.au/sex_discrimination/publication/archive/stretching.html) (viewed 15 September 2008).

<sup>33</sup> Human Rights and Equal Opportunity Commission, *Glass Ceilings and Sticky Floors: Barriers to the careers of women in the Australian finance industry* (1997). At [http://www.humanrights.gov.au/sex\\_discrimination/publication/glass\\_ceilings.html](http://www.humanrights.gov.au/sex_discrimination/publication/glass_ceilings.html) (viewed 15 September 2008).

<sup>34</sup> Human Rights and Equal Opportunity Commission, *The Equal Pay Handbook* (1998). At [http://www.humanrights.gov.au/sex\\_discrimination/publication/equal\\_pay.html](http://www.humanrights.gov.au/sex_discrimination/publication/equal_pay.html) (viewed 15 September 2008).

<sup>35</sup> Unreported, Glynn J, IRC 97/6320, 14 December 1998.

<sup>36</sup> Women in Economic & Social Research (WiSER), *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database* (2006). At [http://www.wel.org.au/index.php?option=com\\_docman&task=cat\\_view&gid=26&Itemid=36](http://www.wel.org.au/index.php?option=com_docman&task=cat_view&gid=26&Itemid=36) (viewed 15 September 2008).

<sup>37</sup> s 3(n) *Workplace Relations Act 1996* (Cth).

<sup>38</sup> Schedule 1 to the HREOC Act.

<sup>39</sup> Art 2.

<sup>40</sup> Art 1.

<sup>41</sup> Art 2(1).

<sup>42</sup> Art 11.

<sup>43</sup> See Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007), Chapter 3.

<sup>44</sup> This issue was raised in the case of *Howe v Qantas* [2004] FMCA 242. In this case, a woman complained of family responsibilities and indirect sex discrimination, arguing that inflexible working conditions conflicted with her caring responsibilities. The respondent argued that allowing women to claim discrimination on the basis of sex by reason of family responsibilities is to entrench gendered stereotypes that women are the natural primary carers. The Sex Discrimination Commissioner, participating in that case, argued that so long as family responsibilities are not equally shared between the sexes and overwhelmingly devolve upon women, a claim for indirect sex discrimination under the *Sex Discrimination Act 1984* (Cth) is and should remain available to women. The Commissioner accepted that there will be no relevant "disadvantage" (under the indirect sex discrimination provisions of the *Sex Discrimination Act 1984* (Cth)) when the unequal sharing of family responsibilities is addressed. However, until that time, women will continue to be disadvantaged by family responsibilities as compared to men and a claim for indirect sex discrimination under the *Sex Discrimination Act 1984* (Cth) is and should remain available to prevent this inequality between the sexes within the family from restricting women's possibilities of preparing for, entering, participating in or advancing in economic activity. See also International Labour Organization General Survey, *Workers with Family Responsibilities International Labour Conference 80<sup>th</sup> session 1993* (1993) 29.

<sup>45</sup> See Joan Williams *Unbending Gender: Why work and family conflict and what to do about it* (2000), p 2. See also Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* (2005), p 59 and *passim*.

<sup>46</sup> See, in particular, Chapter 4 of Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007).

<sup>47</sup> See Sara Charlesworth, Submission 98, pp 9-13. At [http://www.humanrights.gov.au/sex\\_discrimination/publication/strikingbalance/submissions/98\\_c.doc](http://www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/submissions/98_c.doc) (viewed 15 September 2008).

<sup>48</sup> See Beth Gaze, 'The Sex Discrimination Act after Twenty Years: Achievements, disappointments, disillusionments and alternatives' in *Women, Work and Equity Forum* University of Sydney, 1 August 2004, cited in Sara Charlesworth, Submission 98, p 13.

<sup>49</sup> The constitutional basis and the objectives of this new Act could be drawn from CEDAW, ILO 156, the *Convention on the Rights of the Child* and potentially, the *Convention on the Rights of Persons with Disabilities*.

<sup>50</sup> *Sex Discrimination Act 1984* (Cth) ss 7A and 14(3A).

<sup>51</sup> See John von Doussa QC and Craig Lenehan, 'Barbequed or Burned? Flexibility in work arrangements and the Sex Discrimination Act' (2004) 10(2) *SWLJ Forum: The Sex Discrimination Act - A Twenty Year Review* 45.

<sup>52</sup> See *SDA Submission* (2008), p 189 and p 191.

<sup>53</sup> See s 13 the *SDA Submission* (2008). Note that, in limited circumstances, men do not have protection under the SDA. See s 11 of the *SDA Submission* (2008), particularly the subsection dealing with men.

<sup>54</sup> *Hickie v Hunt & Hunt* [1998] HREOCA (extract at (1998) EOC 92-910) and *Escobar v Rainbow Printing* (No 2) [2002] FMCA 122.

<sup>55</sup> These are explained in s 11 of the *SDA Submission* (2008).

<sup>56</sup> In addition, to avoid problems of constitutional validity, ss 9(2) and 9(4) make clear that the *Sex Discrimination Act 1984* (Cth) has effect only by the operation of s 9(3) and ss 9(5) to (20), which reflect relevant heads of Commonwealth legislative power.

<sup>57</sup> A number of submissions received by the Commission during the Women, Men, Work and Family project supported this change, which would bring the family responsibilities provisions into line with other areas of discrimination under the *Sex Discrimination Act 1984* (Cth): Job Watch Inc, Submission 38, pp 6-7; NSW Equal Employment Opportunity Practitioners' Association, Submission 44, pp 3-5; K Lee Adams, Submission 70; Sara Charlesworth, Submission 98, p 11; Belinda Smith, Submission 106; Women Lawyers' Association of NSW, Submission 112, p 8; Australian Capital Territory Human Rights Office, Northern Territory Anti-Discrimination Commission, Anti-Discrimination Commission Queensland, Equal Opportunity Commission Western Australia and Equal Opportunity Commission of South Australia, Submission 117, p 12; Law Institute of Victoria, Submission 120; Equal Opportunity Commission Victoria, Submission 125, pp 9-10.

<sup>58</sup> A number of submissions to the Commission also supported this change: Belinda Smith, Submission 106; Bronwen Burfitt, Submission 107, pp 21-22; Women Lawyers' Association of NSW, Submission 112, p 7; Women's Electoral Lobby, Submission 115, p 14; Australian Capital Territory Human Rights Office, Northern Territory Anti-Discrimination Commission, Anti-Discrimination Commission Queensland, Equal Opportunity Commission Western Australia and Equal Opportunity Commission of South Australia, Submission 117, p 12; Equal Opportunity Commission Victoria, Submission 125, pp 9-10; Queensland Government, Submission 166, p 47.

<sup>59</sup> Submissions to the Women, Men, Work and Family project advocated the extension of 'family responsibilities' protection to all workers with carer responsibilities. See, for example, Women Lawyers Association of New South Wales, Submission 112, pp 9-10. This would

provide protection to workers based on the nature of their responsibilities rather than the more arbitrary nature of their relationship to the person requiring care.

<sup>60</sup> *Convention (No 156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, opened for signature 23 June 1981, 1331 UNTS 295 (entered into force 11 August 1983), ratified by Australia 30 March 1990.

<sup>61</sup> Australian Government, *The National Employment Standards* (2008). At [http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper\\_web.pdf](http://www.workplace.gov.au/NR/rdonlyres/1955FD28-3178-44CD-9654-56A3D5391989/0/NationalDiscussionPaper_web.pdf) (viewed 15 September 2008). See especially s 22 relating to requests for extensions of parental leave and s 13 relating to requests for flexible working arrangements.

<sup>62</sup> Positive obligations to eliminate discrimination and promote gender equality are discussed further in the Commission's *SDA Submission* (2008) under section 8 – Definitions of Discrimination.

<sup>63</sup> *Parental Leave Test Case 2005* (2005) 143 IR 245, [396].

<sup>64</sup> See, for further information, Human Rights and Equal Opportunity Commission, *Submission to the Australian Government Department of Education, Employment and Workplace Relations on the Discussion Paper, National Employment Standards Exposure Draft* (2008). At [http://www.humanrights.gov.au/legal/submissions/2008/20080404\\_deewr.html](http://www.humanrights.gov.au/legal/submissions/2008/20080404_deewr.html) (viewed 15 September 2008). See also Belinda Smith, 'It's About Time – for a New Regulatory Approach to Equality' (2008) *Federal Law Review* (forthcoming) (also available at <http://ssrn.com/absrtact=1101187>), pp14-5.

<sup>65</sup> Sara Charlesworth and Iain Campbell, 'Right to Request Regulation: Two New Australian Models' (2008) 21(2) *Australian Journal of Labour Law* 116, 5. The authors also provide a detailed comparative assessment of Australia's 'right to request' protection compared with equivalent provisions in Europe, and articulate an optimal model for reform in this area.

<sup>66</sup> Newspoll, *Out of School Hours Care Study* (2008). Study jointly commissioned by National Foundation of Australian Women, the WomenSpeak Network, Security for Women, Women's Information and Referral (Vic), Network of Community Activities (NSW), Queensland Children's Activities Network and Human Rights and Equal Opportunity Commission.

<sup>67</sup> Human Rights and Equal Opportunity Commission, *Submission to the Australian Government Department of Education, Employment and Workplace Relations on the Discussion Paper, National Employment Standards Exposure Draft* (2008).

<sup>68</sup> *Equal Opportunity Amendment (Family Responsibilities) Act 2008* (Vic). See also *SDA Submission* (2008) pp 106-107 for further discussion of this model.

<sup>69</sup> For further information see NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977* (NSW), Report No 92 (1999), [3.65]-[3.85], [5.40], [5.212]-[5.217].

<sup>70</sup> See, for example, *Hickie v Hunt & Hunt* [1998] HREOCA 8; *Escobar v Rainbow Printing Pty Ltd* (No 3) [2002] FMC 122; *Mayer v ANSTO* [2003] FMCA 209.

<sup>71</sup> See, for example, *Hickie v Hunt & Hunt* #; *Escobar* #; *Mayer v ANSTO* [2003] FMCA 209. See further Belinda Smith and Joellen Riley, 'Family-friendly Work Practices and The Law' (2004) 26 *Sydney Law Review* 395, p 417.

<sup>72</sup> (2003) 176 FLR 214.

<sup>73</sup> See Belinda Smith, 'It's About Time – for a New Regulatory Approach to Equality' (2008) *Federal Law Review* (forthcoming) (also available at <http://ssrn.com/absrtact=1101187>), 11-2. See also *SDA Submission* (2008), p 108 for further discussion on this point.

<sup>74</sup> Equal Remuneration Convention; Convention on the Elimination of all Forms of Discrimination against Women; Convention concerning Discrimination in respect of Employment and Occupation; Articles 3 and 7 of the International Covenant on Economic, Social and Cultural Rights; Equal Remuneration Recommendation, 1951 and the Discrimination (Employment and Occupation) Recommendation, 1958.

- <sup>75</sup> *Workplace Relations Act 1996* (Cth), s 624.
- <sup>76</sup> *Workplace Relations Act 1996* (Cth), Schedule 2.
- <sup>77</sup> Explanatory Memorandum, *Workplace Relations Amendment (Work Choices) Bill 2005* (Cth), 303.
- <sup>78</sup> *Workplace Relations Act 1996* (Cth), s 623(2).
- <sup>79</sup> Explanatory Memorandum, *Industrial Relations Reform Bill 1993* (Cth), 17.
- <sup>80</sup> *Workplace Relations Act 1996* (Cth), s 625(a).
- <sup>81</sup> *Workplace Relations Act 1996* (Cth), s 625(b).
- <sup>82</sup> *Workplace Relations Act 1996* (Cth), s 626.
- <sup>83</sup> *Workplace Relations Act 1996* (Cth), s 627.
- <sup>84</sup> *Workplace Relations Act 1996* (Cth), s 624(3)(a).
- <sup>85</sup> *Workplace Relations Act 1996* (Cth), s 624(3)(b).
- <sup>86</sup> The AFPC has replaced the AIRC in its role of making decisions about minimum wages.
- <sup>87</sup> *Workplace Relations Act 1996* (Cth), s 622.
- <sup>88</sup> *Workplace Relations Act 1996* (Cth), s 621(1).
- <sup>89</sup> *Workplace Relations Act 1996* (Cth), s 621(6).
- <sup>90</sup> *Workplace Relations Act 1996* (Cth), s 621(2).
- <sup>91</sup> *Workplace Relations Act 1996* (Cth), s 622.
- <sup>92</sup> *Workplace Relations Act 1996* (Cth), s 632.
- <sup>93</sup> *Workplace Relations Act 1996* (Cth), s 632(4)(d).
- <sup>94</sup> HREOC Act, s 46PW(3).
- <sup>95</sup> HREOC Act, s 46PW(7).
- <sup>96</sup> *Workplace Relations Act 1996* (Cth), s 554(2).
- <sup>97</sup> *Workplace Relations Act 1996* (Cth), s 554(3)(b).
- <sup>98</sup> *Industrial Relations Reform Act 1993*.
- <sup>99</sup> *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v HPM Industries* (1998) 94 IR 129.
- <sup>100</sup> Human Rights and Equal Opportunity Commission, *Submission to the Australian Fair Pay Commission for consideration in determining the first national wage decision* (2006). At [http://www.humanrights.gov.au/pdf/200607submission\\_fairpay.pdf](http://www.humanrights.gov.au/pdf/200607submission_fairpay.pdf) (viewed 15 September 2008).
- <sup>101</sup> M. Smith and M. Lyons, '2020 vision or 1920's myopia? Recent developments in gender pay equity in Australia' (2007) 13(2) *International Employment Relations Review* 27, p 34.
- <sup>102</sup> M. Smith and M. Lyons, '2020 vision or 1920's myopia? Recent developments in gender pay equity in Australia' (2007) 13(2) *International Employment Relations Review* 27, p 30.
- <sup>103</sup> M. Smith and M. Lyons, 'Work Choices and Pay Equity', (2007) 33(1) *Hecate* 81, p 89.
- <sup>104</sup> The Commission has, however, intervened in applications brought by trade unions under Division 3 of the WRA. For example, the Commission intervened in an appeal from a decision of a Commissioner that related to an application made by the Automotive, Food, Metals, Printing and Kindred Industries Union (AMWU) for an order for equal remuneration for work of equal value. See *Automotive, Food, Metals, Printing and Kindred Industries Union v Gunn and Taylor* (Aust) Pty Ltd, 4 June 2002 (PR918573). The Commission's submission was

principally directed to the question of whether the SDA or the HREOC Act provided an adequate alternative remedy.

<sup>105</sup> See *SDA Submission* (2008), s 14 in particular.

<sup>106</sup> Women in Economic & Social Research (WiSER), *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database* (2006). At [http://www.wel.org.au/index.php?option=com\\_docman&task=cat\\_view&gid=26&Itemid=36](http://www.wel.org.au/index.php?option=com_docman&task=cat_view&gid=26&Itemid=36) (viewed 15 September 2008)

<sup>107</sup> These findings are summarised in the executive summary of the Women in Economic & Social Research (WiSER), *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database* (2006).

<sup>108</sup> Women in Economic & Social Research (WiSER), *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database* (2006), p 21.

<sup>109</sup> These recommendations are contained within Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007).

<sup>110</sup> See Human Rights and Equal Opportunity Commission, *Submission to the Australian Fair Pay Commission for consideration in determining the first national wage decision under the WRA* (2006). At <http://www.fairpay.gov.au/NR/rdonlyres/46FD572A-CDD0-4C90-A2FF-BF86382A210D/0/HREOCSubmission.pdf> (viewed 15 September 2008) and Human Rights and Equal Opportunity Commission, *Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005* (Work Choices) (2005). At [www.aph.gov.au/Senate/committee/eet\\_ctte/wr\\_workchoices05/submissions/sub164.pdf](http://www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices05/submissions/sub164.pdf) (viewed 15 September 2008).

<sup>111</sup> See *SDA Submission* (2008), Annexure C.

<sup>112</sup> Queensland Industrial Relations Commission, *Pay Equity: Time to Act* (2007), pp 87-89.

<sup>113</sup> A hard copy can be provided on request.