

Comments on Selected Recommendations of the 2017 report of the Senate Finance And Public Administration Committee concerning Gender Segregation In the Workplace

Introduction

NFAW is a non-politically aligned feminist organisation committed to examining the potentially differential impacts of policies and their outcomes for men and for women, and whether the consequences of policies, intended or unintended, may adversely impact on women.

We appreciate Labor's invitation to put our views on the matters identified in the consultation paper. Our commentary below is numbered to mirror the sections of the consultation paper to which it responds.

Our **recommendations** are as follows:

1. NFAW is strongly of the view that the effectiveness of a national framework for pay equity will depend on the existence of:

- **leadership and direction from the top at both the political and the administrative level. Without these, initiatives will languish**
- **a clear agenda for action, so that political commitment is clear from the beginning and the administrative tasks defined**
- **a mechanism to ensure resilience and responsiveness to circumstances at all levels, so that the agenda is able to embrace new developments (such as the loss of penalty rates or the need for domestic violence leave). This should involve a periodic requirement to monitor and evaluate progress, and re-adjust the Framework in consultation with**
- **external political drivers such as employee organisations, employers among WGEA's Pay Equity Ambassadors, the women's sector and academics. It has been argued that this was the factor whose absence ultimately undermined the Women's Budget Statement.**

2 NFAW recommends an IDC structure in which OfW has a sustained high level mandate to drive and coordinate policies developed in the responsible portfolios.

3. NFAW also recommends that, in addition to the usual consultation processes, the IDC second experts in gender analysis of wages and conditions matters from

- **unions,**

- executive officers and directors in the private sector acting as WGEA's Pay Equity Ambassadors
- the women's sector, and
- academics.

These experts should work directly with agencies to assist in testing the impact of portfolio policy proposals on women--including single parents, young women, Indigenous and CALD women and women with disabilities--and with the IDC to assist in periodic monitoring, evaluating and adjusting of the overall framework in response to ongoing developments.

4. NFAW recommends strongly against OfW or any lead agency being enabled to contract out its consultation responsibilities under the framework to one of the major consulting firms.
5. NFAW supports the ACTU's proposals to amend the FW Act to ensure that wage rates for the lowest paid are improved over time relative to average earnings, and that the best mechanism for achieving this is to amend the act to enable the Commission to set a medium term target for the ratio of the national minimum wage to average earnings.
6. NFAW supports amendment to the FW Act to ensure that penalty rates are protected for all workers and all workers are properly compensated for working unsocial, irregular or unpredictable hours
7. NFAW supports the legislative changes and funding identified in the senate report and consultation paper, including: reforms to flexible work provisions that will increase access for men and women, and make provision for employees to appeal decisions;
 - an extension to the period of PPL and new provisions for the payment of superannuation guarantee during PPL;
 - improved access to affordable high quality early childhood education and care; and
 - recognition of career paths and qualifications for feminised industries, particularly the care industry.
8. NFAW proposes that the Government, following the consultation process required by the WGE Act, adjust the minimum performance standard under the WGE Act legislative Instrument to require all reporting organisations within a reasonable fixed period of time to undertake the first three of the actions specified above (develop a formal equal remuneration policy with specified objectives, and conduct an equal remuneration analysis). The instrument should also require the implementation, over a subsequent period, of a specified number of the listed reportable actions to close the gender pay gap.
 - The government could choose to publish data on the number of employers complying with the Instrument, the measures undertaken, and the impact of these measures on gender wage differentials by industry and occupation. The

government could also draw on the existing WGEA benchmarking process to set goals/targets for pay equity for women in different industry and occupational groups. Such information, published annually, could be used by the Minister to promote the national framework.

9. NFAW recommends that the Government legislate a direction to the Commission that it establish an ERP and maintain its relevance over time.

10. NFAW is of the view that, while it would be very desirable to enable the FWO to bring an application for an ERO, the key support that is required for employees, employee organisations, the Sex Discrimination Commissioner and the FWO is financial support for researching and bringing of cases.

11. NFAW recommends that the Fair Work Act (FWA) be amended to provide that equal remuneration and work value applications may be made simultaneously.

12. NFAW strongly endorses the recommendation in the Senate report that the definition of remuneration under the FW Act be specified, but recommends that, on the grounds of practicality and consistency, consideration be given to the definition of remuneration that is currently in use under the WGE Act reporting arrangements.

13. NFAW recommends that an Equal Remuneration Unit be established in the Department of Employment with responsibility for

- preparing policy advice for government on the pay equity implications of changes to the legislative framework established by the FW Act and associated legislation,
- contributing to the government's submissions to annual wage reviews,
- contributing to the government's submissions on relevant pay and conditions matters such as penalty rates and domestic violence leave,
- preparing the government's submissions on pay equity cases being heard in the Fair Work Commission (FWC),
- contributing to labour force supply and demand analyses, the design and evaluation of employment programs and career advisory measures, and
- working with any IDC or consultative body managing the national pay equity framework.

14. NFAW strongly supports the proposal that an Expert Panel be constituted to operate as a Pay Equity Panel, and recommends that s 620 of the Act be amended to require the constitution of such a Panel to

- hear pay equity and related work value cases, and to
- conciliate at the request of parties to an equal remuneration order.

15. NFAW recommends that experience in and knowledge of gender neutral assessment of traditionally female work be one of the skills specified for inclusion in the panel, as well as a background in equal remuneration more generally.

16. NFAW recommends the development of a National Career Development Strategy which explicitly addresses gender segregation and explicitly includes the objectives of economic independence, social inclusion, and personal fulfilment. Delivery should be by means of an easily accessible multi channel service delivery arm which includes community partnerships, appropriate quality assurance mechanisms and appropriate tagged funding.

17. NFAW recommends the establishment of a clearing house for material about women and STEM in the Commonwealth Department of Employment, based on the US Department of Labor Clearinghouse for Labor Evaluation and Research (CLEAR) women and STEM section. The Clearinghouse should be an explicit part of the National Career Development Strategy.

18. NFAW recommends that the next review of ANZSCO address the issue of gender bias.

19. NFAW recommends the Australian government adopt the MOTUS proposal for recommencing the Time Use Survey.

NFAW's responses to individual questions raised in the consultation paper

3.1 National Policy Framework for Pay Equity

i/iii. The pros and cons of a national framework model

Our views on the desirability of a national framework draw on our experience of the Women's Budget Statement from its inception in 1984 to its cessation in 2014.

Initially the process was robust and effective. It was driven at the political level by the Prime Minister working through a high-level Task Force of Departmental Secretaries established soon after the Government came to power in 1983. This Task Force played a crucial role in ensuring that portfolio agencies considered the gender implications of their Budget policies and met WBS reporting requirements.

Over time, the WBS was removed from the Budget papers, radically shortened (from over 300 pages in the mid 1980s to 34 pages in 2011) and reduced to a public relations document reporting on 'good news' stories about government initiatives. It received little public support or even interest.

In the light of this experience, NFAW is strongly of the view that the effectiveness of a national framework for pay equity will depend on the existence of:

- ongoing leadership and direction from the top at both the political and the administrative levels. Without these, initiatives will languish

- an explicit agenda for action, so that political commitment is clear from the beginning and the administrative tasks defined
- a mechanism to ensure resilience and responsiveness to circumstances at all levels, so that the agenda is able to embrace new developments (such as the loss of penalty rates or the need for domestic violence leave). This should involve a periodic requirement to monitor and evaluate progress, and re-adjust the framework in consultation with:
- external political drivers such as employee organisations, employers among WGEA's Pay Equity Ambassadors, the women's sector and academics. It has been argued that this was the factor whose absence ultimately undermined the Women's Budget Statement.

A national pay equity framework with these characteristics could be used to underpin broader, more systemic set of actions than those that might be undertaken on a workplace by workplace basis through more accessible pay equity legislation. In particular, it could be used to drive higher level systemic change to wage fixation arrangements (see ii below).

The effectiveness of a national framework model would also depend to some extent on how the advisory structure is staffed and where it is positioned.

The Office for Women could operate in this role as the agent of Government and of the Secretary of the Prime Minister's Department; without a clear and explicit mandate, however, it would certainly struggle. Further, while it is well positioned to coordinate the policy work and to manage the public service side of the Cabinet process, it does not currently have the skill set to guide policy development in the range of matters already identified as falling within the framework.

Accordingly, NFAW recommends an IDC structure in which OfW has a sustained high level mandate to drive and coordinate policies developed in the responsible portfolios.

While the responsible portfolios do have the necessary subject matter expertise, they have also, over time, defunded those units with the skills to address gender-specific policy analyses.¹ For this reason, and in order to sustain the external drivers of a pay equity framework, NFAW also recommends that, in addition to the usual consultation processes, the IDC second experts in the gender analysis of wages and conditions matters from

- unions,
- executive officers and directors in the private sector acting as WGEA's Pay Equity Ambassadors
- the women's sector, and
- academics.

¹ Including, for example, the Women's Bureau, the Equal Pay Unit in what is now the Department of Employment, and the Pay Equity Unit in Fair Work Australia. For an overview, see Merrindahl Andrews (2013), 'The Institutional Harvest: Women's Services and Women's Policy Agencies' in Sarah Maddison and Marian Sawyer (eds.), *The Women's Movement in Protest, Institutions and the Internet: Australia in transnational perspective*. Routledge, 2013.

These experts should work directly with agencies to assist in testing the impact of policy proposals on women—including single parents, young women, Indigenous and CALD women and women with disabilities—and with the IDC to assist in periodic monitoring, evaluating and adjusting of the overall framework in response to ongoing developments.

NFAW recommends strongly against OfW or any agency being enabled to contract out its consultation responsibilities under the framework to one of the major consulting firms. We have seen this process in action in relation to the development of the Workplace Gender Equality Act and Instrument, and are not convinced that such an arm's length process facilitates policy design, as it effectively licenses individual consultants to define issues and therefore policies before they reach government.

ii. Do you agree that the framework should set interim pay equity targets?

System-wide industrial relations measures

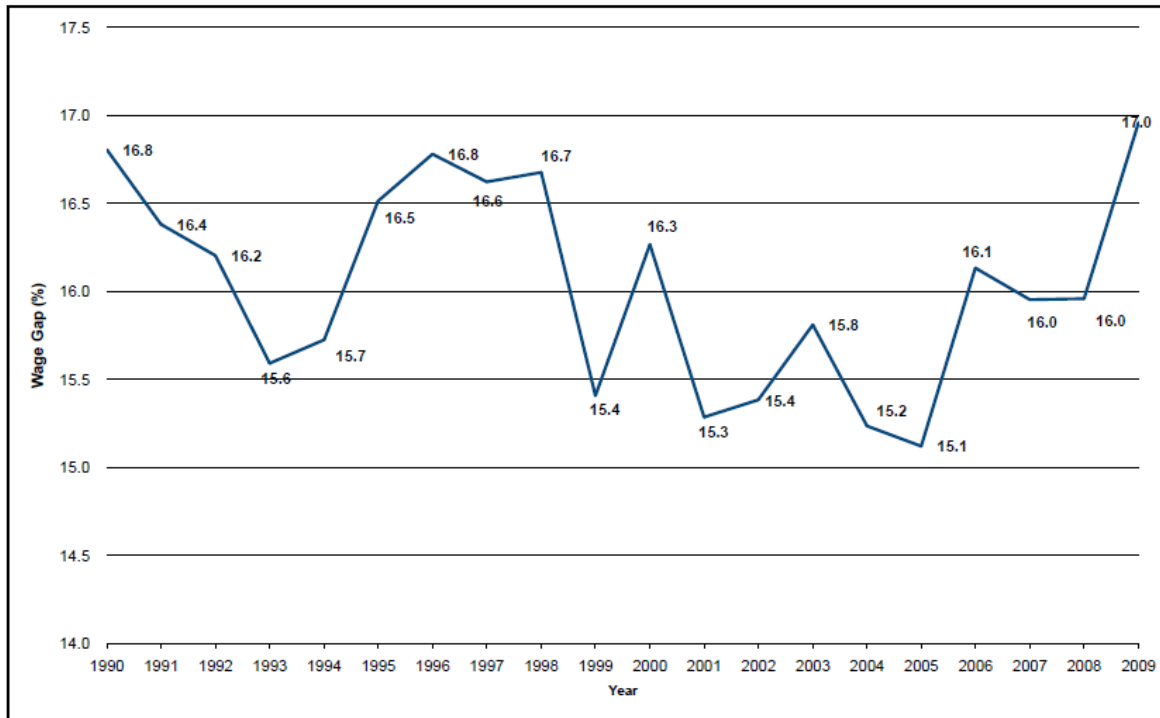
As the Senate report demonstrated, pay equity is associated with the gender segregation of the workforce through the wage fixation arrangements associated with gender segregated industries and the way men's and women's work is structured in those industries. There have been minor movements in the gender wage differential as a result of structural change in industry composition. However the major measurable movements have been associated with changes to the system itself—principally through awards in the 1972 equal pay and 1974 minimum wage decisions (a change of over 20 percentage points from 59.1% in 1970 to 80.9% in 1976).²

As the graph at Figure 1³ shows there have also been impacts on the gender wage differential associated with the formalisation of an enterprise bargaining stream through legislative changes made in 1993 (IRRA) and 1996 (WROLA), and through WorkChoices, which institutionalised individualised bargaining in 2006. Even with these latter changes, however, the gender wage gap has consistently remained between 15% and 17%, with women receiving around 83 to 85 per cent of the average man's wage. It currently sits at 15.3%.

² Women's Bureau (1987), *Pay Equity: A Survey of Seven OECD Countries*, AGPS, p. 67.

³ NATSEM (2009), *The impact of a sustained gender wage gap on the Australian economy*. Report to the Office for Women, Department of Families, Community Services, Housing and Indigenous Affairs, prepared by Rebecca Cassells, Yogi Vidyattama, Riyana Miranti and Justine McNamara.
<http://www.natsem.canberra.edu.au/storage/gender_wage_gap.pdf>

Figure 1 The Gender Wage Gap in Australia, 1990-2009



Note: The gender wage gap is calculated for full time, ordinary time adult employees, using original data.

The reference period for data used in this figure is February for each year.

Source: ABS Average Weekly Earnings, Data cube, 2009, Cat No. 6302.0

While individual pay equity cases are important for individual businesses or even industry segments, and while such cases could have a wider demonstration effect, measurable and sustained improvements in the gender wage differential would require major systemic amendments to the Fair Work Act—amendments to provisions governing award wage fixation and bargaining.

Note, for example, the interesting shift in guidance to the Commission over time on award fixation, from setting awards to protect those who could not bargain (i.e. closing the gap between awards and agreements)⁴ to setting award wages to ‘encourage’ bargaining (i.e. widening the gap between awards and agreements).⁵ Over time the gap between award wages and those set by agreements has duly widened, contributing to widening inequality and further entrenching the gender wage gap.

Experience has not supported the view that low award rates of pay act as a springboard into agreements. A number of widely-acknowledged factors mean that women as a group have always remained award-reliant.⁶ Further, the number of people covered by agreements is now actually shrinking, as employers use unilateral termination of agreements as a mechanism to cut wages. In the past four years the number of private sector workers

⁴ *Industrial Relations Reform Act 1993* s.3(b).

⁵ *Fair Work Act* s 134(1)(b)

⁶ See, for example, Glynn, L. (1998), *The pay equity inquiry*, NSW Government Printer, Sydney, vol 2, pp. 174, 179, 273–4.

covered by EBAs has dropped by 25%. There has been a corresponding increase in the number of workers operating under an award – up from 10% in 2010 to 24%.⁷

The rationale for suppressing award rates of pay wages to push workers into bargaining has not stood the test of time. A national pay equity framework would offer a critical underpinning to amendments to the Fair Work Act (FWA) to increase the relevance of awards to the costs of living.

The ACTU has argued that consideration should be given to amending the FW Act to ensure that wage rates for the lowest paid are improved over time relative to average earnings. It has submitted that the best mechanism for achieving this is to set a medium term target for the ratio of the national minimum wage to average earnings.⁸ A medium term target would give the Commission flexibility in its annual decision-making but would also provide a means of improving and sustaining the ongoing relevance of awards to earnings more generally. The proposal follows the model adopted by the UK Low Pay Commission in its administration of the Living Wage.

Without putting a view on whether or not a legislative amendment is required for the Fair Work Commission (FWC) to implement such a target, NFAW sees the utility of a clear provision in the FWA and supports this recommendation. It further supports amendment to the FWA to ensure that penalty rates are protected for all workers and all workers are properly compensated for working unsocial, irregular or unpredictable hours.⁹ This amendment would recognise the significance of work at unsociable hours, disproportionately performed by women at minimum pay and award only rates.

System-wide and measurable improvements would also require significant cultural change around men's caring responsibilities and the definitions of work, such as breaking down the full-time/part-time dichotomy. In the shorter term, these could be supported by other legislative changes and funding identified in the senate report and consultation paper to:

- reforms to flexible work provisions that will increase access for men and women, and make provision for employees to appeal decisions;
- an extension to the period of PPL and new provisions for the payment of superannuation guarantee during PPL;

⁷ Greg Jericho (2017), 'Is it time for Labor to end the hands-off approach to industrial relations?', *Guardian*, 22 August, drawing on the Department of Employment's March, 2017 *Trends in Enterprise Bargaining* <<https://www.theguardian.com/business/grogonomics/2017/aug/22/is-it-time-for-labor-to-end-the-hands-off-approach-to-industrial-relations>>

⁸ ACTU, ACTU Submission to the Senate Standing Committees on Finance and Public Administration Reference Committee Inquiry Gender Segregation in the Workplace and its impact on women's economic equality, 10 March 2017, paras. 49ff. <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Gendersegregation/Submissions>

⁹ See National Foundation for Australian Women (2016) ,Submission to the Fair Work Commission Hospitality and Retail Penalty Rate Review, March <<http://www.nfaw.org/wp-content/uploads/2016/03/Penalty-Rates-submission-to-FWC-March-20161.pdf>>

- improved access to affordable high quality early childhood education and care; and
- recognition of career paths and qualifications for feminised industries, particularly the care industry.

Organisation-level measures

If the scope of the changes to the FWA being contemplated under the proposed pay equity framework were to be confined to its equal remuneration and part-time provisions--all very welcome--it is not likely that the outcomes would take the gender wage differential out of the 15-17% band within the timeframe typically used by government reporting.

However, if the Government were to target workplace change rather than (or as well as) system-wide change, there are available to it simple, clear mechanisms to drive outcomes and simple, clear data to measure them.

Under subsection 19(1) of the Workplace Gender Equality Act (the WGE Act), the requirement to provide gender equality data is supplemented by a minimum standards Instrument. This Instrument enables the Government to set minimum standards of achievement in relation to any of the Gender Equality Indicators (GEIs) against which employers are required to report, including equal remuneration (GEI3). Thus the Instrument could be amended to enable the government to require employers covered by the WGE Act to undertake specified measures to increase pay equity, and to track the number of organisations undertaking such actions, as well as changes in the gender pay gap in those organisations.

Currently, the Instrument is only being used to apply to the largest tier of employers covered by the Act (those employing 500 or more employees), but the government could use it to cover all three tiers (500 or more, 100-500, and 100 or more) at one time or progressively. The current minimum standard set by the instrument is very generalised, almost to the point of meaninglessness—employers are required to have a policy relating to any one of the GEIs in the WGEA Act.

Thus there is no requirement at present under the WGR Act or the Instrument for employers to act on pay equity. They are simply required to report on rates of pay for men and women in the same occupational groups, as well as whether they have undertaken any of a menu of actions to address pay equity issues. The menu includes:

- having put in place a formal policy or formal strategy on remuneration generally (53.1% in 2016)
- having specific gender pay equity objectives included in their formal policy or formal strategy (26.4% in 2016)
- having conducted a remuneration gap analysis (20%)
- having taken one of a number of specified actions as a result of conducting a remuneration gap analysis, namely having
 - created a pay equity strategy or action plan (13.5% of the 20%)
 - identified cause/s of the gaps (31.2% of the 20%)

- reviewed remuneration decision-making processes (22.4% of the 20%)
- analysed commencement salaries by gender to ensure there are no pay gaps (16.0% of the 20%)
- analysed performance ratings to ensure there is no gender bias (including unconscious bias) (22.3% of the 20%)
- analysed performance pay to ensure there is no gender bias (including unconscious bias) (21.6% of the 20%)
- analysed performance pay to ensure there is no gender bias (including unconscious bias) (21.6% of the 20%)
- trained people-managers in addressing gender bias (including unconscious bias) (11.1% of the 20%)
- set targets to reduce any organisation-wide gaps (4.4% of the 20%)
- reported pay equity metrics to the board 14.4%
- reported pay equity metrics to the executive 25.4%
- corrected like-for-like gaps 16.9%
- conducted a gender-based job evaluation process 2.1%.

There is no penalty under the WGE Act for an organisation which fails to report increased gender equality over time. The penalty for failing to report at all, or for failing to meet a minimum standard, is being named in a report to the Minister or by electronic or other means. Non-compliant employers may also be ineligible to tender for contracts under the Commonwealth and some state procurement frameworks and may not be eligible for some Commonwealth grants or other financial assistance.

NFAW proposes that the Government, following the consultation process required by the WGE Act, adjust the minimum performance standard under the WGE Act legislative Instrument to require all reporting organisations within a reasonable fixed period of time to undertake the first three of the actions specified above (develop a formal equal remuneration policy with specified objectives, and conduct an equal remuneration analysis). The instrument should also require the implementation, over a subsequent period, of a specified number of the listed reportable actions to close the gender pay gap.

The government could choose to publish data on the number of employers complying with the Instrument, the measures undertaken, and the impact of these measures on gender wage differentials by industry and occupation. The government could also draw on the existing WGEA benchmarking process to set goals/targets for pay equity for women in in different industry and occupational groups. Such information, published annually, could be used by the Minister to promote the national framework.

Employer compliance with the instrument and the impact of such compliance on equal remuneration in reporting organisations would be reported to the Agency as part of the usual reporting process.

The limitation of this model for reporting progress in pay equity is that it can only engage employers of 100 or more employees. Countervailing factors are that

1. The Agency has a remit to provide equal pay guidance to small and medium businesses as well as larger organisations, and there should be some scope to scale down successful case studies.
2. The compliance mechanism of naming employers who do not address minimum standards should enable the Minister to publicise the pay equity framework and its goals.
3. The Act requires reporting organisations to make their annual gender equality reports accessible to their own employees, members, shareholders and employee organisations. This provision should enable unions and others (see 3.2.3 below) to take up cases drawing on publicly available data and to lodge ERO applications.

3.2 Reforms to Fair Work Act 2009

1. Factors contributing to the low rate of applications for Equal Remuneration Orders (EROs)

Reasons for the low rate of applications for Equal Remuneration Orders (EROs) are its cost, uncertainty, the time involved in pursuing cases, and the access of women to representation and support. Factors underpinning these causes include:

- the obscurity of the legislation, and the FWC's ongoing reinterpretation of its key elements
- constant reversion to the need for binary comparators in a gender segregated workforce
- the cost of work value assessments and the difficulty in ensuring that so-called 'soft skills' are appropriately valued by assessors and the FWC
- the need to make a threshold choice between proceeding through work value or equal remuneration routes
- the lack of an Equal Remuneration Principle and common agreement on its applicability
- the low levels of unionisation in female-dominated industries and occupations, caused partly by the tendency of feminised occupations to be found in smaller workplaces
- job insecurity in feminised occupations and concern about employer responses
- the grant-dependence of female dominated such as health, social and child care workers. This dependence raises concerns among potential applicants that wage increases may need to be offset by job losses. Commissions have also taken the view that achieving pay equity in these industries needs to be balanced against the interest of services are affordable and accessible to the public.

2. Is a legislated Equal Remuneration Principle a suitable basis for achieving additional guidance for the Commission and applicants in applying for EROs?

There is nothing in the Fair Work Act that either requires the Commission to formulate an ERP to guide its determinations under the equal remuneration provisions of the Act (Part 2-7), or forbids it from doing so.

Wage fixation principles are normally adopted by a Full Bench of the relevant tribunal rather than legislated. This was certainly the case with respect to the two effective ERPs that have come out of the Australian system—those in the New South Wales and Queensland jurisdictions. It is a pity that these Principles were subsequently displaced for the purposes of the great majority of women employees in those states by WorkChoice's use of the corporations power to displace state awards.

The New South Wales and Queensland ERPs were adopted by their respective industrial tribunals by consent following developmental work undertaken within those tribunals. The question here is whether the FWC would be able to apply a legislated principle which it has not developed itself when it has been unable to apply any underpinning legislation in such a way as to deliver predictable interpretations of the relevant provisions and consistent outcomes.

Another way of putting the question is to ask whether the government should directly legislate an ERP or legislate a direction to the Commission that it establish such a principle and maintain its relevance over time.

The advantages of directly legislating an ERP are:

- that legislators have to hand a workable model already developed by comparable tribunals as a result of direct experience
- the speed with which consultative and legislative processes can be implemented, contrasted with the several years taken by FWC to consider individual cases
- the speed with which the ERP could then be applied.

The disadvantages of directly legislating an ERP are:

- that the FWC might not embrace a model which it has not developed itself, and may continue to revisit definitions and their legislative construction
- the role of developing an ERP in building consensus within the FWC about the operation of such a principal as well as skills in gender-based work valuation
- the importance of a seamless fit between an ERP and underpinning legislation and practices specific to FWC
- the need for other legislative amendments to underpin any effective ERP, including the inclusion of equal remuneration in the principal Object of the Act, the specification that work value and equal remuneration cases may be taken simultaneously, and clear provision that gender-based undervaluation, and not binary comparators, constitute a sufficient ground for equal remuneration cases.

On balance, NFAW recommends that the Government legislate a direction to the Commission that it establish an ERP and maintain its relevance over time.

3. Should other institutions, such as government institutions, be enabled or obligated to launch ERO applications?

Under s.302(3) of the FWA, equal remuneration cases may be brought by any of the following:

- (a) an employee to whom the order will apply;
- (b) an employee organisation that is entitled to represent the industrial interests of an employee to whom the order will apply;
- (c) the Sex Discrimination Commissioner.

In addition the Fair Work Ombudsman may, under certain circumstances, bring cases for adverse action where an employer takes adverse action against the employee because of the employee's gender. So, if a woman discovers that she is being paid less than a male colleague who does similar work, she can argue that the employer has taken adverse action by discriminating against her because of her gender. However, as these are discrimination cases, they may be found to involve a binary comparator.

There have yet to be any cases of women pursuing equal pay as an adverse action claim under the FWA, so it is not possible to predict how successful this option would be in practice.

Both the Office of the Sex Discrimination Commissioner and the Fair Work Ombudsman are cash strapped—the FWO mainly takes only those cases which might set a clear precedent and which it has a very reasonable prospect of winning. So, even if the government were to amend the FWA to enable the FWO to apply for an ERO directly, it would be necessary to provide funding in order that such a provision might be meaningful in practice. The same consideration applies to the Sex Discrimination Commissioner.

In general, NFAW is of the view that, while it would be very desirable to enable the FWO to bring an application for an ERO, the key support that is required for employees, employee organisations, the Sex Discrimination Commissioner and the FWO is financial support for researching and bringing of cases.

4. The Report recommends clarifying that equal remuneration and work value applications may be made simultaneously. Do you support this?

Yes. NFAW recommends that the FWA be amended to provide that equal remuneration and work value applications may be made simultaneously.

5. The evidence suggests that the gender pay gap is higher when non-salary compensation and non-cash benefits are considered. How should government respond?

Reliance of the equal remuneration provisions of the FW Act on the international power of the constitution and ILO Convention 100 has given rise to difficulty in the FWC in the past, as while the Convention imports a useful definition of remuneration ('remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment') it also imports the word 'discrimination', which the Commission has in the past interpreted as calling for a binary comparator.

The FW Act itself act does not directly define remuneration, but talks about 'rates of remuneration', which seems to exclude non-cash benefits.

The Senate report recommends that the definition of remuneration in the FW Act be specified to include recompense or reward for services rendered, including non-cash benefits.

The reporting arrangements under the WGE Act, which have been the subject of extensive consultation and practical experience, also include remuneration. The Instrument associated with the Act mandates the reporting, on an annual basis, of:

3.1 Disaggregated data regarding the remuneration profile of managers and non-managers by gender and by workplace profile categories including:

3.1.1 annualised average full-time equivalent base salary; and

3.1.2 annualised average full-time equivalent total remuneration, except for remuneration components paid on a non-pro-rata or fixed-amount basis; and

3.1.3 a fixed total remuneration amount for remuneration components paid on a non-pro-rata or fixed-amount basis.

WGEA's *2017 Reference Guide to reporting under the Workplace Gender Equality Act 2012* defines total remuneration to be reported (at p. 69) as including:

base salary plus any additional benefits whether payable directly or indirectly, whether in cash or in a form other than cash. Includes bonuses, superannuation, overtime, allowances and any other amounts (for example share allocations, discretionary pay etcetera).¹⁰

NFAW strongly endorses the recommendation in the Senate report that the definition of remuneration under the FW Act be specified, but recommends that, on the grounds of practicality and consistency, consideration be given to the definition of remuneration that is currently in use under the WGE Act reporting arrangements.

¹⁰ <https://www.wgea.gov.au/sites/default/files/2017-wgea-reporting-reference-guide.pdf>

3.3 Reforms to Fair Work Commission

i. One justification for restoring funding for the Pay Equity Unit is that it would provide enhanced support for applicants' claims for equal remuneration, recognising that the high cost and extended time period entailed with lodging an application act as deterrents. *What other institutional measures could support this outcome?*

In 1992 the then Government established an Equal Pay Unit in the then Department of Industrial Relations. The functions of the Unit included the provision of policy advice, the management of a small grants program to research equal pay issues and promotion of pay equity advice and strategies. This Unit has since been disbanded.

The Committee's proposal would see the research function formerly undertaken by the departmental EPU transferred to the EPU in the FWC. The 1992 EPU's communications function is currently being delivered through WGEA.

In addition to these two functions the departmental EPU's policy advising activities included preparing policy advice for government on the pay equity implications of broader changes to the legislative framework, contributing to the government's submissions to annual wage reviews, contributing to submissions on relevant pay and conditions matters such as part-time conversion and PPL, and preparing the government's submissions on pay equity cases being heard in the FWC. These critical functions cannot be undertaken from within the FWC. It would also be highly desirable for there to be an EPU in the Department of Employment to work with any IDC or consultative body managing a national pay equity framework.

Accordingly, NFAW recommends that an Equal Remuneration Unit be established in the Department of Employment with responsibility for

- preparing policy advice for government on the pay equity implications of changes to the broader legislative framework established by the FW Act and associated legislation,
- contributing to the government's submissions to annual wage reviews, and the application of any medium term target for the ratio of minimum to average wages,
- contributing to the government's submissions on relevant pay and conditions matters such as penalty rates and domestic violence leave,
- preparing the government's submissions on pay equity cases being heard in the FWC,
- contributing to labour force supply and demand analyses, the design and evaluation of employment programs and career advisory measures, and
- working with any IDC or consultative body managing the national pay equity framework.

ii. During the Inquiry it was noted that an expert Pay Equity Panel could function in a similar way to the Minimum Wage Review Expert Panel; members are brought together by the Commission for a specific purpose and selected for their expertise. What expertise would be required on a Pay Equity Panel? How often should it convene? What powers should it exercise? Under whose authority?

In the light of problems in interpreting the equal remuneration provisions of the FW Act and conducting gender aware job evaluations, NFAW strongly supports the proposal that an Expert Panel be constituted to operate as a Pay Equity Panel, and recommends that s. 620 of the Act be amended to require the constitution of such a Panel to

- hear pay equity and related work value cases, and
- conciliate at the request of parties to an equal remuneration order.

When reporting to the NSW government on the findings of the 1996 Pay Equity Taskforce, Justice Glynn underlined the need for gender neutral assessment of traditionally female work to give adequate weight to factors such as 'dexterity, nurturing, inter-personal skills and service delivery'.¹¹ NFAW recommends that experience in and knowledge of such assessment be one of the skills specified for inclusion in the panel, as well as a background in equal remuneration more generally.

3.4 Career Guidance and Data

i. How should the profession of career guidance respond to the challenges of the future of work and gender segregation?

Careers guidance and information are key policy levers in terms of life long learning and economic and social development. The key challenge for government is to greatly widen the range of services available. Information and guidance systems are not well organised in Australia and tend to concentrate on youth transitions. At a national level they are also not directed at addressing gender segregation in a systematic manor. The Committee noted that while there is a national strategy, it hasn't been updated since 2013 and makes no reference to gender.

Over two thirds of Australians who will form the work force in 10 years are already in the workforce now. Some occupations of this workforce will not yet exist or will change beyond recognition. There is a lack of strategic attention by career professionals and governments to encouraging and supporting industries in planning their up-skilling and making career moves that not only respond to but also take advantage of economic and technological change.

Skills provide an important safeguard against the risks of automation. Workers with tertiary qualifications are usually at less risk of losing jobs due to automation. This may be beneficial for women since more women than men are tertiary graduates. In addition, "soft skills" are likely to grow in importance in the future. There is likely to be major job growth in business, health, education and social services which don't require high level STEM skills.

STEM skills are critical to Australia's future prosperity. However, there is a large gap in STEM skills for women. Less than 20% of STEM workers are currently women. While the

¹¹ Meg smith 154

proportion of women in STEM is very small, the pay gap between women and men in the STEM workforce is already substantial.

So far the combination of public and private sector initiatives has gone only so far in increasing the number of women in STEM.

Women's career development is generally different from men. It is often more complex (e.g. conflict between work and family) and is often characterised by different career stages or patterns (e.g. intervals away from full time employment to assume care responsibilities).

- Women's labour market participation is more restricted than men's. They are under-represented in a number of fields and professions such as STEM, and enter low paying and low status jobs
- Women's abilities and talents are underused. They are less likely to achieve higher levels in their occupational fields.

Approaches specifically designed to respond to the needs of women are required. There needs to be a national strategic approach to career guidance that explicitly includes economic independence, social inclusion, and personal fulfilment. Delivering the strategy should include community partnerships, appropriate quality assurance mechanisms and appropriate tagged funding.

Australia does not have an easily accessible multi channel service delivery arm that is available to all citizens regardless of age or attachment to education or training establishments.

This would enable the community and the economy to reap the benefits of STEM from engaged workers and learners , developing their career paths across the lifespan in tune with social needs, economic and technological change.

NFAW recommends that the National Career Development Strategy be redeveloped which explicitly addresses gender segregation.

ii. The report recommends a review of 'girls and women in STEM' programs. Considering the variety of programs operating in schools, the public sector and private sector, can you provide comment on the best approach for a comprehensive review?

Career guidance has a rich literature on theory and practice. However, the links between research , practice and policy are weaker. Most evaluations focus on proving an initiative achieves its objectives and improving the initiative as it develops. However, there is a need for learning beyond the initiative itself. New STEM initiatives aimed at improving women's participation in STEM need to be able to draw on a clear body of knowledge. The STEM community and policy makers should recognise this body of knowledge is needed if public funds are to be spent effectively in this area.

A systematic attempt is needed to mine current evaluations and research literature, in relation to women and STEM, to develop a body of evidence about how and why they are

effective. Future funding should explicitly require the use of this evidence base in designing initiatives and commitment to building an evidence base.

NFAW recommends the establishment of a clearing house for material about women and STEM in the Commonwealth Department of Employment, based on the US Department of Labor Clearinghouse for Labor Evaluation and Research (CLEAR) women and STEM section. This should be an explicit part of the National Career Development Strategy.

iii. The Inquiry heard that our occupational classifications are limiting our ability to properly measure and understand workforce gender segregation. Can you provide any comment on possible gender bias in job classifications?

Job classification structures need to ensure

- the basis of classifying an occupation is well-specified,
- the relationships of classifications within the hierarchy of the jobs in the hierarchic structure are well-articulated and soundly based,
- the occupations covered in the classification system are sufficiently well described to enable effective and reliable classification, and
- the job descriptions of jobs to be classified are sufficiently developed and accurate to enable matching of the job to the classification.

A system in which jobs are properly evaluated free of gender bias, and the jobs in each band or grade are specified is likely to meet these requirements.

Where different systems are used for different groups of staff – for example, wages staff and salaried staff, or academic and allied staff, using the two or more systems will mean that questions relating to the relationship between the job values and the remuneration levels of the two groups of employees cannot be considered and possible gender implications cannot be explored.

If there is no structured and hierarchic relationship across the various occupations within a particular sub-set of jobs, the relationships of job value and remuneration across occupations, including any gender implications, cannot be analysed and analysis will be possible only within occupations.

For these reasons, using ANZSCO will sometimes provide a way of analysing jobs in relation to the nature of work involved (broadly defined) and the skill level required (taking account of qualifications and experience or their equivalents), because it does provide a common framework that can accommodate any occupation. However, ANZSCO does not provide a framework that effectively differentiates the levels within some occupations – for example, lecturers, or policy analysts.

As a result, issues relating to gender and job levels within occupations may need to be explored using an alternative classification structure, possibly including a framework from a collective employment agreement or a framework that forms part of the wages structure. For example, there may be a gender difference in remuneration for the occupation 'lecturer'. The difference could reflect the distribution of men and women by levels within the occupation, or performance bonuses for particular occupations or job characteristics, or market loadings for particular job types or locations, and each of these possible factors

would need to be considered to understand the reasons for the observed gender differences.

Effective use of ANZSCO requires matching good quality job descriptions to the job descriptions ANZSCO provides. Typically the job description needs to cover the nature of the work and the skills required (indicated by typical qualifications and experience requirements or equivalents). The job description needs to be current and the agreement of the employee and the manager on the job description is an important indicator of its currency and accuracy.

NFAW recommends that the next review of ANZSCO address the issue of gender bias.

iv. The report recommends recommencing the ABS Time Use study. Noting the need for methodological consistency to achieve longitudinal data analysis, how could technology be applied to achieve cost savings for this project?

NFAW supports the initiative that Professor Lyn Craig has proposed called Modular Online Time Use Survey (MOTUS). The proposal aims to reduce the cost of data collection while retaining time series validity. MOTUS has been successfully trialed in Belgium. The proposal is an online approach supported by paper diaries to ensure a representative population sample. Professor Craig proposes managing the introduction of MOTUS through a university with ABS input and advice, similar to the management of HILDA.

NFAW recommends the Australian government adopt the MOTUS proposal.