

Pay Equity

TIME TO ACT



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September 2007
Queensland Industrial Relations Commission





Queensland Industrial Relations Commission

28 September 2007

The Honourable John Mickel MP
Minister for Transport, Trade, Employment and
Industrial Relations
Level 15, Capital Hill Building
85 George Street
BRISBANE, QLD. 4000

Dear Minister

Pay Equity Inquiry (Matter No. INQ/2007/1)

In accordance with your Directive issued 8 March 2007, I am pleased to provide you with, *Pay Equity: Time to Act*, the Report of the Inquiry to examine the impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity in Queensland pursuant to s. 265(4) of the *Industrial Relations Act 1999*.

G.K. FISHER
Commissioner.

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Foreword

In 2000/01 I had the privilege of conducting the first Inquiry into Pay Equity in Queensland. As a result of the recommendations made in my report, *Worth Valuing*, perhaps the most advanced industrial system in dealing with pay equity in Australia was implemented in Queensland. This was achieved through a combination of legislative amendments made by the Queensland Government and the Equal Remuneration Principle adopted by the Queensland Industrial Relations Commission.

Five years after *Worth Valuing* was tabled the industrial landscape underwent a seismic shift. The introduction of Work Choices by the federal government has meant that awards and collective bargaining no longer have a pre-eminent position in the industrial relations system. Work Choices has heralded the growth of individual wage setting arrangements, the demise of awards and the movement of more employees to the federal system. The Queensland jurisdiction now affects approximately 40% of employees. Regrettably, the introduction of Work Choices has also meant that many of the pay equity advancements made in Queensland stand to be whittled away or lost.

Enough academic research has been published to demonstrate that women are vulnerable under the Work Choices regime and if the focus remains on individual pay setting then the prospect of achieving pay equity is remote.

Despite the initiatives taken in Queensland and in other states, Australia still lags well behind its OECD counterparts in taking steps to address pay equity. Central and state governments in many of those countries have shown leadership in implementing legislation or other pay equity processes. The governments and other social partners in those countries have accepted without question for many years that pay equity is an important social objective. It is time for pay equity to take a central place in the policy agenda here and to show that our society eschews gender based discrimination.

I commend the Queensland Government on being prepared to revisit the issue of how to tackle pay equity in the light of the shift in the industrial relations landscape. The announcement of the establishment of the Inquiry on International Women's Day this year signalled that the Queensland Government takes seriously the contribution made by women in the workforce, the vulnerability of many women under Work Choices and wishes to pursue the broader social objectives of fairness and equity. It also signalled a willingness to look more broadly for solutions when traditional options are no longer viable.

Pay equity is an issue of fundamental social importance. It is time for women, who now comprise almost half of the labour force in Queensland, to be valued equally to men. It is time to address the impediments to achieving pay equity. It is time for the Queensland Government to once again show leadership in the area. In short, it is **TIME TO ACT**.

Glenys Fisher
Commissioner
Queensland Industrial Relations Commission

Acknowledgements

The Inquiry wishes to record its appreciation to the Queensland Government and to each individual and organisation that assisted the Inquiry by making submissions, responding to questions posed and/or calling evidence. Because of their number and diversity the Inquiry has not been able to respond to all issues raised and recommendations made. The focus was placed on those matters which directly impacted on the Terms of Reference and the overall direction of the report. All of your work has however assisted in informing the debate and helped shape the recommendations that have been made.

I would particularly like to express my thanks to the two research staff who worked with the Inquiry: Dinah Priestley and Tricia Rooney. Each had their own area of expertise: Dinah on legal matters and Tricia on pay equity. Their knowledge, expertise, original thinking and superior writing skills were extremely valuable and the quality of this report is testament to their abilities.

My thanks also to the Associates who worked on this report: my Associate, Evelyn Klein, and Sewar Mitanis. Thanks too to the staff of the Industrial Registrar's Office who provided administrative support for the Inquiry.

While I am grateful for the assistance received all errors and omissions are my own.

I trust that this report, like its older sister, *Worth Valuing*, succeeds in advancing pay equity in Queensland.

Glossary of Acronyms

ABS	Australian Bureau of Statistics
ACE	Australian Communications Exchange Limited
ACT	Australian Capital Territory
ADAQ	Australian Dental Association (Queensland Branch) Union of Employers
ADCQ	Anti-Discrimination Commission Queensland
ADT	Anti-Discrimination Tribunal
AFPC	Australian Fair Pay Commission
AFPC Standard	Australian Fair Pay and Conditions Standard
AIG	Australian Industry Group
AIRC	Australian Industrial Relations Commission
AMASCU	Australian Municipal, Administrative, Clerical and Services Union Central & Southern Queensland, Clerical and Administrative Branch
APCS	Australian Pay and Classification Scale
AQF	Australian Qualifications Framework
AWA	Australian Workplace Agreement
AWU	The Australian Workers' Union of Employees, Queensland
CRS	Classification and remuneration system
EOP	Equal Opportunity Plan
EOWA	Equal Opportunity for Women in the Workplace Agency
ERC	Equal Remuneration Component
ERP	Equal Remuneration Principle
FMW	Federal Minimum Wage
HREOC	Human Rights and Equal Opportunity Commission
ILO	International Labour Organisation
IRV	Industrial Relations Victoria
LHMU	Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
NAPSA	Notional agreement preserving state awards
NAB	National Australia Bank
NFAW	National Foundation for Australian Women
NSW	New South Wales

NSWIRC	Industrial Relations Commission of New South Wales
NT	Northern Territory
OEA	Office of the Employment Advocate
OECD	The Organisation for Economic Co-Operation and Development
PSA	Preserved State agreement
QCCI	Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers
QCOSS	Queensland Council of Social Service Inc
QCU	Queensland Council of Unions
QGIG	Queensland Government Industrial Gazette
QIRC/Commission	Queensland Industrial Relations Commission
QMW	Queensland Minimum Wage
QNU	Queensland Nurses' Union of Employees
QSU	Queensland Services, Industrial Union of Employees
QTU	Queensland Teachers' Union of Employees
QWA	Queensland Workplace Agreement
QWIRS	Queensland Workplace Industrial Relations Survey
QWWS	Queensland Working Women's Service Inc.
RCEAQ	The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers
SA	South Australia
SDA	Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
UN	The United Nations
WAD	Workplace Authority Director
WEPAU	Women's Economic Policy Analysis Unit
WESKI	<i>Women Employment Status Key Indicators</i>
WiSER	Women in Social and Economic Research

Legislation

ADA	<i>Anti-Discrimination Act 1991 (Qld)</i>
EOPE Act	<i>Equal Opportunity in Public Employment Act 1992 (Qld)</i>
EOWW Act	<i>Equal Opportunity for Women in the Workplace Act 1999 (Cth)</i>
IRA	<i>Industrial Relations Act 1999 (Qld)</i>
Regulations	<i>Industrial Relations Regulation 2000 (Qld)</i>
Work Choices	<i>Workplace Relations Amendment (Work Choices) Act 2005 (Cth)</i>
WRA	<i>Workplace Relations Act 1996 (Cth)</i>

Summary and Recommendations

Five years after the first Pay Equity Inquiry in Queensland handed its report, *Worth Valuing*, to the Minister for Employment, Training and Industrial Relations, the federal government's Work Choices legislation took effect. That legislation is having a profound effect on the conduct of industrial relations in this country. Prior to Work Choices the coverage of employees by the Queensland jurisdiction was approximately 72%. It has caused the transfer of approximately 30% of employees from the Queensland industrial relations system to the federal system and now approximately 76% of all Australian employees are covered by that system.

As a result of the first Inquiry Queensland has arguably the most advanced industrial relations measures for dealing with pay inequity in Australia, through a combination of legislation and the Equal Remuneration Principle adopted by the Queensland Industrial Relations Commission as a Statement of Policy. These measures allow the work predominantly performed by women to be assessed to determine whether it had been undervalued on gender grounds and also permit the Commission to examine industrial instruments to ensure the provision of equal remuneration. Work Choices has diminished the capacity for these reviews to take place.

It was against this background that the (then) Minister for State Development, Employment and Industrial Relations decided to initiate a new Inquiry to investigate the policy and legislative measures that might be taken by the Queensland Government to ensure that the gains made in this State are not lost. This Inquiry engenders confidence amongst employees generally and women in particular that pay equity remains an important policy objective of the Queensland Government. The task of the Inquiry is to recommend reasonable and practical measures that can be implemented in the changed industrial relations environment that now operates and which can benefit employees and employers alike.

Section 1 - Pay Equity and Work Choices: An Overview

Section 1 of this Report looks at the developments that have occurred since the first Pay Equity Inquiry was undertaken by the Queensland Industrial Relations Commission in 2000/01. It provides a context to the establishment of this Inquiry by outlining the impact of Work Choices on industrial regulation and particularly notes that pay equity has suffered as a result. The section then proceeds to provide further context by discussing the meaning of pay equity and causes of pay inequity. The Inquiry accepts the submission by the Human Rights and Equal Opportunity Commission that pay equity means that men and women should receive the same pay, benefits and conditions for work of equal or comparable value. However, the Inquiry goes on to note that underpinning this relatively simple concept is a complex array of factors that contribute to the gender earnings gap and pay inequity.

The causes of pay inequity are many, often complex and generally embedded in industrial, organisational and societal structures. They include:

- gender segregation of the Australian workforce;
- undervaluation of work predominantly performed by women;
- concentration of women in lower level classifications with fewer opportunities for training, and skill development;
- caring responsibilities being undertaken by women and the effect of breaks in workforce participation;

- concentration of women in part-time and casual employment leading to fewer opportunities for skill development and advancement; and
- reliance by women on awards as their primary wage setting arrangement.

The Inquiry comments that a broad range of policy and legislative responses are required to attack these causes of pay inequity and in doing so there can be benefits to employers and employees alike. Pay equity is seen to be associated with greater labour force productivity in response to perceptions of improved equity and more employee focussed workplace flexibility. The federal government agency, the Equal Opportunity for Women in the Workplace Agency, emphasises the business advantages of equity for women and the benefits of workplace programs as including enhanced attraction and retention of the best talent, increased productivity and innovation, enhanced management style, gains in the number of female customers and reduction in the risk of discrimination and harassment law suits.

The gender earnings gap has remained relatively static since the last Inquiry. The value of the data collections that have been used to date to track the gender pay gap over time are called into question given the profound nature of the current changes to the regulatory environment in Australia. The Inquiry considers that it is vital that data is available which will allow adequate monitoring of pay equity into the future. To this end, the Inquiry recommends that the Queensland Government, in collaboration with the other States, actively pursue means of supplementing current data sources with more detailed longitudinal survey data which would enable researchers to assess movements in and effects on gender pay equity.

The section then goes on to provide a brief background to Work Choices. It provides an overview of the constitutional developments leading to the enactment of the Work Choices legislation and notes how it operates to the exclusion of listed State or Territory industrial law. This provision curtails the capacity of State Governments to provide an industrial response about pay equity to Work Choices. The changes to wage setting arrangements are also highlighted. The demise of awards and the growth of individual pay setting arrangements are noted. Work Choices has severely impacted on the work of the Australian Industrial Relations Commission and much of its previous role in wage setting has been transferred to another institution, the Australian Fair Pay Commission, as well as other federal government agencies. These bodies conduct their work in a much less transparent way than the Australian Industrial Relations Commission leading to concerns about the capacity of these bodies to effectively address pay equity.

Section 2 - *Worth Valuing*: An Assessment of Outcomes

Section 2 addresses the first Term of Reference of the Inquiry which requires consideration of the effectiveness of outcomes from the previous Inquiry. It notes that the first Inquiry was established in a markedly different industrial relations system to that which now operates. Accordingly the Terms of Reference of that Inquiry focused on reforms in the context of an industrial relations system where awards and collective agreements played a central role. The Inquiry was also required to make a specific recommendation for a pay equity principle.

The recommendations of the first Inquiry are divided into three categories and addressed in turn:

- the adoption of an Equal Remuneration Principle by the Queensland Industrial Relations Commission;
- a raft of amendments to the *Industrial Relations Act 1999* and the *Industrial Relations Regulation 2000*; and

- the provision of matching funding for a period of three years to allow industrial organisations of employees and employers to conduct or respond to pay equity cases in the Queensland Industrial Relations Commission;

The two cases conducted under the Equal Remuneration Principle, the *Dental Assistants Case* and the *Child Care Case*, are outlined in some detail and then examined in terms of their effectiveness based on the submissions received and confidential interviews conducted with the advocates who appeared in the proceedings. The Inquiry considers the extent to which all of the gains made survive Work Choices. For dental assistants who are not employed by constitutional corporations the decision survives in full. For those who are employed by constitutional corporations the Equal Remuneration Component, a percentage amount to compensate for inability to access enterprise bargaining, has not survived and the improved conditions will only survive until 26 March 2009 at the latest. While the phased wage increases may be paid for child care employees of constitutional corporations the changes in working conditions will not be passed on.

The Inquiry concludes that the Equal Remuneration Principle provides a useful analytical framework for the consideration of pay equity. The cases conducted under the Principle have illustrated this usefulness by highlighting the traditional undervaluation of the work performed by the two predominantly female occupations considered. The Equal Remuneration Principle was found to be a particularly effective outcome of the previous Inquiry.

The second category of recommendations, the legislative amendments, is then considered with particular focus on the amendments made to certified agreements. The amendments which attracted attention in a number of submissions particularly concerned the testing of information required to be provided in affidavits supporting the certification of an agreement. Submissions were made that the Commission should have more of an investigative role than its traditional oversight role. These submissions are rejected by the Inquiry because of the scheme of the Act relating to certified agreements. However, the Inquiry accepted the argument that further information should be provided where a proposed agreement will treat different classes or groups of employees differentially. The Inquiry recommends that an amendment be made to s 9 of the Regulation such that the affidavit should specify the reasons for and purpose of the differential treatment and provide any supporting evidence.

The third category of recommendations concerned the provision of funding for the conduct of equal remuneration cases. Although noting that the number of such cases may be reduced because of the effect of Work Choices, the Inquiry nonetheless considers that funding should continue to be provided where such cases are run.

This section concludes with the comment that this Inquiry provided a useful means to review the effectiveness of the recommendations made by the previous Inquiry, especially given the changed regulatory environment which now exists.

Section 3 - Impact of Work Choices on Legislative Measures addressing Pay Equity

Section 3 of the Report considers the second Term of Reference concerning the impact of Work Choices on legislative measures addressing pay equity under the federal and State systems. The section begins by examining the impact of Work Choices on equal remuneration orders that are able to be made under the federal and State systems. The diminished role of the Australian Industrial Relations Commission is described, however, it is noted that that Commission's jurisdiction has always been narrower than that of the Queensland Industrial Relations

Commission in respect of making equal remuneration orders. The Inquiry finds that the jurisdiction of the Queensland Industrial Relations Commission has resulted in two successful cases being conducted but that the ability of unions to run pay equity cases in the future has been impacted by Work Choices which has resulted in the spread of occupational groups across jurisdictions. The Inquiry queries the efficacy of conducting future cases in light of this given they are resource intensive and likely to have limited impact.

The Inquiry then considers whether it is possible for legislative reform to achieve equal remuneration for work of comparable value. The effect of the *Tristar Case* is examined and the view is reached that it may not cover the entire field leading to an examination of whether an amended form of equal remuneration order may be legislatively achievable. In particular, the option of amending the *Anti-Discrimination Act 1991* (Qld) to provide for such orders is canvassed. After considering the submissions that were made, especially that of the Anti-Discrimination Commission Queensland, the Inquiry concludes that the legislative intention and scheme of the Anti-Discrimination Act establishes a complaints based model which is not well suited for securing equal remuneration for work of comparable value.

Section 4 - Broader Impacts of Work Choices on Pay Equity

Section 4 considers the third Term of Reference which requires an examination of the current and future impact of Work Choices on pay equity, including its impact on industries, occupations as well as individuals. This section commences with a consideration of the broader impacts of Work Choices on pay equity and in so doing fleshes out some of the issues introduced in Section 1 - the loss of classification and remuneration structures; the consequences of the loss of collective wage setting and the role of the Australian Fair Pay Commission.

Classification and remuneration systems will be removed from awards and preserved in an Australian Pay and Classification Scale. Skills based career paths are not allowable award matters or a preserved award entitlement. The Australian Fair Pay Commission has not yet indicated whether their review of pay and classification structures will allow skills based classification structures to be preserved in some form. The Queensland Government submission highlights the importance for pay equity that such classifications be retained together with descriptors covering the full range of skills particularly in predominantly female industries and occupations.

A remedy to counteract the effect of the loss of classification and remuneration systems from awards is recommended for further exploration based on a proposal by the Australian Services Union Central and Southern Queensland Branch. The recommendation concerns the development of two types of advisory benchmarks which could be used to provide advice to employers and employees and for Queensland Government procurement and funding purposes. The first type are benchmarks based on pre-Work Choices awards. The second type would require equal remuneration cases conducted in the Queensland industrial Relations Commission for selected occupations. The Inquiry acknowledges that some legislative amendments would be required to allow such cases to proceed.

The consequences of the loss of collective wage setting and the shift to individual pay arrangements are then considered. The Inquiry notes that the gender pay gap was widening before the introduction of Work Choices but that the situation has been exacerbated by Work Choices. It is too early to tell whether the recent introduction of the fairness test for agreements will ameliorate the trend, however, it is anticipated it will have little effect because of the types of matters that are excluded from the application of the test.

The Inquiry considers whether the Australian Fair Pay Commission is the institution that is capable of ensuring pay equity is delivered. Its jurisdiction is examined and it is noted that the Australian Fair Pay Commission has a narrow economic focus and is not legislatively obliged to consider the fairness of its decisions in respect of the minimum wage. This stands in stark contrast to the jurisdiction of the Queensland Industrial Relations Commission, Australian Industrial Relations Commission and other State tribunals which have social justice as one of their principal objects. The Australian Fair Pay Commission has shown itself to be resistant to considering pay equity on other than direct discrimination grounds. With such a narrow focus the Inquiry concludes that the Australian Fair Pay Commission cannot be relied on to deliver pay equity.

Two other issues that are important for ensuring pay equity, family leave and paid maternity leave, are then considered.

The Inquiry examines the federal Government's claim that Work Choices provides additional flexibility to assist employees better balance their work and family responsibilities. This is considered particularly in the context of Work Choices curtailing the ability of the Australian Industrial Relations Commission to hear test cases on matters such as the recent *Family Provisions Test Case*. None of the gains under the *Family Provisions Test Case* are allowable award matters under Work Choices nor are they protected allowable award matters. Consequently, employees covered by awards which were amended to include the gains made under the *Family Provisions Test Case* before 27 March 2006 have no guarantee of having these provisions preserved under Work Choices agreements.

The Inquiry notes the amendments to the *Industrial Relations Act 1999* (Qld) which incorporated the entitlements of the *Family Provisions Test Case*, however, the difficulty in enforcing these conditions for employees of constitutional corporations is noted. The Inquiry recommends that as the origins of these provisions are in anti-discrimination law the *Anti-Discrimination Act 1991* (Qld) be amended to provide for the employee's right to request flexible work arrangements and for the employer to have a duty to consider them.

The Inquiry notes the submission of the Human Rights and Equal Opportunity Commission which comments on the importance of pay equity in the decisions working people make about care for family members. The Inquiry endorses the view that paid maternity leave is a necessary measure in the pursuit of pay equity as it has a positive effect on women's earnings over the life course.

- **Impact of Work Choices on industries, occupations and individuals**

The second part of the section then turns to a consideration of the impact of Work Choices on particular industries, occupations and individuals as highlighted by submissions, evidence and reports detailing women's experiences under Work Choices.

The community services sector is singled out for particular attention as it is particularly impacted by Work Choices. Whereas much of the sector has been covered by federal awards, the high number of non-constitutional employers means a shift of those organisations to State industrial relations coverage. However, the employees in this sector are predominantly women performing typical "women's work" with the consequence that they are low paid workers. No State award is yet in place.

As submissions by the Queensland Council of Social Service Inc and Queensland Chamber of Commerce and Industry identify, the pay inequity that is present in this sector as a result of undervaluation of work is exacerbated by the absence of enterprise bargaining in this sector. This means that the wages paid to employees in this sector are substantially less than their counterparts employed in the public sector. The Inquiry adapts a proposal made by the Australian Services Union Central and Southern Queensland Branch and makes a recommendation that the establishment of pay equity benchmarks be investigated by the Queensland Government as the basis for funding not-for-profit services and for purchasing outsourced services. This could include providing funding and technical support for the making of a new common rule award for the community sector that contains a classification and remuneration system which is properly valued in accordance with the Equal Remuneration Principle and which takes into account the inability of employees in the community sector to access enterprise bargaining.

Employees of non-constitutional corporations in the community sector would benefit directly from such an award and the award could be used by the Queensland Government as the basis for funding the community sector. The non-governmental organisations which are constitutional corporations would be obliged contractually, by these funding and procurement arrangements, to pay at least the equivalent of the new common rule award in addition to complying with any relevant federal industrial instrument.

In this section the Inquiry considers the case colloquially referred to as the Qantas Mums case where a complaint over changed working conditions for new mothers has been made to the Anti-Discrimination Commission Queensland. Conciliation failed and the complaint has been referred to the Anti-Discrimination Tribunal. Although the Inquiry does not involve itself in the merits of the dispute the delay in having the matter heard and determined is of concern. The matter is related to the Terms of Reference of the Inquiry as the dispute is not capable of resolution through the Australian Industrial Relations Commission and the work/family balance issues are a contributing factor to pay inequity. Accordingly, the Inquiry recommends that the *Anti-Discrimination Act 1991* (Qld) be amended to provide that the Queensland Industrial Relations Commission be granted jurisdiction under that Act to hear and determine complaints made in the area of work to the Anti-Discrimination Commission. This jurisdiction is to be shared with the Anti-Discrimination Tribunal. Complainants are to be given the right to elect to proceed to a hearing before the Queensland Industrial Relations Commission or the Anti-Discrimination Tribunal in the event conciliation in the Anti-Discrimination Commission fails. Where the complainant elects to proceed in the Queensland Industrial Relations Commission it would also have jurisdiction to conduct further conciliation.

As a result of an examination of the changed industrial relations landscape and the reports of the impact of Work Choices on particular segments of the labour market the section concludes that women are especially vulnerable in the new industrial relations system. The review of the impact of Work Choices on pay equity shows that there are no effective mechanisms for delivering pay equity - either through comparative wage justice such as work value cases or equal remuneration cases or through a system of minimum wage fixing which will limit the extension of low pay and the increase in wage dispersion.

Section 5 - Approaches to Advancing Pay Equity

Section 5 responds to the fourth Term of Reference which requires the Inquiry to consider models and policy and legislative options used in other Australian States and other countries in the pursuit of pay equity. The Inquiry identifies that three approaches to pay equity have

typically been taken ranging from a complaints based individual human rights model, to a system reliant on a centralised wage fixing to deliver pay equity outcomes, to much more positive, proactive approaches which place obligations on employers to eradicate gender wage differentials in their workplaces. The previous system of industrial relations that operated in Australia is considered to be a good example of the second approach and the model adopted in Quebec, Canada is a good example of the third approach and one on which a number of submissions commented.

Before turning to overseas examples, an examination is made of the policy initiatives implemented in Queensland and other States. Attention is paid to the work done in Victoria and the pay equity unit established by the Western Australian Government. That unit's role in educating employers, employees, unions and the community is highlighted together with the practical assistance provided to organisations in undertaking pay equity audits. The promotion of pay equity by the federal government agency, the Equal Opportunity for Women in the Workplace Agency, is mentioned. The Inquiry notes however that the work of this agency stands in stark contrast to the diminished value placed by the federal government through Work Choices on pay equity.

An international comparison is made of the type of pay equity initiatives taken. It is evident from this comparison that Australia lags well behind other OECD countries especially those with which it usually compares itself - the United Kingdom, France, Canada and New Zealand. Some time is devoted to a description of the initiatives taken in New Zealand and Quebec, Canada. New Zealand is examined in detail because it is a close neighbour whose industrial relations system has experienced a similar history to Australia's. Quebec is examined because it is widely considered as providing the most progressive approach to pay equity.

The section concludes that voluntary approaches to pay equity are limited in their delivery of outcomes. Although proactive legislation is not perfect the Quebec experience has been shown to have had a very positive impact and has resulted in the greatest number of female workers obtaining concrete recognition of a fundamental right without lengthy and costly litigation.

Section 6 - Advancing Pay Equity in Queensland

Section 6 of the Report requires the Inquiry to consider possible policy and legislative options for advancing pay equity in Queensland. Several recommendations are made in earlier sections dealing with policy and legislative changes that can be made by the Queensland Government. Although each of these recommendations is important the Inquiry considers that the Queensland Government is well placed to take bold steps to make a more positive contribution to pay equity. The establishment of this Inquiry is evidence of its willingness to tackle this complex issue in difficult circumstances.

The Inquiry identifies that the individual complaint method is not useful in tackling pay equity and the centralised method is no longer available. The issue then confronting the Inquiry is how to craft an outcome which satisfies the following:

- the limitations placed on the States in dealing with pay equity by Work Choices;
- is likely to provide outcomes for women employees;
- can provide benefits to employers in attracting and retaining employees and minimizing turnover of employees and providing other stakeholder satisfaction;
- does not conflict with enterprise bargaining; and
- is enforceable.

The key recommendation of the Inquiry is for the enactment of a stand alone Pay Equity Act which has as its objects the achievement of pay equity through the promotion of equal opportunity and the prevention of discrimination. The proposed Act takes some of its features from the Quebec *Pay Equity Act* but is designed to take account of its reported limitations and some uniquely local characteristics.

The proposed Act is intended to apply to all employers, whether engaged in the public or private sectors and whether they are constitutional corporations or not, which effectively employ 15 or more employees. The proposed Act contains provisions for the following:

- the development of pay equity plans;
- the establishment of pay equity committees with a predominance of women members;
- legally binding documentation of pay equity adjustments;
- the implementation of adjustments where pay inequity is found;
- mandatory reporting;
- dispute resolution; and
- sanctions for non-compliance.

The Inquiry recommends that such legislation be enacted as soon as practicable but its implementation in organisations be deferred for a period of 12 months to allow education and training of employers, employees and their unions to occur in advance of being required to implement the legislation.

The Inquiry recommends that the Minister for Transport, Trade, Employment and Industrial Relations be responsible for the Act. It is further recommended that a Pay Equity Commission be established as a public service office attached to the Department of Employment and Industrial Relations and the Pay Equity Commission have day to day responsibility for the administration of the Act. The Pay Equity Commission is to have an educative and information role as well as being the body to which reports are submitted. The Pay Equity Commission is to be charged with the responsibility to investigate and conciliate, where possible, complaints about the application of the Act.

Where those complaints can not be resolved the Inquiry recommends the establishment of a Pay Equity Tribunal, separate from any other tribunal. The Pay Equity Tribunal is to also have as one of its functions the ability to ensure the implementation of legally binding consent pay equity adjustments. The Tribunal does not have the capacity to make equal remuneration orders. Both the Pay Equity Commission and Tribunal have the capacity to impose sanctions where breaches are found. Initially, however, the focus is on educating and informing rather than the imposition of sanctions.

Evidence of compliance with the proposed Act will be necessary in order to participate in the State Purchasing scheme.

The Inquiry considers that pay equity is best addressed separately from enterprise bargaining to ensure that the issues involved are not subject to compromise, being overlooked or downplayed.

The section concludes that in the context of a dramatically changed industrial landscape, it is time to implement a different approach to further pay equity, one that takes account of the constraints in place and has the capacity to deliver constructive outcomes for all parties.

Conclusion

The Inquiry considers that its recommendations provide a suite of measures which, when implemented, will see Queensland remain at the forefront of delivering pay equity. The business benefits of implementing a formal process to deal with pay equity cannot be underestimated. In addition, the outcomes for women employees will ensure that not only will their work be appropriately remunerated but that they are acknowledged as equally productive and valuable employees making a positive contribution to the economy.

The Inquiry encourages the Queensland Government to adopt a leadership role to once again be at the forefront of advancing pay equity.

Recommendations

Section 1

RECOMMENDATION 1

That the Queensland Government, in collaboration with the other States, actively pursue means of supplementing current data sources with more detailed longitudinal survey data which would enable researchers to assess movements in and effects on gender pay equity.

Section 2

RECOMMENDATION 2

That s 9 of the *Industrial Relations Regulation 2000* be amended to require the affidavit to provide information about the reasons for and purpose of any provisions of the proposed agreement which provide for or result in differential treatment of different groups of employees.

RECOMMENDATION 3

That the program of funding provided by the Queensland Government be continued for industrial organisations that are engaged in equal remuneration cases.

Section 4

RECOMMENDATION 4

That the Queensland Government investigate the feasibility of advisory classification and remuneration benchmarks to provide advice to employees and employers and for Queensland Government procurement and funding purposes.

RECOMMENDATION 5

That the Queensland Government amend the *Anti-Discrimination Act 1991* (Qld) to provide employees with carer responsibilities the right to make a reasonable request for flexible work practices including part-time work, altered start and finish times, and telecommuting. Carer responsibilities should not be limited to care of children but should include care of other family members. The amendments should also provide:

- appropriate notice procedures;
- an employer obligation for reasonable decision-making;
- matters which must be considered by the employer;
- a requirement that the employer provide written reason for a refusal; and
- the capacity to have the Anti-Discrimination Commission Queensland or the Anti-Discrimination Tribunal determine complaints and consider whether the employer's response is reasonable or not.

RECOMMENDATION 6

That the Queensland Government actively investigate and support measures to establish pay equity benchmarks as the basis for funding the not-for-profit community sector and for purchasing outsourced services. Such measures could include providing funding and technical support for the making of a new common rule award for the community sector that contains a classification and remuneration system which is properly valued in accordance with the Equal Remuneration Principle and which takes into account the inability of employees in the community sector to access enterprise bargaining.

RECOMMENDATION 7

That the *Anti-Discrimination Act 1991* (Qld) be amended to provide that the Queensland Industrial Relations Commission be granted jurisdiction under that Act to hear and determine complaints made in the area of work to the Anti-

Discrimination Commission. This jurisdiction is to be shared with the Anti-Discrimination Tribunal.

Section 6

RECOMMENDATION 8

That the Queensland Government enact a Pay Equity Act which has as its principal object the achievement of pay equity by the promotion of equal opportunity and the prevention of discrimination.

RECOMMENDATION 9

That the Pay Equity Act apply to employers employing 15 or more employees, except in the community services sector where it shall not apply to organisations employing fewer than 30 employees.

RECOMMENDATION 10

That the Pay Equity Act contain the following provisions:

- **That pay equity plans be developed but this requirement is subject to the number of employees employed by an organisation.**
- **That pay equity committees be established in organisations employing more than 100 employees and that smaller organisations have the option of establishing such committees but should do so where it is reasonable and practicable or where the majority of female employees request its establishment.**
- **That unions be permitted to be represented on pay equity committees.**
- **That members of pay equity committees receive training.**

RECOMMENDATION 11

That the first 12 months after the date of assent of the Pay Equity Act be devoted to the establishment of the body charged with the administration of the Act, education of major stakeholders about the Act and the development of resources.

That the date of implementation of the provisions relating to the development of pay equity plans and other matters impacting on organisations be deferred for 12 months after the date of assent of the Pay Equity Act.

RECOMMENDATION 12

That the Pay Equity Act provide that organisations be required to report on compliance with the Act. In particular, annual reporting will be required on progress towards the development of a pay equity plan.

That organisations be required to report annually during the period that adjustments are being made and thereafter three yearly on the status of pay equity within the organisation.

RECOMMENDATION 13

That a Pay Equity Commission be established as a public service office attached to the Department of Employment and Industrial Relations.

RECOMMENDATION 14

That the head of the Pay Equity Office be the Pay Equity Commissioner with remuneration established at the level of the Senior Executive Service.

RECOMMENDATION 15

That the Pay Equity Commissioner be given the power under the Pay Equity Act to resolve disputes over the application of the Act.

RECOMMENDATION 16

That a Pay Equity Tribunal be established under the Pay Equity Act with its powers and functions specified in the Act.

RECOMMENDATION 17

That the State Purchasing Policy tender documents be amended to allow organisations seeking to be awarded a State Government contract the ability to indicate that they have complied with, or are exempt from, the Pay Equity Act.

Section 1

Pay Equity and Work Choices: An overview

1. Overview

This section of the report provides an overview and background to the issues under consideration as well as details of the conduct of the Inquiry. The discussion begins with a brief scene setting of the developments since the 2000/01 Inquiry and an outline of the establishment and conduct of the current Inquiry. This is followed by an overview, and update where appropriate, of the major issues with respect to pay equity. The discussion then turns to a brief background of the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices) and highlights the extent to which these developments represent a major turning point in the history of the regulatory framework for industrial relations in Australia. The section concludes that the existence and persistence of the gender pay gap requires further action and that Work Choices represents a significantly changed industrial environment in which to address the issue.

1.1 Developments since the 2000/01 Queensland Pay Equity Inquiry

In September 2000 the Minister for Employment, Training and Industrial Relations directed the Queensland Industrial Relations Commission (QIRC) to conduct an Inquiry into pay equity in Queensland. The Queensland Inquiry followed on from and built on the work of the New South Wales Pay Equity Inquiry conducted by Glynn J of the New South Wales Industrial Relations Commission (NSWIRC). While both Inquiries focussed on the historical undervaluation of the work undertaken by women, the Queensland Inquiry was also required to consider the adequacy of the existing legislation in addressing pay equity. These Inquiries were conducted in response to and in the context of a regulatory system in which industrial awards provided the primary form of regulation upon which enterprise based agreements could be added.

The industrial landscape in Australia has altered considerably with the introduction by the federal Government of the *Workplace Relations Amendment (Workchoices) Act 2005* to the *Workplace Relations Act 1996* (WRA) in March 2006. Although the Inquiry is aware that in May 2007 the federal government decided to stop using the name "Work Choices",¹ it has been continued to be used throughout this report for two reasons. First, the name Work Choices is contained in the Terms of Reference of this Inquiry and second, it is a name which is still widely used in the community.

The Work Choices reforms have widened the scope of the Commonwealth legislation to cover nearly all employees outside of the States' public services. Also, the amended WRA declares an intention to "apply to the exclusion of" a number of State and Territory laws including "a law that provides for orders in relation to equal remuneration for work of equal value". Therefore, the key reforms of the 2000/01 Pay Equity Inquiry will be lost to all but those employees covered by the State jurisdiction. In addition, under Work Choices, the award system has largely been abandoned, the individualisation of agreement making is strongly encouraged and a new body, the Australian Fair Pay Commission (AFPC), has been established to set the minimum wage. Together these developments impact significantly on

¹ <http://www.abc.net.au/news/stories/2007/05/17/1926007.htm> at 17 May 2007.

the pay equity initiatives introduced as a result of the 2000/01 Inquiry and on the industrial system to which those initiatives responded.

The final report, *Inquiry into the Impact of Work Choices on Queensland workplaces, employees and employers*², presented by a Full Bench of the QIRC to the Minister for State Development, Employment and Industrial Relations on 29 January 2007, makes particular reference to pay equity under Work Choices. At **4.6.5 Gender pay equity** of the report, the Inquiry recorded that it had "heard evidence and submissions from academics and organisations on the effect of Work Choices on gender pay equity". After considering the submissions that had been made on the issue the Inquiry said:

The Inquiry accepts that gender pay equity is an area that will require close monitoring under Work Choices.

A number of other reports and Inquiries into Work Choices echo these findings of concern in relation to the potential impact on pay equity. It is considered important that, at this stage, an evaluation of the impact of Work Choices is undertaken to determine the current position before the gains that have been achieved in advancing pay equity are whittled away or lost.

1.2 Conduct of the Inquiry

1.2.1 Establishment of the Inquiry

In March 2007, the (then) Minister for State Development, Employment and Industrial Relations, the Honourable John Mickel MP, directed the QIRC pursuant to s 265(3)(b) of the *Industrial Relations Act 1999* to hold an Inquiry to examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on pay equity in Queensland.

1.2.2 Terms of Reference

The Inquiry officially commenced on 26 March 2007 with the following Terms of Reference:

1. Examine the effectiveness of the outcomes of the previous Pay Equity Inquiry conducted by the Commission in 2000/01 in advancing pay equity.
2. Assess the impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* on the legislative measures addressing pay equity under the federal and State systems.
3. Examine the current and possible future impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity, including its impact on industries, occupations as well as individuals.
4. Consider alternative models and specific policy and legislative options used in other Australian States and other countries in pursuit of pay equity.
5. Recommend possible policy and legislative options for the Queensland Government to consider implementing in further progressing pay equity.

² The report can be found at http://www.qirc.qld.gov.au/inquiry/workchoices/final_report.htm.

1.2.3 Submissions to the Inquiry

A directions hearing was held on the 26 March 2007 to announce the formal commencement of the Inquiry, to advise the Terms of Reference of the Inquiry and to outline the intended conduct of the Inquiry including important dates. The statement issued by the Inquiry at that time is attached as Appendix 1.

Interested people and organisations were invited to make submissions to the Inquiry. In addition to the formal notification of the Inquiry, information about the establishment of the Inquiry and how to make submissions was also posted on the Commission website on the 26 March 2007. The website provided regular updated information on the progress of the Inquiry. Advertisements, advising of the Inquiry and how to respond, were placed in *The Courier Mail* and various regional newspapers on Saturday 31 March 2007. A copy of the advertisement is provided as Appendix 2.

A Discussion Paper to assist in the formulation of responses to the Inquiry was developed and released on 30 April 2007. The Discussion Paper considered issues raised by the Terms of Reference and posed a number of questions intended to stimulate debate about the issues. The Discussion Paper was posted to all industrial organisations, other organisations that regularly appear in the QIRC, Queensland Government departments, federal Government departments and agencies which the Inquiry considered had an interest in the matter, various academics with expertise in the field and to those persons and organisations who registered an interest in the Inquiry as a result of the advertisements. The Discussion Paper was also available via the QIRC website. The release of the Discussion Paper was notified in an advertisement placed in *The Courier Mail* and various regional newspapers on 28 April 2007. A copy of the advertisement is provided as Appendix 3.

In support of the Inquiry, the Department of Employment and Industrial Relations (DEIR) hosted a one day symposium on pay equity on Friday 1 June 2007. The symposium, *Beyond Just Pay*, included sessions on the implications of Work Choices for pay equity, pay equity initiatives in New Zealand, the importance of the minimum wage to pay equity, women's earnings over the life course and a case study of a pay equity audit in the finance sector. All those individuals and organisations who had expressed an interest in the Inquiry were invited to attend the symposium.

Written submissions were invited to be lodged by 14 June 2007, which was later extended by request to 21 June 2007. A list of the persons and organisations which provided written submissions to the Inquiry is included as Appendix 4. Following the receipt of the written submissions the Inquiry wrote to a number of individuals and organisations posing questions and seeking clarification about matters raised in their submissions.

Public hearings were scheduled for 27, 28 and 29 June 2007 and were rescheduled in line with the extended date for receipt of written submission to 10 and 11 July 2007. Evidence was heard on 10 July 2007 and oral submissions heard on 11 Jul 2007. Those organisations which appeared at the hearings are listed as Appendix 5.

In addition to the formal processes one of the research officers attached to the Inquiry participated in a number of informal meetings with women employees who were affected by Work Choices and the industrial parties to the two equal remuneration cases that had been conducted in the QIRC. The meetings with the industrial participants were particularly informative as views about the cases were able to be expressed honestly but confidentially. Although none of the information provided in any of the meetings was evidence, it was useful in gaining a better understanding of the issues and has helped to inform the Inquiry.

1.3 Brief Background to Pay Equity

The definition of and issues surrounding pay equity were canvassed extensively in the *Worth Valuing* report of the earlier Inquiry as it was a Term of Reference of that Inquiry to examine the extent of pay equity in Queensland. It is not the intention of this report to reproduce much of that information here. Rather the intention is to provide a summary of, and update where appropriate, the major issues with respect to pay equity.

1.3.1 Definition of pay equity

The Discussion Paper adopted the definition of pay equity as set out in Schedule 5 of the *Industrial Relations Act 1999* (IRA):

equal remuneration for men and women workers for work of equal or comparable worth.

Although no submissions took issue with this definition, it was clear that some took a much narrower view of pay equity. For that reason, it is worth revisiting some of the definitional issues with respect to pay equity.

The Human Rights and Equal Opportunity Commission (HREOC) submission to this Inquiry refers to their submission to the AFPC³ in which they provide greater detail of the issues surrounding pay equity. In that submission, HREOC describes pay equity as "simply the idea that men and women should receive the same pay, benefits and conditions for work of equal or comparable value".⁴ While a relatively simple idea, Redman and O'Connell⁵ point out that pay equity is "not simply about women being treated differently or being offered inferior terms and conditions of employment". The concept of pay equity is broader than that of equal pay for equal work. The concept of pay equity attempts to consider the wide range of issues underlying and contributing to the gender earnings gap including "entrenched historical practices, the invisibility of women's skills, the lack of a powerful presence in the industrial system, and the way that 'work' and how we value work is understood and interpreted within the industrial system".⁶ So, while as HREOC suggests pay equity is a relatively simple idea, it reflects a complex array of factors contributing to the gender earnings gap and pay inequity. These are discussed in more detail below.

1.3.2 Causes of pay inequity

The Queensland Government submission and the HREOC submission to the AFPC provide a comprehensive account of the factors contributing to pay inequity.⁷ A summary of that information is provided here.

A key component of pay inequity is the marked gender segregation of the Australian workforce with women clustered in low wage sectors of the workforce. Although changes have occurred in women's educational attainments and labour force participation, there has been little commensurate change in the overall level of gender segregation in the Australian labour market.⁸

³ HREOC 2006 Submission to the Australian Fair Pay Commission's national wage determination.

⁴ Ibid p 25.

⁵ Ronnit Redman and Karen O'Connell, 'Achieving Pay Equity Through Human Rights Law in Australia' (2000) 6(1) *Australian Journal of Human Rights* 107 at p 110.

⁶ Ibid p 3.

⁷ Queensland Government Submission pp 23-31 and HREOC submission to the AFPC pp 37-46.

⁸ HREOC Submission to the AFPC pp 39-40.

The industries with high female employment in Australia exhibit similar characteristics including: a high level of award only coverage; high levels of part-time work; low levels of unionisation and low levels of hourly earnings. These industries are accommodation, cafes and restaurants (58.3% women); cultural and recreational services (50.5% women); health and community services (78.6% women); personal and other services (47% women) and retail trade (51.4% women).⁹

Employment in these sectors also often requires the utilisation of what have been traditionally seen as female skills, eg, caring for people, communication skills and fine dexterity. These skills have been shown to have been systematically undervalued especially compared to the work predominantly performed by men. Such undervaluation and the means to address it were key considerations of the previous Inquiry.

In addition to segregation in the labour force, women tend to be concentrated in lower level classifications within organisations with fewer opportunities for training, skill development and promotion. The website of the federal Government's Equal Opportunity for Women in the Workplace Agency (EOWA), provides some relevant statistics showing that women comprise just 13% of generalist managers and 27% of specialist managers. Only 1% of Australia's Top 500 companies' CEO is female. In contrast, women represent approximately 89% of advanced clerical and services workers and 73% of all intermediate clerical and services workers.¹⁰ Equal access to opportunities in workplaces is critical to improved earnings outcomes for women.

Australian women continue to have the major responsibility for unpaid work in the home which has a significant impact on their earnings.¹¹ Typical employment patterns for mothers in the Australian workforce involve breaks out of the workforce for child bearing and rearing and significant periods in part-time and casual employment. These breaks and part-time patterns affect a woman's earnings, their access to training and promotion opportunities and the total level of earnings over their career. Regardless of the presence of children, women tend to take on the major responsibility for elder care and care of other family members which tends to affect their workforce participation in similar ways as for mothers.

The HREOC report, *It's About Time: Women, Men, work and family*, describes pay inequity as a major factor in determining the choices men and women make about who undertakes care within couple families. The report states that in order to allow real choices for men and women (in relation to paid and unpaid work), a greater effort is required to progress pay equity. In relation to this, paid maternity leave is seen as critical in creating greater decision making choice for both men and women.¹²

As indicated by the work patterns described above, women are concentrated in part-time and casual forms of employment. The Queensland Government submission stated that in 2002, 45% of female employees in Australia were working part-time (compared to 15% of males) and that 32% were working on a casual basis (compared to 24% of males).¹³ Part-time and casual jobs also tend to be concentrated in a limited range of occupations. For example, many intermediate clerical, sales and service workers are employed casually.¹⁴

The consequences of working part-time may result in fewer opportunities for skills development and advancement, underutilisation of skills, and a lower number of hours

⁹ HREOC Submission to the AFPC p 40.

¹⁰ http://www.eowa.gov.au/About_Equal_Opportunity/Key_Agenda_Items/Women_in_Decision_Making_Roles/Facts_On_Women_In_Management.asp.

¹¹ Ibid p 43.

¹² HREOC Submission pp 9-10.

¹³ Queensland Government Submission p 26.

¹⁴ HREOC Submission to the AFPC p 42.

worked than desired. The submissions of the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA)¹⁵ and the Queensland Teachers' Union of Employees (QTU)¹⁶ both point to the limited opportunities to access part-time promotional positions for their members with the result that life time earnings of women, who are most interested in these positions because of family responsibilities, suffer.

For those employed casually, these outcomes are exacerbated by limited access to paid leave entitlements. Although the casual loading in Queensland State awards is designed to compensate casuals for lack of access to such conditions as paid sick and annual leave, public holidays, bereavement leave and leave loading, casuals tend to be excluded from a range of other leave entitlements which may include carer's leave and maternity leave. Women's earnings are affected by their capacity to access maternity leave, paid sick leave for carer purposes and annual leave to manage their family responsibilities. In August 2006, 27% of employees had no leave entitlements and of these 53% were women and 63% were part-time.¹⁷

Also, despite the casual loading, both the Queensland Government and HREOC submissions to the AFPC present evidence of an earnings penalty for casual employment. They quote research by Wooden in 1999 which found a negative wage premium of around 6% (after controlling for a range of demographic and workplace characteristics) associated with casual employment.¹⁸

In terms of wage setting arrangements, women tend to be more reliant on awards to determine their wages. A 1992 study by HREOC demonstrated the marked difference in over-award payments with men being much more likely to have negotiated some form of over-award payment.¹⁹ The continued relevance of these trends is illustrated in 2006 Australian Bureau of Statistics (ABS) data showing men as more likely to receive non-leave employment benefits in their main job including goods and services, transport and shares.²⁰ The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers (RCEAQ) confirms the award reliance of workers in that field.²¹ Women's reliance on awards and lack of access to enterprise bargaining has been a particular constraint in terms of pay equity as bargaining at enterprise level has been a key manner in which increases in wages, above the award minima, have been achieved for workers since 1996.

Finally, as already suggested, gender inequity also affects women's life time earnings. Women, on the whole, experience a more varied participation in paid work over the life course. This is largely due to women's traditional role as "wife and mother". This varied participation, coupled with women's concentration in lower paid employment during their working lives, leads to low retirement incomes for many women. Thus, the same factors contributing to a gender earnings gap for working women can be seen to contribute to ongoing inequality in retirement incomes. A report on women and Australia's retirement income system by the Women's Economic Policy Analysis Unit suggests that the "maximum labour force attachment model underpinning this retirement income system is gender biased and disadvantages women in respect of retirement income".²² The report also suggests that paid maternity leave enhances gross lifetime earnings (and contributes to superannuation

¹⁵ SDA Submission p 9.

¹⁶ QTU Submission (Appendix 4 to QCU Submission) p 68.

¹⁷ ABS 6310.0 August 2006.

¹⁸ Queensland Government Submission p 26.

¹⁹ Ibid p 41.

²⁰ Ibid p 41.

²¹ RCEAQ Submission p 3.

²² Siobhan Austen, Therese Jefferson and Alison Preston, *Women and Australia's Retirement Income System*, Women's Economic Policy Analysis Unit, Curtin University of Technology, 2002.

accumulation). The *It's About Time* report also expressed concerns in relation to women's retirement incomes and quotes alarming figures that show that half of all women aged 45-60 have \$8000 or less superannuation, while 70% have \$25,000 or less.²³ As retirees in the future come to depend increasingly on retirement benefits received as a result of work related contributions over a long period, the disparity between men's and women's outcomes in old age is expected to worsen.

This overview shows that many factors contribute to the existence and persistence of pay inequity. The first Inquiry was required to focus on particular outcomes which might have an industrial effect, however, as *Worth Valuing* identified, and as has been identified here, the causes go beyond those to which industrial responses alone can cure. The Terms of Reference of this Inquiry allow broader policy and legislative responses to be considered so that the causes of pay inequity can be addressed more comprehensively and holistically.

1.3.3 The importance of pay equity

The importance of pay equity arises from a rights perspective as well as from an economic perspective. From a rights perspective, Redman and O'Connell²⁴ contend that "equality is the essence of human rights". In this light, submissions point to Australia's international obligations in respect of pay equity.²⁵ Both the HREOC and Queensland Government submissions highlight that one of the principal objects of the WRA is to assist " ... in giving effect to Australia's international obligations in relation to labour standards"²⁶ including:

- International Labour Organisation (ILO) Convention concerning discrimination in respect of employment and occupation (ILO 111);
- ILO Equal Remuneration Convention (ILO 100); and
- The United Nations Convention on the Elimination of all Forms of Discrimination against Women.²⁷

These Conventions recognise that gender pay equity is fundamental to substantive gender equality, both for individuals and for society as a whole.

From an economic perspective, pay equity is also considered important in terms of labour market participation and productivity. As HREOC notes, "[T]he workforce participation rate of Australian women, and mothers in particular, is low by international standards".²⁸ Concerns with an aging population, projected declines in labour force growth and a growing skill shortage in Australia, provide an imperative to maximise the participation of women in the labour force.²⁹

In addition, pay equity is seen to be associated with greater labour force productivity in response to perceptions of improved equity and in response to more employee focussed workplace flexibility.³⁰ From a business case perspective, pay equity is seen as providing organisations with a competitive advantage in attracting and retaining a skilled and more productive workforce. The ILO accepts the business case and argues that equity enhances the capacity of business to attract a broader range of quality employees in a competitive job market, reduces staff turnover, results in less absenteeism and lateness, enhances staff performance and motivation and improves productivity, providing a competitive edge and

²³ Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family*, 2007, p 41.

²⁴ Ibid p 3.

²⁵ see Queensland Government Submission pp 20-21, HREOC Submission p 7 and ADCQ Submission pp 1-2.

²⁶ HREOC Submission p 6.

²⁷ HREOC Submission p 7 and Queensland Government Submission pp 20-21.

²⁸ HREOC Submission to the AFPC p 26.

²⁹ Queensland Government Submission p 21.

³⁰ Ibid p 22.

innovation contributing to improved effectiveness.³¹ EOWA emphasises the business advantages of equity for women and lists the benefits of equal employment opportunity workplace programs to include enhanced attraction and retention of the best talent, increased productivity and innovation, enhanced management style, gains in the number of female customers and reduction in the risk of discrimination and harassment law suits.³²

The imperative for addressing and advancing pay equity then, comes from two equally persuasive views: the rights perspective which highlights the importance of pay equity in achieving substantive gender equality and an economic perspective which highlights the importance of fair treatment in maximising the workforce participation of women both in terms of the time engaged in paid labour and the utilisation of skills in improving productivity.

1.3.4 The gender earnings gap

The gender earnings gap is commonly considered the key indicator of pay (in)equity. It refers to the difference between the earnings of men and women and is generally expressed as a percentage. Calculating the gender earnings gap can be undertaken using a variety of measures.³³ Debates about the most appropriate measure to use tend to be concerned with issues such as whether hourly or weekly earnings should be used, whether to include part-time workers or focus on full-time employees, and whether average or total earnings are more appropriate. These concerns reflect the differing participation patterns of men and women in the labour market and the extent to which the gender earnings gap is measuring differences in pay and/or differences in participation patterns.

The report of the earlier Inquiry into Pay Equity in Queensland found, using a variety of measures, that a gender pay gap was evident in Queensland and that it was between 11% and 17% depending on the measure used. The report concluded that the precise size of the gap was less important than the evidence of the existence and persistence of that gap. It was also found that women appeared to be faring less well than men in the move to enterprise bargaining.³⁴

The Queensland Government submission to this Inquiry provided a review of the gender pay gap in Queensland. Their analysis showed that the gender earnings gap has remained relatively static since the early 1980s³⁵ and reflected the findings of the earlier Inquiry in terms of the existence and persistence of pay inequity in Queensland.

In terms of the official national statistics, the ABS published information on the gender pay gap in the 2005 issue of Australian Social Trends.³⁶ That analysis showed a slight widening of the gender pay gap between 1994 and 2004 with the ratio of female to male average hourly ordinary-time earnings among full-time adult non-managerial employees at 0.92. In other words, female earnings were 92% of male earnings, resulting in a gender wage gap of 8%.³⁷ It is important to note here that the report makes clear that the article focused on average hourly ordinary-time earnings (derived from data collected in the ABS Survey of Employee Earnings and Hours) in order to examine the issue of equal pay for work of equal value. Arguably average hourly total earnings would have provided a more accurate measure of pay inequity rather than just unequal pay. For example, the Organisation for Economic Co-Operation and Development Employment Outlook uses median earnings to

³¹ Strachan and French Submission p 34.

³² http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/About_Equal_Opportunity/Why_EO_Makes_Business_Sense.asp.

³³ Queensland Government Submission p 33.

³⁴ *Worth Valuing* pp 50-51.

³⁵ Queensland Government Submission pp 33-37.

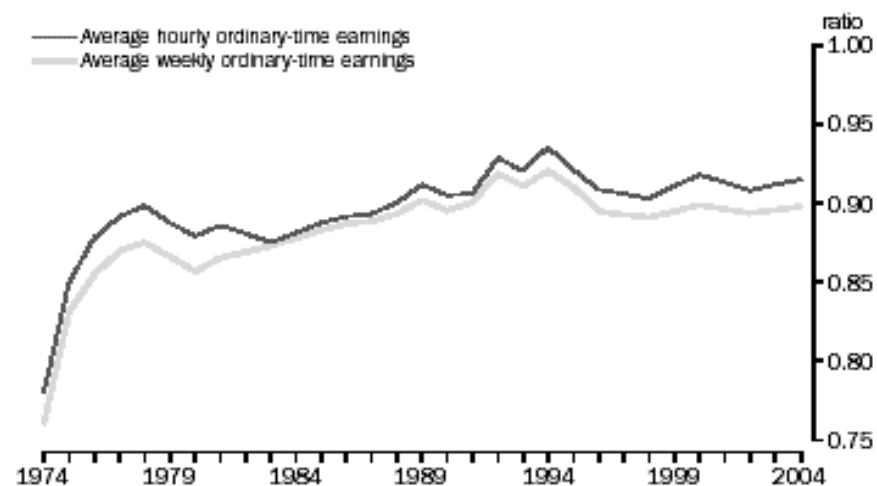
³⁶ ABS 2005 Australian Social Trends 4102.0.

³⁷ *Ibid* p 150.

calculate a ratio of female to male earnings of 0.84 indicating a gender pay gap of 16% in 2005.³⁸

The more important picture to emerge from the ABS publication, however, is again the persistence of the gender pay gap in Australia. The analysis shows that the gender wage gap narrowed markedly between 1974 (0.78) and 1978 (0.90) following a series of decisions on specific awards which flowed from a 1972 decision granting equal pay for equal work. A further but less pronounced narrowing of the pay gap occurred between 1983 (0.88) and 1994 (0.94) but with a slight widening of the gap over the last decade.³⁹ This is graphically illustrated in the figure below:

Figure 1: Female/male earnings ratio among full-time adult non-managerial employees - May 1974 to May 2004(a)



(a) Data points have been interpolated for years when the survey was not conducted. Data for years prior to 1983 are not strictly comparable with data for subsequent years because of changes introduced in the 1983 survey to the sampling frame and the definitions of 'full-time' and 'adult'.

Source: *Employee Earnings and Hours, Australia* (ABS cat. no. 6306.0).

Concerns exist currently as to the ability to adequately track data on the movement of wages and the gender pay gap in the changed regulatory environment. These concerns are addressed by the *Women Employment Status Key Indicators* (WESKI) report which was prepared by the Women in Social and Economic Research (WiSER) at the Curtin University of Technology. The report examined the capacity of existing data collections to allow the ongoing monitoring of women's wages and other employment related conditions under the new regulatory framework. The key finding of the report was that as labour market regulatory systems change, the types of data and information that will provide adequate monitoring also changes. The report found that as current data collections were not designed with the new regulatory framework in mind, they were unlikely to provide sufficient insight into the effects of new regulations on specific workforce sectors. It was considered that the development of an adequate data base from which to monitor labour market trends would require extensions and modifications to existing data collections, methods and analyses.

These concerns were also taken up in the submission to this Inquiry from Associate Professor Gillian Whitehouse. Whitehouse recommends that aggregate level tracking of the

³⁸ OECD 2007 Employment Outlook p 268.

³⁹ ABS 2005 Australian Social Trends 4102.0 pp150-151.

gender pay gap through ABS cross sectional surveys be supplemented with more detailed longitudinal data. This would enable researchers to assess the effects on individuals over time and gain a deeper understanding of influences on gender pay inequity as men and women move between employers, jobs and industrial arrangements and respond to family needs. The utility of this data could then be maximised by linking it with information collected from businesses in the Queensland Workplace Industrial Relations Survey and similar surveys conducted in other States.

The Australian Industry Group (AIG) opposed the proposal that the Queensland Government should develop a longitudinal study tracking wages and conditions on the basis this was a function best performed at a national level given the move towards a national system of industrial relations.⁴⁰ However, the Inquiry notes that many of the submissions supported a proposal to engage in longitudinal data collection and analysis.⁴¹

The data shows a persistent gender pay gap regardless of the measure used. The value of the data collections that have been used to date to track the gender pay gap over time is now called into question given the profound nature of the current changes to the regulatory environment in Australia. It is vital that data is available which will allow adequate monitoring of pay equity into the future.

RECOMMENDATION 1

That the Queensland Government, in collaboration with the other States, actively pursue means of supplementing current data sources with more detailed longitudinal survey data which would enable researchers to assess movements in and effects on gender pay equity.

1.4 Brief Background to Work Choices

Work Choices represents a major turning point in the history of the regulatory framework for industrial relations in Australia over the past century. Until Work Choices the regulatory framework evolved gradually, both in terms of the constitutional underpinning of the Commonwealth legislation and in the wage setting mechanisms provided by that legislation.

1.4.1 Constitutional developments

Under the Australian Constitution, the Commonwealth Parliament has no general power to make laws about employment conditions or industrial relations. The only head of power that explicitly addresses such matters is found in s 51(35). This provision authorises Parliament to legislate with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State". This section was included to deal with the possibility of disputes occurring on a scale that crossed State boundaries and which accordingly each State might struggle on its own to control.

Historically, s 51(35) was the predominant source of validity for the statute which ruled industrial relations at the Commonwealth level for most of the twentieth century, the *Conciliation and Arbitration Act 1904*. That Act survived (with numerous amendments, both

⁴⁰ AIG Submission p 6.

⁴¹ See AMACSU Submission p 23; QCU Submission p 29, QSU Submission (Appendix 3 to QCU Submission) p 64; HREOC Submission p 9.

substantive and technical) until the *Industrial Relations Act 1988* was enacted. Initially the 1988 Act also relied almost exclusively on the conciliation and arbitration power.

From the mid-1990s, however, there was an increasing reliance on other constitutional heads of power. First the *Industrial Relations Reform Act 1993* inserted provisions reliant on the external affairs power and the corporations power. Later the WRA reduced the reliance on the external affairs power while making increased use of the corporations power to support new approaches to the regulation of industrial relations.

The federal workplace relations landscape changed dramatically with the enactment of Work Choices by the Howard Government. The conciliation and arbitration head of power has been abandoned, except for the purpose of certain transitional provisions, and other powers now underpin the federal Act, particularly the corporations power (s 51(20) of the Constitution). Instead of being triggered by the occurrence or threat of an interstate dispute, federal regulation now applies to certain types of employers. In particular, the corporations power is used so as to cover all trading, financial and overseas corporations which are collectively referred to as "constitutional corporations".

Not only was the scope of the Commonwealth legislation expanded to cover nearly all employers outside the States' public services, but one of the key planks of the Work Choices reforms that took effect on 27 March 2006 is to prevent most (but not all) State and Territory employment laws from applying to federal system employers.

Section 16 of the amended WRA declares an intention that the Act is to "apply to the exclusion of" a range of State or Territory laws that are described therein.

This restraint on the capacity of the States to legislate with respect to industrial relations provoked a High Court challenge by the State Governments to the constitutional validity of Work Choices.

The challenge by the States failed. By a 5-2 majority decision released on 14 November 2006, the High Court upheld all of the Work Choices amendments to the WRA.⁴² The majority of the High Court rejected the Plaintiffs' argument that there should be a distinction between laws that regulate the internal and external relationships of constitutional corporations. The majority stated that such distinctions were "inappropriate and unhelpful". The majority held that a law which prescribed norms regulating the relationship between constitutional corporations and their employees are laws with respect to constitutional corporations.

Part of the States' challenge was to the Commonwealth's power to exclude certain State and Territory industrial laws. The majority found that the exclusion of the laws was only in relation to current and future constitutional corporations and did not go beyond the power provided under s 51(20).

The validity of Work Choices has meant that the jurisdiction that has regulated the wages and employment condition for many employees has altered. In Queensland, prior to the introduction of Work Choices approximately 72% of employees came within the State jurisdiction. Now, this figure is approximately 38%.⁴³ Those who remain in the State system are employed in the public service, by sole traders, partnerships or unincorporated associations.

⁴² [2006] HCA 52.

⁴³ Department of Industrial Relations, *The Coverage and Characteristics of the State jurisdiction under a new Industrial Relations System*, (Draft), 15 March 2006, pp 6, 9.

The change in jurisdiction means a markedly changed industrial regulatory system for those workers in the federal system. The following discussion picks up on just three aspects of these changes which are considered to have particular implications for pay equity - wage setting developments, the demise of awards and the establishment of the AFPC - and also overviews the changes as a result of the introduction of the fairness test.

1.4.2 Wage setting developments

The evolution of the constitutional underpinning of industrial relations regulation facilitated a change in the way in which wages and other employment conditions are set moving from the centralised wage fixing of the early 20th century to the predominance of individual contracts a century later.

The *Conciliation and Arbitration Act 1904* established a Court of Conciliation and Arbitration to deal with "interstate" industrial disputes. The Court was empowered to summon the parties to conciliation conferences in order to encourage a negotiated resolution. If this could not be achieved, the Court could hear arguments from the parties and then resolve the matters in dispute by arbitration. Its decisions would take effect as "awards", legally binding instruments enforceable under the Act.

Trade unions saw the value of having common conditions across an industry or sector and began to deliberately manufacture interstate disputes. In practice, most disputes were resolved by negotiation, with the settlement framed as a "consent award" or (less commonly) registered as an agreement with the same effect as an award. But the Court did arbitrate where it had to, and its power to do so acted as a strong incentive for parties to negotiate settlements.

This process resulted in a network of federal awards that stipulated minimum wages and certain other working conditions across a range of industries and occupations or, sometimes, for a specific employer. Once an award was established, unions would periodically seek improvements or additions.

A key feature of this system was the practice of having "national wage cases" and "test cases" on key conditions such as parental leave. These involved an application by one or more unions to seek enhancements in specified awards, which would be used as a test case for all other federal awards. The application would be contested by employer representatives, while both the federal and State governments were permitted to present evidence and make submissions to the Court of Conciliation and Arbitration (which eventually became the Australian Industrial Relations Commission). Test cases were usually lengthy proceedings with extensive evidence presented by the parties to the tribunal. Once the tribunal had handed down its decision, unions then made applications to "flow-on" to other awards whatever improvements had been granted in the test case.

Despite the regulation of minimum conditions by awards, unions operating within the federal system could and did continue to negotiate with individual employers about matters that were specific to their workplaces, which might include "over-award" payments for certain workers.

Prior to the 1990s these agreements were generally informal in nature, having legal effect as common law contracts. However the 1993 amendments by the Keating Government to the *Industrial Relations Act 1988*, which had replaced the 1904 Act, encouraged parties to formalise their arrangements and present them to the Australian Industrial Relations Commission (AIRC) for certification. A certified agreement would override any award that would otherwise apply. When the Howard Government amended the 1988 Act and renamed

it the *Workplace Relations Act 1996*, it also introduced the option of registering Australian Workplace Agreements (AWAs) between employers and individual employees.

One effect of the 1996 reforms was to change the role of awards. Rather than being the primary form of regulation within the federal system, these now operated as a default set of minimum conditions, especially for those not covered by any certified collective agreement or AWA. A limit was placed on the number and type of matters allowed to be covered by an award. The AIRC was also encouraged not to arbitrate disputes over matters that might be resolved by enterprise bargaining. However awards continued to be significant because of the no disadvantage test which meant that certified agreements and AWAs had to deliver terms and conditions of employment that overall were no less favourable than those in the relevant award.

By early in the twentieth century each State also had its own system for resolving industrial disputes and making awards. These systems continued despite the expanding federal arbitration system. Not all unions were willing or prepared to manufacture the interstate disputes that would lay the groundwork for a group of workers to be covered by a federal award. They were content instead to rely on State award coverage and take any disputes to a State tribunal. Some unions sought federal awards for some of their members but not others, or in some States but not all.

By 1990 more Australian workers were covered by State awards than by federal awards. The pattern of coverage was haphazard. Some industries or occupations were more or less entirely covered by federal awards, others by State awards but often there was a mix of both. Because many of the more important awards were occupationally-based, it was common for larger employers to be bound by different awards for different types of employee. These might be all federal, all State, or sometimes a combination of the two.

During the 1990s each of the States, with the exception of Victoria (which referred its powers to the Commonwealth), reformed their arbitration systems in much the same way as the Commonwealth. In each case parties were encouraged to register enterprise-level agreements, though in practice awards continued to be the primary form of regulation for many smaller employers, especially in industries such as retail and hospitality.

Aside from retaining their own industrial tribunals and award systems, the States also engaged in various forms of direct statutory regulation of employment conditions. The most significant of these were workers' compensation and workplace health and safety statutes. The States also legislated on matters such as training, discrimination and various forms of leave entitlements. These statutes typically applied to all employees (and sometimes contractors as well), whether covered by an award or not.

Where State legislation was inconsistent with a federal award (or in more recent years a federally registered agreement), the federal instrument prevailed. Depending on the industry or location in which an employer operated, or the types of worker they engaged, the employer might be subject to one or more federal awards or State awards, or a mixture of the two. They would also have some workers (especially in management) who would be award-free. They might or might not be party to one or more registered agreements under either federal or State law.

All private sector employers were generally subject to State or Territory legislation on matters such as workers compensation and workplace health and safety, even for workers covered by federal awards and agreements. Award-free employees, and even sometimes those covered by federal awards, also had certain leave entitlements set by State or Territory legislation.

The Work Choices legislation radically revises the way employment conditions are set in Australia. Work Choices encourages the negotiation of agreements directly between employers and employees, with only limited intervention by third parties such as unions or the AIRC.

Workplace agreements are not subject to AIRC scrutiny and are operative upon lodgement with the Workplace Authority. The no disadvantage test which was used to assess the fairness of agreement conditions against the relevant award as a whole was abolished.

The AIRC's dispute resolution powers are limited to the provision of voluntary services, with the power to make binding workplace determinations confined to extreme cases. The traditional role of the AIRC is further reduced with the minimum wage set by a new body called the AFPC.

1.4.3 The demise of awards

Prior to Work Choices the extensive coverage of the award system ensured wage adjustments awarded through a range of processes. Decisions from national wage cases, work value cases, minimum rates adjustment processes and test cases could be flowed through to many classifications within the award system. Under Work Choices, classification and remuneration systems (CRS) are removed from awards which have been determined by the AIRC. The pay scale from each award and sufficient information about the classifications which explain the pay scale, will be preserved in an Australian Pay and Condition Standard (APCS). The AFPC can vary APCSs and eventually (after award rationalisation) will make new ones.

With the exclusion of classification and remuneration systems from awards the ability to flow through decisions from one sector to another is now significantly constrained. Historically women in Australia benefited from the highly centralised system of wage fixing and the associated principles and decisions of the AIRC. The loss of detailed classification systems in awards poses very real practical problems for pay equity. It remains unclear what alternatives to the *Metals Industry Award* classification structure can be used to benchmark the value of work in other industries and callings.⁴⁴

The elimination of the CRS from awards and the transfer of wage setting functions from the AIRC to the AFPC significantly weaken the avenues through which employees or groups of employees might previously have prosecuted pay equity. The WiSER submission asserts that responsibility now rests with the AFPC to ensure, and provide for, a fair and equitable wage structure.⁴⁵

1.4.4 The Australian Fair Pay Commission

Work Choices establishes a new body, the AFPC, to determine the terms of the APCSs and to determine and adjust the Federal Minimum Wage (FMW). Unlike the pre-reform requirements for the AIRC, consideration of "fairness" is not one of the wage setting parameters for the AFPC. The wage setting parameters set by s 23 are:

- the capacity for the unemployed and low paid to obtain and remain in employment;
- employment and competitiveness across the economy;
- providing a safety net for the low paid; and

⁴⁴ Tricia Rooney and Gillian Whitehouse, 'Recent Child Care Worker Pay Cases in Australia: Implications for Pay Equity under "WorkChoices"' (Paper presented at *Our Work Our Lives: National Women and IR Conference* Brisbane, 12-14 July 2006).

⁴⁵ WiSER 2007 Submission to the Australian Fair Pay Commission p 5.

- providing minimum wages for junior employees, trainees and employees with disabilities that ensure those employees are competitive in the market.

Under s 222(1)(a), the AFPC is to apply the principle that men and women should receive equal remuneration for work of equal value when it sets wages in an APCS or the FMW.

Under s 24 the AFPC has full discretion as to the timing and frequency of wage reviews, the scope of wage reviews, the manner in which they will be conducted and when the decisions come into effect. In making its first minimum wage determination in October 2006 the AFPC adopted an approach involving the calling of submissions; consultation with stakeholders and the public and commissioning of research. In its most recent decision the approach appears to be more limited. The AFPC sought views through submissions and focus groups and drew on available data and academic literature.⁴⁶

This process contrasts sharply with AIRC processes for safety net adjustments, test cases and award variations. These matters were heard upon application by an industrial party. The process was a public hearing and submissions of all parties and interveners were tested, scrutinised and subjected to further response from other parties. Whilst the AIRC is not bound rigidly by judicial rules of evidence, its evidentiary procedures and decision making were closer to judicial than legislative or administrative in character. By contrast the AFPC informs itself as it pleases and its decisions are legislative in nature.

1.4.5 The fairness test

From 1 July 2007, the WRA was amended by the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* to introduce a fairness test to be applied to all agreements lodged on or after 7 May 2007. The amendments also created the Workplace Authority to replace the Office of the Employment Advocate and to administer the test and the Workplace Ombudsman to replace the Office of Workplace Services.

The fairness test is intended to reassure people that there are measures to ensure that an agreement under Work Choices provides fair compensation (including non-monetary) for any removal or modification of protected allowable award conditions. The *Fairness Test Policy Guide* issued by the Workplace Authority on 25 July 2007 sets out the processes to be used when applying the fairness test. The fairness test is to be applied by the Workplace Authority Director (WAD), although in practice it is applied by staff of the Authority.

Although stated as applying to all agreements, there are a number of exclusions from the fairness test. In addition to the test excluding agreements lodged prior to 7 May 2007, the fairness test will also exclude employees on AWAs who earn more than \$75,000 per year and employees in industries or occupations not usually regulated by an award. (The reference to an award includes reference to a State award prior to 27 March 2006). The former no disadvantage test applied by the AIRC or QIRC to collective agreements applied to all employees with reference to the relevant award or a designated award.

Also, the test applies only to protected allowable award matters which are:

- rest breaks;
- incentive payments and bonuses;
- annual leave loadings;
- observance of, payment for and substitution of public holidays;
- allowances (skills, reimbursement and disability);

⁴⁶ Australian Fair Pay Commission, *Wage-Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007.

- overtime loadings;
- shift loadings; and
- penalty rates.

Several important award conditions are not protected and may be lost without compensation in return, for example:

- redundancy pay;
- limitations on rostering such as shift length or working more than one shift per day; and
- casual loadings that exceed 20%. (The standard shift loading in Queensland State awards is 23%).

For employees employed under an AWA the fairness test will be met if the WAD is satisfied that the AWA provides fair compensation to the AWA employee in lieu of the exclusion or modification of some or all protected conditions.⁴⁷ The Policy Guide sets out that the fairness test in respect of a collective agreement will be met if the WAD is satisfied that, on balance, the collective agreement provides fair compensation in its overall effect on employees in lieu of the exclusion or modification of some or all protected conditions.⁴⁸ The WAD must consider the agreement as in force immediately after lodgement.

There are a number of issues that would appear to make administration of the fairness test problematic. First, fair compensation is not defined in the amendments which merely list what must be considered and also what may be considered in making an assessment. The Policy Guide attempts to provide an explanation and states that:

The Fairness Test is a comparison between the value of the protected conditions removed or modified and the compensation in the agreement for such removal or modification based on the work obligations/working patterns of the employee(s).

The Fairness Test is a global test in that the compensation in the agreement as whole (sic) is compared to the value of the excluded/modified protected conditions (based on the work obligations/working patterns of the employee or employees) together with the Standard, to determine whether the agreement provides fair compensation in lieu of the protected conditions excluded or modified.⁴⁹

Non-monetary compensation is also not adequately defined and the reference to significant value to the employee does not assist. Although the Policy Guide states that "it is necessary for the assessors to establish whether or not a non-monetary benefit is of significant value to the employee",⁵⁰ no guidance is provided as to how to assess the significance of the benefit and of course, the significance of the value may differ between employees.

Also, there is a lack of transparency in the application of the fairness test. The test is applied administratively and consequently, there will be difficulties in ensuring consistency in administrative decision making. To administer the test, staffing of the Workplace Authority will be increased from the current level of around 250 staff to more than 750. Training for these staff will be required. No public reporting requirements are specified so that the impact of lost conditions can be measured and analysed, however, the WAD has recently

⁴⁷ Workplace Authority, *Fairness Test Policy Guide*, 25 July 2007, p 18.

⁴⁸ Ibid.

⁴⁹ Ibid p 20.

⁵⁰ Ibid p 25.

announced⁵¹ that from September 2007 information will be published monthly, including data about the number of agreements lodged, the number that passed the test, the numbers that required variations or undertakings, and those that passed the test subsequent to the variations or undertakings. State based data will also be provided as well as information relating to certified agreements.

There is no process for appeal, although under certain circumstances the Policy Guide states that the WAD may elect to exercise discretion to reconsider a fairness test assessment. It is noted that recently doubt has been cast on whether this can be done.⁵²

The process in place to assess agreements by the Workplace Authority is in marked contrast to the application of the former no disadvantage test which was applied by the AIRC or QIRC in open hearings to collective agreements and with decisions subject to appeal.

The exclusions to the fairness test, its limitation to allowable matters, lack of clarity, subjectivity of application and administrative weaknesses make it seem likely that the fairness test will have little practical effect on the current situation with respect to agreements under Work Choices.

1.5 Summary and Conclusion

This section of the report has provided an overview of and background to the issues under consideration in this Inquiry. The discussion of pay equity highlighted the importance of accurately defining pay equity, the causes of pay equity and the importance of pay equity both in terms of the contribution of equity to participation and productivity in the workforce and in terms of its contribution to substantive equality for women in our society. The discussion also canvassed the background to the Work Choices amendments to industrial regulation in this country highlighting the fundamental nature of those changes to a system which had evolved over a century. Key aspects of those changes which were considered likely to impact on pay equity were also discussed. Finally, the main changes to Work Choices as a result of the introduction of the fairness test were also considered.

This section has shown that the industrial environment has significantly altered as a consequence of the introduction of Work Choices. The former system which focused on awards largely benefited women and assisted in the moderating the gender pay gap. In contrast the new system, with its focus on individual pay setting and a deficient mechanism for testing whether employees are disadvantaged by their agreements, is likely to contribute to a widening of the gender pay gap.

⁵¹ Thomson, *Workforce Daily*, <http://services.thomson.com.au/login.asp?Referer=default.asp?svc=Workforce> at Thursday 23 August 2007.

⁵² Professor Andrew Stewart, quoted in Thomson, *Workforce Daily*, <http://services.thomson.com.au/login.asp?Referer=default.asp?svc=Workforce> at 17 August 2007.

Section 2

Worth Valuing: An assessment of outcomes

2. Overview

The first Term of Reference of the current Inquiry requires examination of the effectiveness of the outcomes of the previous Pay Equity Inquiry conducted in 2000/01 in advancing pay equity. The discussion begins with an overview of the previous Inquiry and a summary of the major findings and recommendations. The 20 recommendations of the Inquiry are categorised into three main outcomes: the adoption of the Equal Remuneration Principle, other legislative measures, and the provision of funding to allow parties to conduct or respond to pay equity cases in the QIRC. Each of these three areas is discussed in turn, in light of submissions received. The section concludes that the processes adopted as a result of the first Inquiry's recommendations were important to progressing pay equity in Queensland.

2.1 The 2000/01 Inquiry

In September 2000, the Minister for Employment, Training and Industrial Relations directed the QIRC to conduct an inquiry into pay equity in Queensland. The Terms of Reference for that Inquiry were to consider:

1. The extent of pay equity in Queensland. In doing so the Commission is not required to examine all industries and occupations, but is to include an examination of the findings of the New South Wales Inquiry into pay equity and their relevance to Queensland. The examination is to consider:
 - whether the relevant Queensland and New South Wales legislation differs and the extent to which any such differences may impact on pay inequity in Queensland; and
 - the relevance of the case studies into the undervaluation of women's work examined as part of the New South Wales Inquiry for Queensland.
2. The adequacy of the current Queensland legislation for achieving pay equity.
3. The New South Wales Equal Remuneration and Other Conditions principle and the Tasmanian Pay Equity principle and their relevance for a pay equity principle for Queensland. The Commission is to prepare a draft principle which may be adopted in Queensland.

The Terms of Reference clearly focussed the Inquiry on reforms within the context of the industrial relations system in which awards and collective agreements played a central role and required specific recommendations with respect to a pay equity principle. The Inquiry received a broad range of submissions from trade unions, the Queensland Working Women's Service (QWWS), several academics and the Department of Employment, Training and Industrial Relations. In addition to the written submissions, the Inquiry conducted a case study in respect of dental assistants employed in both the public and private sectors. The case study was particularly useful in providing an opportunity to "unpack" the nature of the work, skills and responsibilities required and to examine the conditions under which work is

performed. The findings of the case study directly contributed to the development of a draft pay equity principle.

2.2 Summary of major findings and recommendations

The QIRC provided its report, *Worth Valuing*, to the Minister for Employment, Training and Industrial Relations on 30 March 2001. The Inquiry found that the gender pay gap - the difference between the average men's and women's pay - was between 11% and 17% depending on the measure used for calculation.¹ The Inquiry further found that investigating and addressing the undervaluation of work performed by women in predominantly female occupations could have a major impact on the gender pay gap.²

The profile of undervaluation indicators developed by the NSW Inquiry was found to be relevant to Queensland. The Inquiry also accepted that a range of other factors, such as the concentration of women in low paid work and forms of precarious employment, contribute to pay inequity. This finding reflected the complexity of the causes of pay equity and suggested that a multi-faceted approach was required and one which was not exclusively focused on full-time and award workers.³

The report contained 20 recommendations for:

- the adoption of an Equal Remuneration Principle (ERP) by the QIRC;
- a raft of amendments to the *Industrial Relations Act 1999* and the *Industrial Relations Regulation 2000*; and
- the provision of matching funding for a period of three years to allow industrial organisations of employees and employers to conduct or respond to pay equity cases in the QIRC.

Each of these three areas is dealt with in turn in the following discussion.

2.3 Effectiveness of Outcomes

2.3.1 Equal Remuneration Principle

The first Inquiry recommended that the QIRC make a statement of policy about pay equity and that it take the form of an ERP that was separate from the Principles regarding the Making and Amending Awards. In April 2002 a Full Bench of the QIRC issued such a Principle, effective from 1 May 2002.⁴ The Principle that was adopted contained only minor variations to the draft that had been proposed.

The Principle was modelled on the draft principle recommended by the NSW Inquiry but modified to take account of submissions that were made to the Inquiry and legislative prescriptions unique to Queensland. It was noted in *Worth Valuing* that the draft principle was more extensive than any of the principles included in the Statement of Policy regarding the Making and Amending Awards because of the relative recency of the issue in mainstream industrial relations and accordingly, was not widely understood.⁵

¹ *Worth Valuing* p 37.

² *Ibid* p 51.

³ *Ibid* p 51.

⁴ (2002) 170 QGIG 15.

⁵ *Ibid* p 140.

The Principle was framed to provide a blueprint to industrial parties and to the Commission of the types of factors to be addressed in assessing the value of work predominantly performed by women. It contained the traditional work value elements but included other types of issues to be taken into account such as award histories, occupational segregation, and the occupation's demographics. The Principle also specified that male comparators and discrimination were unnecessary to find undervaluation but that the evaluation was to be undertaken transparently, objectively and in a gender neutral way. Once undervaluation was found the Principle provided guidance on how it could be rectified.

The Equal Remuneration Cases

The Equal Remuneration Principle was applied in two cases before the QIRC. It is beneficial to describe the cases and their outcomes before turning to a discussion of the effectiveness of the Principle in delivering pay equity and whether any amendments are necessary.

- **Dental Assistants Case**

An application was made by the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (LHMU) in December 2003 (Case No B/2003/2082) seeking an equal remuneration order under s 60 of the IRA to increase the remuneration of dental assistants employed under the *Dental Assistants (Private Practice) Award - State* (the Dental Assistants' Award), and an order under s 125 of the IRA to amend that Award to provide for an extended career path, increased remuneration and additional allowances for dental assistants. The case was conducted in 2005 and the decision released on 7 September 2005.⁶

The application by the LHMU sought firstly to establish undervaluation of the work of dental assistants by reference to work value considerations such as the level of qualifications, recognition of soft skills, and the disabilities incurred as a result of the conditions under which work was performed. Another consideration was the training undertaken through skills development courses and attendance at conferences.

The second aspect of the LHMU application was to remedy the undervaluation through a two pronged approach. First, the LHMU compared the classification structure and rates of pay found in the *Engineering Award - State 2002* (Engineering Award) with the Dental Assistants' Award to show that the dental assistants' classification structure (except at the Certificate III C10 classification) provided lesser relativities and hence lower wages despite comparability of qualifications. This was said to be the result of the misapplication of a number of the wage adjustment mechanisms, primarily the minimum rates adjustment process. Second, the LHMU selected predominantly male trades groups as comparators and showed that the wage rates actually paid to these groups were substantially higher than those paid to dental assistants despite comparability of skills and qualifications. This evidence was produced in two ways:

- through an analysis of ABS and Census data; and
- providing a select range of certified agreements.

The Australian Dental Association (Queensland Branch) Union of Employers (ADAQ) filed a counter claim which, ultimately, was mostly pressed in relation to the classification structure.

A unique feature of this case was that the LHMU commissioned a questionnaire with the stated goal of "gain(ing) information with regards to all aspects of the nature of the work undertaken, and the conditions under which the work is undertaken, as well as the induction,

⁶ (2005) 180 QGIG 187.

training qualifications and basic demographics of this group of workers".⁷ The ADAQ also undertook a survey of members. The data collected from the surveys helped to inform the Full Bench about many aspects of the claim and counter claim, including financial assistance to obtain qualifications and the provision of formal or informal over-award payments.

Relying on the survey conducted by the LHMU and an analysis of the Dental Assistants' Award history, the Full Bench accepted that the work of dental assistants had been undervalued. One measure to remedy this was the establishment of a new classification structure which set relativities consistent with the Engineering Award for dental assistants and practice managers, a classification which was included in the Dental Assistants' Award for the first time. In the view of the Full Bench this step resulted in pay equity being achieved *prima facie*.⁸

However, consideration also needed to be given to the second aspect of the claim which sought rates consistent with those paid to male comparators who were beneficiaries of the enterprise bargaining system. The Full Bench rejected the quantum of the claim for wage rates sought by the LHMU. It did not reject the proposition of including rates from certified agreements into an award but said that it could only do so if it was in the public interest.⁹ The Full Bench examined the enterprise bargaining increases achieved in certain industries for the period 1997-2004,¹⁰ and the total increases to award rates of pay at C10 delivered by way of General Ruling and found that the differential was approximately 11% (discounting the abnormal increases found in the construction industry).

In order to provide pay equity the Full Bench granted a once off increase of 11% phased in over two years commencing 13 February 2006.¹¹ In addition, to compensate for future inequities due to the almost complete absence of formalised bargaining under the Dental Assistants' Award, the Full Bench also established an Equal Remuneration Component (ERC). The ERC is an amount of 1.25% of the base rate to be added to after the annual granting of the State Wage Case General Ruling.¹² The rate was expressed as a percentage in order to retain currency and included an amount to compensate for disabilities incurred which were not a usual feature of the work, eg cleaning suction traps and spittoons, cleaning dental waste lines, separating amalgam from human waste for disposal, changing o-rings and cleaning up vomit.¹³

Other benefits granted were:

- financial assistance to obtain qualifications; and
- an increase in the uniform allowance.

These measures, in combination with the wage increases, were designed to deliver pay equity in the most effective way considered possible within a system which needed to protect the integrity of the award system.

⁷ (2005) 180 QGIG 187 at 192.

⁸ (2005) 180 QGIG 187 at 204.

⁹ (2005) 180 QGIG 187 at 204.

¹⁰ Source: *Queensland Enterprise Bargaining Database*, Department of Industrial Relations, Brisbane.

¹¹ The original operative date was set as 5 December 2005 but owing to the failure of the parties to finalise some matters by agreement, the original operative date was vacated and new dates set on 28 February 2006. See (2006) 181 QGIG 346.

¹² (2005) 180 QGIG 187 at 210.

¹³ (2005) 180 QGIG 187 at 210.

- **Child Care Case**

The application, Case No B/2003/2133, was also filed in December 2003. The substantive hearing of the application did not occur until February/March 2006. An interim decision was released on 24 March 2006¹⁴ with the final decision being released on 27 June 2006.¹⁵

The application made by the LHMU was in two stages:

- the first essentially sought a flow on of decisions of the AIRC with respect to a work value claim for child care workers employed in Victoria and the Australian Capital Territory (ACT);¹⁶ and
- the second sought substantial wage increases pursuant to s 60 of the IRA and the Equal Remuneration Principle.

Like the claim for dental assistants, the LHMU's claim was to establish wage rates for child care workers in Queensland that were the same as the average rates paid to workers in comparator trades such as mechanics; metal fitters and machinists; electricians; carpenters and chemical and gas plant operators. The rates claimed in this case were not based on specific certified agreements but were drawn from an analysis of ABS wage statistics. That analysis showed that the male comparators, even in 2004 when the relevant wage statistics were last available, received substantially higher rates of pay than child care workers despite the various occupational groups purportedly holding similar qualifications. Although evidence about the analysis was produced, the Full Bench found that the case for child care workers was ultimately conducted on the basis of historical and current undervaluation of work based on gender influences and not on the lack of access to over award payments.¹⁷ This was in contrast to the *Dental Assistants Case*.

The Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) pursued a counter claim which sought increases in certain wage rates and changes to conditions. The Roman Catholic Archdiocese supported an increase in wages and Livingstones Australia, who appeared on behalf of a number of child care centres and child care associations, supported "a fair, reasonable wage rate".¹⁸ The employers urged the Full Bench to consider the impact of substantial wage increases on affordability of fees and the participation of women in the workforce.

In its decisions the Full Bench accepted that the work of child care workers had been substantially undervalued "having regard to the historical gender-based undervaluation of the work and in light of the current objective assessment of the value of their work".¹⁹ The Full Bench awarded substantial pay rises, acknowledging that child care workers were paid "appallingly low wages".²⁰

The increases recognised that:

- the duties, skills and responsibilities of child care workers had not been assessed in a gender neutral way in past work value cases. Skills such as multi-tasking, communication with colleagues, parents and professionals; and domestic skills were some of those not previously valued;

¹⁴ (2006) 181 QGIG 568.

¹⁵ (2006) 182 QGIG 318.

¹⁶ Prints PR957259; PR954938; PR957914. The decision of the AIRC was flowed on in South Australia [2005] SAIR Comm 49 and Western Australia (PR968525).

¹⁷ (2006) 182 QGIG 318 at 353.

¹⁸ (2006) 182 QGIG 318 at 357.

¹⁹ (2006) 182 QGIG 318 at 357.

²⁰ (2006) 182 QGIG 318 at 357.

- the conditions under which child care workers performed their work had not been properly assessed. For example, the case identified a range of hazards encountered and various safe work procedures that are required to be followed; and
- in addition, other conditions under which work is performed had not previously been identified and factored into the setting of rates. These included work intensity; lifting of children; and working at child level.

The Full Bench rejected the claim for the incorporation of over-award payments into minimum rates as it was not the case run by the LHMU.²¹ It also rejected the attempt by employers to align the rates with those applying to other predominantly female occupations determining that such an approach could perpetuate pay inequity.

The Full Bench considered that the rates awarded were a reflection of the value of the work performed by child care workers being assessed transparently, objectively and in a gender neutral way, having regard to the factors provided in the ERP.

A range of other relevant work features which had previously not been recognised were compensated either by the increases granted to the wage rates or by separate award amendment. Some of the relevant work features compensated by separate amendment included:

- participation in meetings outside school hours;
- participation in skills development courses; and
- certain training costs associated with the gaining of qualifications.

Because of the magnitude of the increases granted the newly determined wage rates were to be phased in over a period of 2½ years.

The designation of "Child Care Worker" and the title of the Award were amended to reflect the change in work from essentially child minding to where a range of services are delivered in a variety of facilities to parents and their children. The new designation is "Children's Services Worker" and Award title is "*Children's Services Award - State 2006*".

It is also worth noting that this case in particular enabled the Commission to firmly establish the principle that a Certificate III gained for a predominantly female occupation has the same value as a Certificate III awarded to a predominantly male occupation. Possession of a Certificate III now attracts the payment of the 100% rate (C10) in the Engineering Award. The critical issue is not the length of time the qualification takes to achieve but the equivalence of the skills and competencies gained.

Pay equity case outcomes: do they survive Work Choices?

The extent to which all of the outcomes achieved in these cases survive the impact of Work Choices has yet to be fully determined. It is likely that many dental assistants will continue to derive the benefits of the ERP Decision as many dentists operate as sole traders or partnerships and will thus remain in the State system. For those dental assistants who are employed by constitutional corporations the changes made to award conditions should be preserved in a notional agreement preserving state awards (NAPSA) until 27 March 2010 unless a Work Choices agreement or new award is made.

The Pay Scale Summaries for Queensland dental assistants and children's services workers have been published on the Work Choices website.²² The rates for dental assistants are

²¹ (2006) 182 QGIG 353. See also Transcript pp 1577-1579.

²² <https://www.workchoices.gov.au/ourplan/payconditions/>.

consistent with those applying under the *Dental Assistants (Private Practice) Award - State*, however, the rates provided by the Workplace Authority for the practice manager classification are lower at levels 2 and 3. This comparison was made based on rates that applied up to the wage adjustment decision of the AFPC effective 1 October 2007 and the Queensland State Wage Case decision that took effect on 1 September 2007. Thereafter a gap will be introduced as a result of the disparity in the increases granted to minimum wages in the two systems. It seems that the phased in pay equity increases granted by the QIRC continue in the federal jurisdiction.

The Pay Scale Summaries show that the ERC does not apply to dental assistants now covered by the federal jurisdiction.

In contrast to dental assistants, it appears that many children's services workers are employees of constitutional corporations and caught by Work Choices. For those who now fall under the federal system the improved award conditions will not be preserved as they were granted after the operative date of Work Choices. In respect of the wage increases it appears that the rates determined in the final decision will be passed on either by the AFPC or employer action.

Compared with the rates under the Queensland awards, the rates provided by the Workplace Authority for children's services workers are presently consistent. It should be noted, however, that during the second wage review, the AFPC received a number of submissions about future wage increases awarded on the basis of work value and/or pay equity, which are preserved by the effect of s 208(4) WRA, and their interaction with minimum wage adjustments made by the AFPC. A number of child care associations submitted that the AFPC should exempt child care from the minimum wage adjustments because children's services workers would receive preserved increases as a result of work value or pay equity decisions. The AFPC refused to exempt the child care sector from the wage setting decision 3/2007 because that would diminish the work value increases already awarded.²³

In any event a number of employer parties to the case thought it likely that the increases in the final Decision would in fact be passed on to children's services workers. This was considered likely for a number of reasons including that those rates were now the market rates that needed to be paid to attract and retain quality employees.

The Whitehouse submission recommends careful tracking of the impact of these two cases to assess the extent to which relative gains are maintained over time and the different experiences of employees remaining under the State, or moving to the federal jurisdiction. This kind of information is seen as being invaluable in justifying the benefits of an ERP and understanding how they can be most effectively applied.²⁴

Critiquing the Equal Remuneration Principle

Submissions about the effectiveness of the ERP were received from the Queensland Government, AIG, Queensland Council of Unions (QCU), LHMU, Australian Municipal, Administrative, Clerical and Services Union (AMACSU) and Associate Professor Whitehouse. In addition to these submissions, a research officer attached to the Inquiry conducted confidential interviews with the individuals (representing both unions and employers) who had been directly involved in cases heard under the ERP in order to obtain feedback on the process and experience of participating in those cases. The interviews were useful in providing feedback (which might not otherwise have been obtained) on the practical

²³ Australian Fair Pay Commission, *Wage Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007, p 85.

²⁴ Whitehouse Submission p 2.

aspects of running and responding to a case being considered under the ERP. The information obtained from the interviews is used here to represent the common views expressed by interviewees (rather than individual responses) and to supplement the material from submissions.

The submissions received generally considered that the ERP provided a useful tool in addressing gender pay inequity. Some concerns were raised with respect to the practical aspects of participating in an equal remuneration case as well as with some aspects of the outcomes of the two cases heard under the ERP. Only minimal amendments to the Principle were advocated in submissions.

The AIG submission considered that the ERP provided a useful analytical framework for the consideration of gender pay equity issues.²⁵ This was also broadly the view of the Queensland Government,²⁶ QCU,²⁷ AMACSU²⁸ submissions which all highlighted the usefulness of the Principle in this respect and as an educative tool for the industrial parties.

The issue of whether the outcomes of these cases represent significant pay equity gains was raised in several submissions. The Queensland Government,²⁹ QCU³⁰ and AWU³¹ submissions all supported the contention that considerable gains were made for workers in the two cases. The Queensland Government and QCU submissions also contended that despite the gains won, pay equity was not achieved through the cases as the Decisions failed to award the same rates of pay as those achieved in the male comparator groups. The LHMU submission,³² as discussed below, saw the *Child Care Case* as being particularly restrained in this respect by public interest issues.

The Whitehouse submission noted that it is still too early to comprehensively assess the efficacy of the ERP, but pointed to the gains which have been able to be achieved for specific groups of female employees and which have exceeded what might have been expected under traditional work value approaches. Whitehouse argued that the advantages of the ERP are demonstrated in the comparison between the interim Decision in the *Child Care Case* (which delivered pay increases consistent with those established in a pre-Work Choices federal work value case) and the Final Decision which reflected the potential under the ERP in delivering higher increases for children's services workers.³³

Support for this position also comes from the evidence presented in both cases with respect to skill shortages. Evidence was given in both the *Dental Assistants* and *Child Care Cases*, and by both applicants and respondents, that a high demand for suitably qualified and experienced workers in these occupations exists. These acknowledged skill shortages, however, had not translated into higher wages for these workers as might be expected, particularly in male dominated areas. Given the depressed wages even in a situation of skill shortages, it does seem to be the case that the ERP afforded these workers a means of addressing pay equity which was not likely to have been otherwise possible.

Submissions from AIG,³⁴ the Queensland Government,³⁵ LHMU,³⁶ QCU,³⁷ and AMACSU³⁸ all recommended the retention of the ERP. The Queensland Government,³⁹ QCU⁴⁰ and LHMU⁴¹ submissions, however, recommended amendments to that Principle.

²⁵ AIG Submission p 3.

²⁶ Queensland Government Submission pp 57-58.

²⁷ QCU Submission p 13.

²⁸ AMACSU Submission p 9.

²⁹ Queensland Government Submission pp 53-57.

³⁰ QCU Submission p 13.

³¹ AWU Submission Transcript p 75.

³² LHMU Submission p 2.

³³ Whitehouse Submission p 2.

³⁴ AIG Submission p 5.

Amendments to the ERP proposed by the LHMU, and supported by the QCU, concern the inclusion of a new paragraph to the effect that the QIRC would only consider arguments raised by employers that it would be contrary to the public interest to grant a union's claim for wage increases to rectify pay inequity where no government agencies were able to address the matters raised. The example was given of the *Child Care Case* where the QIRC considered arguments raised by employers that significant increases in wage rates for children's services workers could adversely impact on women who may be forced to leave the workforce because of resultant fee increases. The LHMU argued that child care subsidies were a matter for the federal government and thus the impact of wage rises was not a matter of concern for the QIRC. The proposed amendment also required the Commission to rigorously test any public interest arguments.

The difficulty with this argument is that it overlooks the provisions of s 320(5) of the IRA which require the Commission in making decisions to consider the public interest and to that end to consider the objects of the Act and the likely effects of the decision on the economy, industry generally and the particular industry concerned. In addition, s 129 of the IRA requires the Commission to take account of the public interest where applications are made to include in an award, provisions that are based on a certified agreement.

The first Inquiry addressed public interest considerations when framing the draft principle⁴² and any Principle developed is always subject to the provisions of the IRA. With this in mind this Inquiry does not consider that the amendments proposed by the LHMU and supported by the QCU are therefore appropriate.

The LHMU, again supported by the QCU, proposed a further amendment, that where the Commission makes an order that is reliant upon equal remuneration in a comparable occupation or industry, the Commission will state the details of the comparison in its order. The ERP is clear that comparisons within and between occupations and industries are not required in order to establish undervaluation of work on a gender basis. The draft principle was developed so that comparators were not required and would be treated with caution.⁴³ However, comparators were not specifically excluded. The draft principle was also designed to give the Commission flexibility in any orders made. Should the Commission make a decision based on a comparison then it is the view of the Inquiry that it is a matter for the Bench concerned, after hearing from the parties to the application, as to the form of the order issued.

The Queensland Government submission proposed minor amendments to the order of paragraphs 2 to 6.⁴⁴ The Queensland Government submitted that these proposals would allow the process to be more orderly. An amendment is also proposed to the introductory words to paragraph 6 to refer to pay inequity. Given that the Principle uses the term equal remuneration (and that term was proposed for particular reasons identified in *Worth Valuing*)⁴⁵ it could be confusing to import a new concept. The other proposals are not without merit, however, as they are procedural rather than substantive and because in the present circumstances the Principle may have limited application (see Section 3), the

³⁵ Queensland Government Submission p 58.

³⁶ LHMU Submission p 3.

³⁷ QCU Submission p 14.

³⁸ AMACSU Submission p 20.

³⁹ Queensland Government Submission p 58.

⁴⁰ QCU Submission p 14.

⁴¹ LHMU Submission pp 2-3.

⁴² *Worth Valuing* pp 154-157.

⁴³ *Worth Valuing* pp 151-153.

⁴⁴ Queensland Government Submission p 58.

⁴⁵ *Worth Valuing* p 143.

changes are not considered necessary. The matter could be revisited after further application of the Principle.

Limitations of the ERP identified in submissions arose primarily in regard to the process of application of the Principle in the two cases heard under the ERP. This is supported by information obtained from interviews with key participants in the conduct of the cases.

The AMACSU submission raised the issue of what it sees as the limited application of the ERP to discrete occupational groups such as those addressed in the two cases heard. With respect to clerical and administrative workers (who are seen to fit the profile of undervaluation), AMACSU considered that the diversity of roles of such workers across a range of industries and occupations would make it extremely difficult to conduct a case for such workers under the ERP.⁴⁶

The AIG submission suggested that the ERP is limited in particular by the institutional and procedural context in which the Principle has so far been exercised. They pointed to the adversarial nature of proceedings in the QIRC as potentially masking issues of pay equity. In addition, the submission highlighted the difficulties in establishing the validity of comparators and in determining appropriate mechanisms to rectify inequities found.⁴⁷

The interviews with key participants in the two cases raise specific, primarily practical, issues with respect to the ERP. A number of interviewees (including representatives of employees), however, saw the Principle itself as being important and necessary although not well understood by the industrial parties.

A common concern expressed by interviewees with respect to the conduct of the cases was the lack of precedent and the difficulties in determining what the case should be based on and what issues would be considered important. The interviewees indicated that it was clear that a range of matters, such as award histories, would be important in the case(s) but how to specifically address these was less clear due to the lack of precedent(s). This view clearly reflects the learning required by the industrial parties to successfully put and respond to a case under the ERP. Not surprisingly then, interviewees also expressed concern that such cases are expensive and resource intensive. Frustration was particularly expressed in relation to this with respect to the *Child Care Case* which was seen as being unnecessarily long and drawn out (by both union and employer representatives).

Most of the interviewees also expressed the view that the Decisions in the two cases had reflected the particular facts and circumstances evident in the separate cases. This was seen positively as reflecting the flexibility available under the Principle.

Summary

It is clear from submissions to the Inquiry that the ERP provides a useful analytical framework for the consideration of pay equity. The cases conducted under the Principle have illustrated this usefulness by highlighting the traditional undervaluation of the work performed by the two predominantly female occupations considered.

It is also clear from submissions and from the interviews conducted that the ERP has been an important tool in educating the QIRC and industrial parties about pay equity. It is also possible that the Principle may have affected learning more broadly by alerting individual employers and employees to issues around pay equity. The corollary of this learning process, however, is the concerns expressed with the resource intensive nature of cases

⁴⁶ AMACSU Submission p 19.

⁴⁷ AIG Submission pp 3-4.

conducted under the ERP. In *Worth Valuing* the Inquiry noted the resource intensive and time consuming nature of undervaluation claims and made suggestions about the development of a practice note to guide the parties about the application of the Principle and how the workload could be managed even in an adversarial setting.⁴⁸ The *Child Care Case* in particular did not lend itself to co-operative preparation as suggested. The Inquiry accepts the Queensland Government and QCU submissions that reported the importance of the grants program in supporting such cases.

With respect to the two cases conducted under the ERP, submissions pointed to the gains achieved for the occupational groups considered which are unlikely to have been obtained under traditional work value principles. The cases were also seen as highlighting the unique approach needed to address pay equity for different occupational groups. It is unfortunate that other cases under the Principle were not pursued in a more timely fashion.

The Inquiry accepts that there are limitations in the application of the ERP. In particular, it is accepted that it is likely that the ERP is most useful in respect of discrete occupational groups where award histories can be readily analysed for gender bias and where common duties, skills, responsibilities and other relevant work features can be readily identified and assessed in a gender neutral manner.

The first Inquiry was only required by its Terms of Reference to prepare a draft pay equity principle and to consider the adequacy of industrial legislation for achieving pay equity in Queensland. The ERP and legislative amendments made as a consequence of the report of that Inquiry were always only going to have an effect on the causes of pay inequity over which the QIRC had some oversight. As discussed earlier, pay equity is a multi-faceted issue that cannot be satisfactorily addressed by these measures alone, especially in light of the starkly different industrial context which now applies. Instead, it is likely that a Principle such as the ERP has greatest effectiveness in the context of a suite of measures designed to address pay inequity.

In short, the Inquiry finds that the ERP has been a particularly effective outcome of the previous Inquiry.

2.3.2 Legislative amendments

Submissions from the Queensland Government, QCU and AMACSU addressed the effectiveness of other legislative amendments adopted as a result of the 2000/01 Inquiry. Particular attention was paid to certification of enterprise agreements and those concerns are addressed in some detail here.

Certified agreements

In *Worth Valuing*, the Inquiry recognised that enterprise bargaining was replacing centralised wage fixing but that there was evidence that enterprise bargaining had done nothing to improve the gender earnings gaps and may even worsen the gap in the long term.

The first Inquiry made a suite of recommendations to amend the provisions in the IRA and Regulations. Those affecting the certification of enterprise agreements were:

Recommendation 4

The Inquiry recommends that section 157 of the *Industrial Relations Act 1999* continue to provide that the Commission must refuse to certify an agreement if a provision of the agreement is inconsistent with an order under Chapter 2 Part 5.

⁴⁸ *Worth Valuing* pp 140, 158.

Recommendation 5

The Inquiry recommends that section 157 of the *Industrial Relations Act 1999* be amended to provide that the Commission must refuse to certify an agreement if a provision of the agreement seeks to preclude or prevent an application being made under Chapter 2 Part 5.

Recommendation 6

The Inquiry recommends that section 156 of the *Industrial Relations Act 1999* be amended to provide, in relation to agreements other than multi-employer agreements, that the Commission must not certify the agreement unless it is satisfied that the agreement ensures equal remuneration for all men and women employees of the employer for work of equal or comparable value.

Recommendation 7

The Inquiry recommends that section 156 of the *Industrial Relations Act 1999* be amended to provide, in relation to multi-employer agreements, that the Commission must not certify the agreement unless it is satisfied that the agreement ensures equal remuneration for those men and women employees covered by the agreement for work of equal or comparable value.

In relation to recommendation 6, the Inquiry recognised the necessity to ensure equal remuneration for all employees of an employer even if they are not covered by one agreement. The concern was to pre-empt an outcome which might perpetuate gender inequity by, for example, having one agreement for technical (male) employees and another for administrative (female) employees.

In relation to recommendation 7, the Inquiry recognised the practical difficulty of ensuring equal remuneration for all employees of the multiple employers who are associated because they are engaged in a joint venture or common enterprise.

The Inquiry went on to make another recommendation which was an essential part of the suite of recommendations for certifying agreements. The Commission was of the view that it was not sufficient for the affidavit filed by the parties in support of certification of an agreement to merely make bald assertions about the agreement ensuring equal remuneration.

Recommendation 8

The Inquiry recommends that section 9 of the *Industrial Relations Regulation 2000* be amended to require the affidavit to provide information about the steps taken to ensure that the agreement ensures equal remuneration for men and women employees of the same employer for work of equal or comparable value.

Recommendations 4, 5, 6 and 7 were implemented by the Queensland Government. Recommendation 8 was not adopted in its entirety, rather, s 9 of the Regulation was amended to include the following paragraph:

- (p) a statement that the requirement for equal remuneration of employees under section 156(1)(l) or (m) of the Act is met;

In submissions to the present Inquiry,⁴⁹ both the QCU and AMACSU argued that further amendments were necessary. They argued that it was necessary to have a mechanism that would permit statements in affidavits to be tested by the Commission in circumstances where it can be established that the proposed agreement will produce differential outcomes. They

⁴⁹ See Transcript pp 111, 149-151.

submitted that the Commission should be able to investigate statements made in the affidavit and either refuse to certify the agreement or, with consent of the parties, amend it.

The Commission's role in certifying agreements is one of oversight. The scheme of the IRA in relation to enterprise bargaining is for the parties to negotiate an agreement within the boundaries set by the Act with respect to the process (eg protected industrial action) and the content (eg must not be discriminatory). This is in stark contrast to its arbitral role in making awards, where the Commission determines on the merits what will be the new rights and obligations of the persons bound by the award. The Inquiry is reluctant to recommend a highly inquisitorial role for the Commission or any power to alter the content of the proposed agreement. The agreement which is ultimately certified must be the agreement which was explained to the employees and supported by a valid majority of employees. The Inquiry supports unchanged the current arrangements in s 169 which details the limited circumstances in which an agreement can be varied.

The Inquiry does support some further information being provided to the Commission when an application to certify a proposed agreement is made. The Inquiry supports the Unions' proposal that where a proposed agreement will treat different classes or groups of employees differentially, the affidavit required by s 9 of the Regulation should specify the reasons for and purpose of the differential treatment and provide any supporting evidence.

RECOMMENDATION 2

That s 9 of the *Industrial Relations Regulation 2000* be amended to require the affidavit to provide information about the reasons for and purpose of any provisions of the proposed agreement which provide for or result in differential treatment of different groups of employees.

For reasons outlined above, the Inquiry does not accept the Unions' proposals to make further amendments supporting Commission investigation of statements made in the affidavit. Further, the Inquiry believes that the existing legislation and practices of the Commission are sufficient to permit adequate scrutiny of affidavits about differential treatment. The *Ergon Case*⁵⁰ is illuminating.

The proposed Ergon agreement provided for differential allowances. AMACSU was entitled to be a party to the Ergon agreement but chose not to be. However it subsequently sought to be made party to the certification hearings. While the Full Bench refused to make AMACSU a party to the certification hearing, it granted the Union the right to be heard.⁵¹

Some considerable material was considered by the Full Bench concerning AMACSU's contention that the differential allowances meant that the agreement should not be certified because it did not ensure equal remuneration for work of equal or comparable value.

The Full Bench examined what is required by s 156(1)(m) and said:⁵²

In ordinary circumstances the presence of clauses 3.8.1 and 3.8.2 would not have caused the Commission to refuse certification pursuant to s. 156(1)(m). The materials before the Commission would ordinarily be the proposed Ergon

⁵⁰ *Ergon Energy Corporation Ltd and Another AND The Electrical Trades Union of Employees of Australia, Queensland Branch And Others* (No. CA 140 of 2005) (2005) 179 QGIG 21 and (2005) 179 QGIG 140.

⁵¹ (2005) 179 QGIG 21.

⁵² (2005) 179 QGIG 140.

Energy - Certified Agreement 2005 and an affidavit containing the statement required by the *Industrial Relations Regulation 2000*, s. 9 (1)(p) i.e. a statement that the requirement for equal remuneration of employees under s. 156(1)(m) had been met. "Satisfied" means no more than "made up ones mind", compare *Blyth v Blyth* [1966] A.C. 643 at 676 per Lord Pearson and *Robinson v Cox* (1979) 21 S.A.S.R 536 at 546 per Williams A.J. But this was not an ordinary case, AMACSU exercised the right to be heard vested in the organisation by s. 155(1).

An organisation exercising that right may well enlarge the information upon which the Commission is to make up its mind. Further, the Commission has power to inform itself on a matter it considers appropriate (s. 320(2)) and some inquisitorial powers. An organisation availing itself of the right at s. 155(1) may well inform the Commission of matters which will cause the Commission to make inquiries about whether the agreement meets the requirements of s. 156(1)(m). Indeed, the information placed before the Commission by the organisation may be so compelling as to enliven a duty to enquire, compare *R v Australian Broadcasting Tribunal and Others, ex parte Hardiman and Others* (1980) 29 ALR 289 at 304. However, it is no part of the function of the Commission to enter upon a speculative inquiry because an organisation addressing the Commission pursuant to s. 155(1) voices suspicions or opinions about whether an agreement provides for equal remuneration for all men and women employees covered by the agreement for work of equal or comparable value. A factual foundation for the suspicions or opinions must be given ...

In other circumstances the criticisms [made by AMACSU] may well have induced this Bench to require the parties to the proposed agreement to put on more material. Here, The Electrical Trades Union of Employees of Australia, Queensland Branch anticipated such a development and put in an extract from a report from the Independent Panel for Electricity Distribution and Service Delivery for the 21st Century (of July 2004), commonly described as the Somerville Report. That report makes claim that Ergon faced an urgent need to recruit additional staff within the "technical stream". Whilst it is true that the expression "attraction rates" is not used, there is an express reference to the need "to invest more in recruiting"...

It seems to us that the point has been reached at which we should be satisfied about the *bona fides* of the submission that the allowances are by way of "attraction and retention"...

The Commission has now heard that which it is that AMACSU is able to tell it. Doubtless, if the matter went further, assertions would be supported by affidavits and the documents relating to "award history" would be put into admissible form. But that is all about polishing. Section 155 cannot be construed as empowering the Commission to conduct a roving inquiry into the matter of "equal remuneration for work of equal or comparable value" whenever a multi-employer or project agreement is presented with certification...

The Inquiry does not support the Unions' proposal that the Commission take corrective action for equal remuneration such as annexing an equal remuneration order to the agreement. Taking corrective action such as annexing equal remuneration orders to agreements could only be taken after a full and detailed work value or equal remuneration case has been

heard. This is inconsistent with the scheme of the Act for enterprise bargaining. The parties negotiate with minimal assistance or interference from the Commission. The Commission holds a certification hearing, not to test, examine, review or determine every entitlement, but to oblige the parties to make sworn statements that the agreement complies with the law and where necessary, to make judgments about the no disadvantage test. To amend the Act to enable the Commission to take a more interventionist role would irreparably delay and impede enterprise bargaining.

If a group of employees or their union are dissatisfied with the wages under a certified agreement and believe there are grounds for an equal remuneration order, a case can always be run under Chapter 2 Part 5 of the IRA as a separate exercise distinct from certification proceedings.

Further, the Inquiry is satisfied that the Commission may exercise its discretion under s 158 to permit an agreement to be certified on the basis of undertakings by the parties. However, the Commission does not generally exercise its discretion to require an undertaking where matters of great significance are involved. If the circumstances were such that an equal remuneration order is needed, then the Commission would be obliged by the terms of s 156(1)(l) and (m) to refuse to certify the agreement.

This is not to say that any agreement which treats different groups of employees differentially will necessarily be denied certification. As the Full Bench said in the *Ergon Case*:⁵³

It is clear that s. 156(1)(m) is amongst the provisions relating to work of equal or comparable value. It is equally clear that paragraph (b) of the definition is apt to capture allowances made available to an employee under a contract of service. But s. 156(1)(m) requires only that the agreement must provide for equal remuneration for work of equal or comparable value. Payments made for reasons unrelated to the value of the work performed, e.g. (importantly) attraction or retention loadings, are not to cause refusal of certification pursuant to s. 156(1)(m), compare *Re Equal Remuneration Principle* (2000) 97 IR1 77 at paras [127], [139], [147] and [131 to 152].

The Unions were also critical of the recent amendment to ss 153 and 156⁵⁴ which permit the Commission to certify a proposed agreement if it is satisfied that the parties genuinely reached agreement and a valid majority of employees supported the proposed agreement even if it is not signed by all the parties. As these amendments were made as a result of a recommendation by the Commission,⁵⁵ the Inquiry does not support reversing or modifying these amendments.

2.3.3 Provision of funding

The Queensland Government submission notes the importance of the pay equity grants program in facilitating the conduct of cases under the ERP. The Queensland Government submission considers that neither case may have been run without the grants program because of the union's low membership in these callings.⁵⁶ The QCU submission recommends the continuation of funding to run equal remuneration cases.⁵⁷

⁵³ (2005) 179 QGIG 140.

⁵⁴ Effective 14 June 2007.

⁵⁵ *Professional and Technical Stream Employees and Dental Officers (Certified Agreement) 2005* (2005) 186 QGIG 388.

⁵⁶ Queensland Government Submission p 59.

⁵⁷ QCU Submission p 40.

Although the number of equal remuneration cases that are able to be conducted in the future under the ERP may be limited due to the impact of Work Choices, the value of funding industrial organisations engaged in such cases is considerable. It appears that without funding dental assistants and children's services workers may not have had access to the significant improvements in their wages and conditions. Accordingly, the Inquiry considers there is merit in continuing a program of funding for such cases.

RECOMMENDATION 3

That the program of funding provided by the Queensland Government be continued for industrial organisations that are engaged in equal remuneration cases.

2.4 Summary and Conclusion

This section of the report has considered the effectiveness of the outcomes of the 2000/01 Queensland Inquiry into Pay Equity. The discussion focussed on the three main categories of outcome of the previous Inquiry and considered submissions which were made with respect to the first Term of Reference.

This Inquiry finds that the ERP has been a useful analytical tool for addressing pay equity for the industrial parties and an effective outcome of the previous Inquiry. The operation of the Principle together with the equal remuneration provisions of the IRA (Chapter 2 Part 5) has ensured that equal remuneration is an industrial right enshrined in the Queensland industrial relations system.

With respect to the legislative amendments, some submissions raised certain aspects of the process concerning the certification of enterprise agreements. In response, the Inquiry finds some changes are desirable however the scope of the possible amendments is constrained primarily by the role assigned to the Commission in the certification process.

The Inquiry also accepts those submissions attesting to the importance of the provision of funding for the running of pay equity cases and has recommended the continuation of the program.

The establishment of this Inquiry has shown the usefulness of reviewing policy and legislative measures to ensure that such initiatives are delivering the intended benefits. A review also allows the effectiveness of the measures to be examined in the light of current circumstances. This is especially beneficial when the context in which the initiatives were developed has dramatically altered either through economic change, or, as the case here, through a markedly different legislative scheme.

Section 3

Impact of Work Choices on Legislative Measures addressing Pay Equity

3. Overview

The second Term of Reference requires an assessment of the impact of Work Choices on legislative measures addressing pay equity under the federal and State systems. The focus of the discussion in this section is on the impact of Work Choices on both the Commonwealth and Queensland equal remuneration provisions. The discussion then considers whether the WRA covers the field with respect to measures to address pay equity for employees of constitutional corporations. The section concludes that Work Choices severely curtails the operation of current pay equity legislative measures at the federal and State levels.

3.1 Impact on Commonwealth Equal Remuneration Orders

The AIRC remains empowered under Division 3 of Part 12 of the WRA 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.

It is still the case that the AIRC cannot deal with an application if there is an adequate alternative remedy under any other Commonwealth, State or Territory law.¹ A remedy that consists solely of compensation for past action such as unlawful discrimination is not an adequate alternative remedy.

The relevant definitions have not changed with the Work Choices amendments. Section 623(1) provides that a reference in this Division to **equal remuneration for work of equal value** is a reference to equal remuneration for men and women workers for work of equal value. An expression in s 623(1) has the same meaning as in the ILO Equal Remuneration Convention.² That Convention provides that the term **equal remuneration for men and women workers for work of equal value** refers to rates of remuneration established without discrimination based on sex.

The Commonwealth Act has never provided real opportunities to correct the undervaluing of feminised work or skills. In the first place, AIRC equal remuneration orders are limited to work of equal value and the Commonwealth legislation has never contemplated equal remuneration for work of comparable value. This limitation on the efficacy of such orders in closing the gender earnings gap has endured with the Work Choices reforms.

Further, the requirement to establish that rates of remuneration have been established on the basis of gender discrimination before a corrective order can be made has impeded progress towards pay equity through equal remuneration orders under the Commonwealth Act. This was highlighted by the unsuccessful *HPM Case*.³

In that case, the Commission said as a first step to making the orders sought, it had to be satisfied that the relevant rates of remuneration were established without discrimination on the basis of sex. The necessary precursor to this was to establish that the work was of equal

¹ see *Workplace Relations Act 1996* (Cth) s 621.

² *Workplace Relations Act 1996* (Cth) s 623(2).

³ *Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union v HPM Industries* (Print P9210).

value. There could only be direct discrimination where there was different treatment in the same circumstances, which in turn could only be established by an assessment of the equivalence of the work. If the work was not of equal value then, as long as there was no indirect discrimination, there could be no basis for a finding that there was no equal remuneration on the basis of work of equal value.

The impediments to pay equity in the Commonwealth jurisdiction revealed by the *HPM Case* have not been alleviated by the Work Choices amendments and indeed further restrictions have been added.

In hearing an application for an equal remuneration order, the AIRC now must have regard to decisions of the AFPC.⁴ The AIRC must not deal with an application to the extent it relates to the basic periodic rates of pay or basic piece rate of pay⁵ if the applicant employee(s) and the comparator employee(s) are both entitled to a rate of pay that is equal to (but not higher than) the applicable guaranteed rate of pay under the AFPC Standard in Division 2 of Part 7.⁶ "Comparator group" in this context is defined to mean "the employees whom the applicant contends are performing work of equal value to the work performed by the employees to whom the application relates."

Furthermore, the AIRC must not deal with an application to the extent it relates to the basic periodic rates of pay or basic piece rate of pay if the applicant employee(s) are entitled to a higher rate of pay than the rate of pay the group would be entitled to under the AFPC Standard and the comparator group is entitled to a rate of pay equal to (but not higher than) the applicable guaranteed rate of pay under the Standard.⁷

In effect, until new APCs are determined, the guaranteed rate of pay under the Standard is the pre-reform federal or State award rates of pay which now form a reserved APCs, or the federal minimum wage where the employee was award-free prior to Work Choices.⁸

It appears that the AIRC can only deal with a claim relating to basic rates of pay where the applicant female employees were, pre-Work Choices, award and agreement free or received only pre-reform award wages whilst the comparator male employees were covered by a pre-reform agreement. The provisions of s 622 have been interpreted to mean that the AIRC is effectively restrained from making orders that remedy pay inequity on a collective basis and remedies are now individualised.⁹ It is not clear how, over time, the limitations on the AIRC's jurisdiction will operate as pre-reform federal or State awards become irrelevant to the APCs guaranteed by the AFPC Standard. Eventually it is the AFPC that will determine new APCs and a number of provisions govern how the AFPC will determine a new APC.¹⁰ However, given the serious limitations imposed by the definition of equal remuneration used in the Commonwealth Act as evidenced in the *HPM Case*, this theoretical narrowing of the scope of the AIRC's jurisdiction might have little practical consequence for women.

⁴ *Workplace Relations Act 1996* (Cth) s 622(1).

⁵ Defined in s 178 – **basic periodic rate of pay** does not include incentive payments and bonuses, loadings, allowances, penalty rates or any other similar separately identifiable entitlements; **basic piece rate of pay** is a piece rate other than an incentive payment or bonus in addition to basic periodic rate of pay.

⁶ *Workplace Relations Act 1996* (Cth) s 622(2).

⁷ *Workplace Relations Act 1996* (Cth) s 622(4).

⁸ See *Workplace Relations Act 1996* (Cth) s 182 the guarantee; s 208 deriving preserved APCs from pre-reform wage instruments; and s 178 definitions of pre-reform wage instruments.

⁹ Michael Lyons and Meg Smith, 'Gender Pay Equity, Wage Fixation and Work Choices: Forward to the Past' (Paper presented at *Our Work Our Lives: National Women and IR Conference*, Brisbane, 12-14 July 2006, and at the IFSAM VIIIth World Congress, Berlin, 2006).

¹⁰ *Workplace Relations Act 1996* (Cth) s 214.

3.2 Impact on Queensland Equal Remuneration Principle

The equal remuneration provisions in Chapter 2 Part 5 of the IRA differ in a significant way from the Commonwealth provisions. The QIRC is empowered to make equal remuneration orders with respect to work of comparable value, not just equal value. Following the first Pay Equity Inquiry in Queensland in 2000/01, a Full Bench issued an Equal Remuneration Principle separate from the Wage Fixing principles applying in the Queensland jurisdiction, effective from 1 May 2002.¹¹

Section 2 of this Report summarises the outcomes of two successful applications for equal remuneration conducted under this Principle for dental assistants in the private sector and children's services workers. These two cases show that real gains can be made for women in "feminised" occupations through correcting undervaluation of skills or failure to recognise the skills required for performing that work.

The question arises about the extent to which these superior statutory provisions in the IRA survive Work Choices. Clearly the State law survives in its entirety for employees of the Queensland government, (other than Government Owned Corporations and some statutory authorities which are constitutional corporations), employees of partnerships and of some not for profit service providers.

The difficulty now is that any union which seeks to pursue an equal remuneration case under the IRA and ERP for a particular occupational group is likely to find that the industrial regulation for that group is either wholly in the federal jurisdiction or spread across both the federal and State systems. The LHMU, supported by the QCU, expressed their desire to pursue pay equity cases where the majority of employees remain in the State jurisdiction subject to funding being received. Given that the industrial parties have commented on the complexity and resource intense nature of equal remuneration cases when only one jurisdiction is involved the impact of having the occupational group spread across jurisdictions raises questions about the efficacy of the pursuit of such cases in the future and the effectiveness of any outcomes.

It is also possible that the conduct of equal remuneration cases for employees who remain in the State system might force the employer into incorporation so that they can offer the lower wages possible under Work Choices.

So, although the Queensland ERP provisions survive in their entirety for Queensland employees covered by the State jurisdiction, their application and effectiveness is limited by having only partial coverage of an occupational group. A further question then arises as to whether the WRA covers the field with respect to measures to address pay equity for employees of constitutional corporations. This is an important question to address in establishing the extent to which Work Choices impacts on legislative measures addressing pay equity under the State system.

Section 16(1) of the WRA provides that it excludes all listed State laws so far as they would otherwise apply to an employee or employer including:

- (a) a State or Territory industrial law;
- (b)
- (c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 623).

¹¹ (2002) 170 QGIG 15.

Section 4 defines **State or Territory industrial law** which includes the *Industrial Relations Act 1999 (Qld)* or is:

- (b) an Act of a State or Territory that applies to employment generally and has one or more of the following as its main purpose or one or more of its main purposes:
 - (i) regulating workplace relations (including industrial matters, industrial disputes and industrial action within the ordinary meaning of those expressions);
 - (ii) providing for the determination of terms and conditions of employment;
 - (iii) providing for the making and enforcement of agreements determining terms and conditions of employment;
 - (iv) providing for rights and remedies connected with termination of employment;
 - (v) prohibiting conduct that relates to the fact that a person either is, or is not, a member of an industrial association (as defined in section 779); or
- (c) an instrument made under an Act described in paragraph (a) or (b), so far as the instrument is of a legislative character; or
- (d) a law that:
 - (i) is a law of a State or Territory; and
 - (ii) is prescribed by regulations for the purpose of this paragraph.

In part, the answer to the question of coverage of the field was provided by the Full Bench of the Federal Court in its decision in the *Tristar Case* which was released on 13 April 2007.¹² In that case, Tristar challenged the jurisdiction of the NSWIRC to conduct an inquiry into the availability of work at Tristar, as directed by the NSW Minister for Industrial Relations under his power to direct inquiries into industrial matters pursuant to the *Industrial Relations Act 1996* (NSW). The Minister did not dispute that Tristar was a constitutional corporation, but argued that while there was a clear intention in the Commonwealth Act to exclude the operation of the NSWIRA, the field which the Commonwealth Act covers exclusively is the rights and obligations arising out of the relationship between an employee and an employer.

The Full Bench found that the field covered by the WRA is the State industrial law as it relates to employers which are constitutional corporations and the employees of constitutional corporations. The only exclusions are those laws and matters listed in ss 16(2) and 16(3), such as long service leave and workers' compensation. There was no relevant exclusion relating to the *Tristar Case*. Kiefel J held that while the NSW IRA may not be wholly invalid, it can have no effect upon constitutional corporations concerning their relations with actual or potential employees.¹³ The Full Bench granted an injunction restraining the NSWIRC from proceeding further with the inquiry.

This decision makes clear that the IRA is struck down in relation to employees of constitutional corporations, however, the question remains as to whether another Queensland law could deal with equal remuneration. Some comments in response to the Discussion Paper were to the effect that the decision in the *Tristar Case* makes clear that the

¹² *Tristar Steering and Suspension v Industrial Relations Commission of New South Wales* [2007] FCAFC 50.

¹³ *Ibid* p 8.

intention of the Commonwealth is to exclusively cover the entire field of the relationship between a constitutional corporation and its employees, with the exception of only those matters specifically referred to in the WRA, eg long service leave, child labour etc. This suggests that there is no room for any legislation about the employment relationship with a constitutional corporation unless it fits into one of the specified exemptions. However it is possible to distinguish the *Tristar Case* on the basis that it concerned an inquiry pursuant to the NSW IRA. This Act is explicitly excluded by the WRA and the Inquiry in question did not concern any of the explicitly listed exemptions in s 16(2) of the WRA.

There is an argument, then, that an Act other than the IRA would only be excluded if it were a State law which applies to employment generally and has one or more of the proscribed purposes as its main purpose or one of its main purposes.

Pursuant to s 4 of the WRA, a law of the State or Territory "applies to employment generally" if it applies to:

- (a) all employers and employees in the State or Territory; or
- (b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory;

and which has a main purpose of any of the following:

- regulating workplace relations;
- determining terms and conditions of employment;
- providing for making and enforcing agreements which determine terms and conditions of employment;
- providing for rights and remedies in relation to termination of employment;
- prohibits conduct that breaches freedom of association.

Clearly, the terms of s 16(1)(c) of the WRA prevent a State law providing for a tribunal or court to make orders for equal remuneration for work of equal value, which refers to rates of remuneration established without discrimination based on sex. It appears, however, that a State law may survive with respect to the fuller scope of equal remuneration orders that have been provided under the IRA, that is, equal remuneration for work of comparable value. Such a law would not be struck down by virtue of s 109 of the Constitution (that federal law prevails to the extent of the inconsistency) because the federal law does not provide for remedies for work of comparable value. It is also possible, however, that such an approach may trigger the exclusionary provisions of s16(4) of the WRA which provides:

This Act is intended to apply to the exclusion of a law of a State or Territory that is prescribed by the regulations for the purpose of this subsection.

In summary, it would appear that the decision in the *Tristar Case* suggests there may be some opportunity for legislative reform to provide for equal remuneration orders for work of comparable value. However, as discussed in Sections 1 and 2, the ERP was developed in response to an industrial context which is now substantially altered. The broader impacts of regulatory changes on pay equity (which are discussed in the next section), also highlight the extent of the challenges to pay equity that are presented by Work Choices.

A further option canvassed in the Discussion Paper, was the possibility of legislative reform to achieve equal remuneration for work of comparable value by means other than industrial tribunals. Section 16(2) of the WRA does not exclude laws of a State or Territory so far as the law deals with the prevention of discrimination, the promotion of EEO or both, and is

neither a State nor Territory industrial law,¹⁴ nor contained in such a law. The *Anti-Discrimination Act 1991 (Qld)* (ADA) is such an exempted law.

Various submissions¹⁵ to the Inquiry supported amending the ADA to allow the Anti-Discrimination Commission Queensland (ADCQ) or Anti-Discrimination Tribunal (ADT) to make orders for equal remuneration for work of comparable value. The QCU was cautious about such an approach noting that while there was value in considering it, ultimately the federal government may consider that pay equity orders are industrial in nature and thus override them.¹⁶ Accordingly, the QCU believed the risks would outweigh any benefits and should not therefore be pursued as an option to remedy pay inequity.

The submissions of the QCCI and AIG strongly opposed any such amendment. The QCCI argued that further litigation would ensue to determine whether equal remuneration orders were valid. The AIG submitted that such an approach would be cumbersome and short-lived as well as resulting in duplication. This would be a deterrent to business.

The most significant impediments to amending the ADA to provide for equal remuneration orders, however, are those which relate to the legislative intention and scheme of the ADA. This is outlined in the submission by the ADCQ to this Inquiry. One of the primary functions of the ADCQ and the ADT is to deal with complaints of discrimination. The comparator methodology required to prove direct discrimination works well in the case where men and women perform the same work in the same workplace, but anti-discrimination legislation does not sufficiently address systemic discrimination or undervaluation deriving from factors including occupational segregation. Remedies available under the ADA complaint process compensate for past harms caused by discrimination and generally have an individualised focus. Even if the complaint is a representative complaint, the remedy can apply only to the respondent to the complaint and cannot bind third parties. There is no power to order a collective or sector wide remedy.

Although not without merit, the Inquiry does not support a proposal for legislative reform to provide for equal remuneration orders for work of comparable value in the present context.

3.3 Summary and Conclusion

In terms of the second Term of Reference, then, it is clear that Work Choices significantly impacts on the legislative measures addressing pay equity under the federal and State systems. The federal equal remuneration provisions have never been as extensive as those that have been provided in Queensland legislation. The scope to pursue equal remuneration orders in the federal jurisdiction, however, has been further curtailed with the introduction of Work Choices. In Queensland equal remuneration cases still remain possible, however, their application and effectiveness is limited by having only partial coverage of an occupational group. As a consequence, women in undervalued occupations lose a significant remedial measure. In terms of whether the WRA covers the field with respect to measures to address pay equity for employees of constitutional corporations, it would appear that there may be some opportunity for legislative reform. This was discussed here in relation to legislation to provide for equal remuneration orders for work of comparable value and in relation to doing so by means other than industrial tribunals. The Inquiry considered that these proposals, although not without merit, were not appropriate in the current context.

¹⁴ Defined in *Workplace Relations Act 1996* (Cth) s 4.

¹⁵ AMACSU Submission Transcript p 139; QCOSS Submission p 6; QSU Submission (Appendix 3 to QCU Submission) pp 64-65.

¹⁶ QCU Submission p 32.

Section 4

Broader Impacts of Work Choices on Pay Equity

4. Overview

The third Term of Reference calls for an examination of the current and future impact of Work Choices on pay equity, including its impact on industries, occupations as well as individuals. This section builds on the discussion in Section 1 which considered the changes brought about by Work Choices to industrial regulation. The focus here is on three areas identified as pertinent to pay equity: the consequences of the demise of classification and remuneration systems, the loss of collective wage setting, and the implications of wage setting under the AFPC. The discussion also considers the impact of Work Choices on work and family as pay inequity is a major factor in determining the choices about caring arrangements made in couple families.

The discussion then turns to a consideration of the impacts on industries, occupations and individuals. This part of the discussion relies on submissions from interested parties and is not intended to be an exhaustive examination of all industries and occupations. Drawing from the submissions and the discussion about the changes in pay setting arrangements the discussion highlights the vulnerability of women in the new industrial relations environment.

In addition, it is found that Work Choices more broadly impacts on the labour market to exacerbate women's disadvantage in the labour market. Furthermore, changes to regulation of the minimum wage through the AFPC are seen as likely to lead to increasing wage dispersion in general and hence, an increasing gender pay gap.

4.1 Impact of Work Choices on Industrial Regulation

In Section 2 of this report, a brief background to Work Choices was provided. That discussion highlighted the significant nature of the changes to industrial regulation brought about by Work Choices. An attempt was also made to highlight some of the changes that were seen as likely to particularly impact on pay equity. Those issues are taken up again in this discussion with a focus on the following:

- the loss of classification and remuneration systems;
- the demise of collective wage setting;
- the implications of wage setting under the AFPC; and
- the impact on leave provisions and work/life balance.

4.1.1 The loss of classification and remuneration systems

In Section 1, it was noted that under Work Choices classification and remuneration systems (CRS) are removed from awards. The pay scale from each award and sufficient information about the classifications which explain the pay scale will be preserved in an APCS. The AFPC can vary APCSs and eventually (after award rationalisation) will make new ones.

Colin Fenwick notes that "skill-based career paths" are no longer an allowable award matter or preserved award entitlement. Fenwick argues that it is evident that the federal Government believes that this should be dealt with by bargaining or not at all. He finds support for this supposition in the fact that the AFPC and the Award Review Taskforce are to

streamline wage classifications.¹ The Queensland Government submission notes that training and paid training leave are also no longer allowable matters and that although the AFPC may consider skill based career paths to be included in APCs, it is not obliged to do so.²

The loss of detailed classification systems in awards poses very real practical problems for pay equity. It remains unclear what alternatives to the *Metals Industry Award* classification structure can be used to benchmark the value of work in other industries and callings.³

The Queensland Government submission⁴ referred to the final report of the Award Review Taskforce, *Rationalisation of Wage and Classification Structures*, which does address pay equity issues in its recommendations to the AFPC. Research conducted by the Taskforce into the relevance of awards confirms that businesses with more than 60% female employees are more likely to use award pay and conditions exactly as set out in the award for at least some of their employees.⁵

In making its recommendations, the Taskforce stated that any new rationalised system should be simple and fair and should ensure that "minimum wages are not influenced by differentials which reflect gender-based traditions" and that the system be subject to continual review. In discussing the options of broadbanning classifications based on wage rates or grouped around skills and responsibilities, the Taskforce recommended the latter model as "allowing for the identification of any particular gender based inequities since they involve grouping or mapping classifications on the basis of the nature of work, skills and the level of responsibilities".⁶

The Queensland Government submission contended that it is therefore critical that the AFPC address the issues of pay equity in making its determinations on the classification scales, otherwise the potential exists for indirect discrimination if the proposed system contains a bias about the value of certain skills and attributes. The submission went on to reiterate the HREOC recommendations in its 2006 submission to the AFPC that the AFPC:

- undertake a series of investigations focused on undervaluation and comparative worth in female dominated occupations and industries particularly focusing 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; and
- ensure that Australian Pay and Classification Scales contain detailed descriptors covering the full range of skills and employee attributes which can provide clear, skill based career paths for employees, particularly in female dominated industries and occupations.⁷

Despite these recommendations there is little evidence that such considerations have been adopted by the AFPC in its determinations on pay scales. The pay scales which the Inquiry has had reason to consult do not contain detailed descriptors covering the full range of skills

¹ Colin Fenwick, 'How Low Can You Go? Minimum Working Conditions Under Australia's New Labour Laws' (2006) 16(2) *The Economic and Labour Relations Review* 85 at p 96.

² Queensland Government Submission p 69.

³ Tricia Rooney and Gillian Whitehouse, 'Recent Child Care Worker Pay Cases in Australia: Implications for Pay Equity under "WorkChoices"' (Paper presented at *Our Work Our Lives: National Women and IR Conference*, Brisbane, 12-14 July 2006).

⁴ Queensland Government Submission pp 73 – 76.

⁵ Award Review Taskforce, *Award Review Taskforce Final Report on Rationalisation of Wage and Classification Structures*, Australian Government, Canberra, 2006.

⁶ Ibid p 93.

⁷ Queensland Government Submission p 74.

and employee attributes and only have a listing of pay rates with few other details provided. However, the Inquiry notes that recently the AFPC has announced a process for creating and publishing pay scales and has established a priority list of pay scales.⁸ Further, an issues paper about these matters is due to be released on 26 September 2007. In the Inquiry's view without detailed descriptors and skill based career paths it is difficult to see how pay scales could be useful in determining any inherent gender bias and in making comparisons with and between occupations in pay equity investigations.

More broadly, the exclusion of CRS from awards significantly constrains the ability to flow through decisions from one sector to another. This has been an important mechanism in the past for advancing pay equity in Australia.

The loss of classification and remuneration structures from awards is seen as a very serious practical limitation in pursuing pay equity at an occupational level and then, in turn, flowing such advances on to other areas. The new model of setting CRS, if it does not adequately heed the recommendations of the Award Review Taskforce and HREOC in terms of adequately taking account of pay equity considerations, has the potential to significantly impact on pay equity remedies.

- **Addressing the loss of classification and remuneration systems**

In oral submissions to the Inquiry on 11 July 2007, AMACSU⁹ commented on the aim of Work Choices, through the award rationalisation process and new APCs to be made by the AFPC, to strip back existing award based classification and remuneration scales. AMACSU proposed the creation of advisory classification benchmarks so that workers could compare proposed AWAs with benchmarks based on pre-Work Choices classification scales.

AMASCU suggested that such benchmarks could be used for all Government contracting and promoted in the private sector among employers seeking to be employers of choice to attract and retain staff. This in itself will not remedy gender based pay inequity although it could assist in preventing the gap from widening as bargaining is further individualised.

The Inquiry believes that this idea is worthy of further exploration. There could be two kinds of benchmarks. DEIR could prepare advisory benchmarks based on pre-Work Choices awards. In addition, the QIRC could conduct work-value/equal remuneration exercises for select occupations, which are possibly undervalued, and produce advisory pay equity benchmarks. As a pre-cursor to these QIRC equal remuneration exercises, DEIR could undertake research, in consultation with stakeholders to identify occupations which are possibly undervalued. Applications to the QIRC could be funded by Government. These kinds of QIRC "hearings" would need to be authorised by amendments to the IRA or by some other statute.

Both kinds of advisory benchmarks could be used for a range of purposes:

- assist individual employees to assess proposed AWAs;
- assist employers who genuinely wish to address pay inequity;
- provide a basis for the assessment and comparison of work value;
- provide a minimum standard for Government procurement of goods and services; and
- provide a minimum wages standard for Government funding of not-for-profit organisations.

⁸ <http://www.fairpay.gov.au/fairpay/PayScales/> at 30 August 2007.

⁹ Transcript pp 140-141.

RECOMMENDATION 4

That the Queensland Government investigate the feasibility of advisory classification and remuneration benchmarks to provide advice to employees and employers and for Queensland Government procurement and funding purposes.

4.1.2 Consequences of the loss of collective wage setting

Of major concern for pay equity is the fact that the statutory scheme of Work Choices favours AWAs as the prime wage setting instrument. Bradon Ellem *et al*¹⁰ have commented that bargaining is a misnomer in relation to AWAs because these contracts are typically "pattern" contracts developed unilaterally by the employer and offered on a take it or leave it basis. The evidence is already clear that the gender earnings gap was widening even under pre-reform AWAs, despite the protections of an award safety net and a no disadvantage test.

The 2007 WiSER submission to the AFPC canvasses a range of measures of the gender earnings gap. The WiSER submission provides a Table¹¹ (reproduced below) which examines the average hourly cash earnings for non-managerial employees disaggregated by form of agreement.

Table 1: Average hourly cash earnings for non-managerial employees, May 2006.

	Permanent			
	Full-time	Part-time	Casual	Total
Males	\$	\$	\$	\$
Award only	17.60	17.70	19.00	18.0
Registered collective agreements	29.30	25.00	24.10	28.7
Unregistered collective agreements	24.00	20.30	21.80	23.6
Registered individual agreements	29.30	19.50	20.70	28.1
Unregistered individual arrangements	27.70	22.40	23.90	27.2
All methods of setting pay	27.20	22.50	22.00	26.3
Females				
Award only	18.10	19.30	18.70	18.6
Registered collective agreements	27.00	24.20	22.00	25.7
Unregistered collective agreements	20.50	20.40	22.00	20.7
Registered individual agreements	24.70	20.50	17.30	22.8
Unregistered individual arrangements	23.40	23.30	20.10	23.1
All methods of setting pay	24.20	22.80	19.90	23.2

Source: ABS 6306.0; Table 20.

¹⁰ Bradon Ellem, Marian Baird, Rae Cooper, Russell Lansbury, ' "Workchoices" : Myth-making at Work' (2005) 56 *Journal of Australian Political Economy* 13 at p 17.

¹¹ WiSER 2007 *Submission to the Australian Fair Pay Commission* p 14.

The absence of a wage gap in the award sector reflects the extensive collective nature of awards and the previous capacity of tribunals to flow through work value tests. The demise of the award system together with limited capacity for flow-ons and test cases is likely to see a further expansion of the gender wage gap in future years.

In the agreement stream the gender wage ratio amongst those covered by registered collective agreements was 89.5% in May 2006 whereas for those covered by registered individual agreements the ratio was much lower at 81.4%. When the hourly earnings of award dependent workers are compared to those on collective and individual agreements it is apparent that there is a sizeable gap in the wages of these sectors. Amongst women the award/registered collective agreement ratio is 72.4%; the corresponding ratio amongst men is 62.7%. These ratios, of course, do not take into account differences in the qualifications and skills of the two groups. Low paid employees, often with a lower skill set, are more likely to be covered by awards. Nevertheless, it is clear from these data that award dependent employees, many of whom are employed on a part-time or casual basis (the majority of whom are women), are at a significant earnings disadvantage.

Extending the study to an analysis of the gender wage gap across occupations the WiSER researchers also found that between 2002 and 2004 the gender wage gap amongst non-managerial employees on AWAs widened, particularly amongst lower skilled classifications such as clerks, sales and service workers. Based on an analysis of these data it would seem that as more employees are drawn into the federal jurisdiction and as coverage of AWAs of the low paid, low skilled sector expands, a widening gender wage gap can be expected.¹²

The WiSER team has reported a more detailed analysis, *Women's Earnings and Australian Workplace Agreements*,¹³ in which they show that between 2002 and 2004 the gender gap amongst non-managerial employees on AWAs deteriorated by 19.6 percentage points to 79.6% and was larger than the observed gender wage gap amongst non-managerial employees on collective agreements, equal to 87.5%. The WiSER team examined the gender earnings gap for employees on AWAs in every Australian Standard Classification of Occupations occupational group and found that for all non-managerial groups, including professionals and associate professionals, women's relative position declined between 2000 and 2004. Aside from the widening gap, female non-managerial employees on AWAs also experienced deterioration in real wages with absolute earnings falling.

It is important to note also that the increase in pay inequity has occurred when the no disadvantage test still applied and it is probable that the earnings gap will widen more rapidly after 27 March 2006. While women's position has deteriorated in the individualised sector of the labour market leading up to Work Choices, the new agreement making system under Work Choices is likely to exacerbate this.

Research by David Peetz¹⁴ and Kristen van Barneveld¹⁵ identify further issues of concern with respect to the move to individualised wage bargaining. Peetz has identified that the Work Choices prohibition on pattern bargaining in ss 421 and 431 of the WRA makes it illegal for a union to use collective bargaining to achieve equal pay. It is illegal, punishable

¹² Ibid p 17.

¹³ Alison Preston, Therese Jefferson, Rob Guthrie, WiSER Working Paper No 49 November 2006, available at <http://www.cbs.curtin.edu.au/business/research/areas-of-research-focus/women-in-social-and-economic-research/wiser-publications#workingpapers>.

¹⁴ David Peetz, 'Brave New Work Choices: What do we know so far?' (Paper presented to the *Diverging employment relations patterns in Australia and New Zealand?* Association of Industrial Relations Academics Australia and New Zealand Conference, Auckland, 2007).

¹⁵ Kristen van Barneveld, 'Australian Workplace Agreements under Work Choices' (2006) 16 (2) *The Economics and Labour Relations Review* 165.

by \$33,000 fines if accompanied by industrial action, to seek common wages or conditions for two or more agreements.¹⁶ While women fare better in unionised workplaces and under collective bargaining,¹⁷ under s 400(6) of the WRA employers can frustrate the preference of employees for collective bargaining by using their legal capacity to prescribe an AWA as a pre-condition of engagement.

Research by van Barneveld highlights the scope for discrimination under AWAs and the difficulties likely to be encountered if an employee wishes to move from an AWA to a collective agreement. The current scheme of the WRA in relation to AWAs permits discrimination on any grounds including gender. As van Barneveld points out¹⁸ the pre-reform Act acted as a brake on discrimination because s 170VPA(1)(e) required an employer to state that, if AWAs with the same terms were not offered to employees doing the same kind of work, the employer was not acting unfairly or unreasonably in failing to do so. Work Choices abolished this obligation and employers may now more readily discriminate between employees doing equal or comparable work.

Work Choices strikes down existing prohibitions in pre-reform agreements against making AWAs with employees covered by collective agreements.¹⁹ Once employees are on AWAs they are likely to stay there. AWAs can be terminated unilaterally once past their nominal expiry date²⁰ but if there is no replacement AWA, the employee's terms and conditions are not those that would otherwise be provided in a relevant collective agreement or award. They are those in the AFPC Standard. An AWA employee cannot participate in any industrial action for a collective agreement until after the nominal expiry of the AWA.²¹ As van Barneveld points out, if the AWA expiry dates are not the same, it may be impossible for workers to gain a critical mass of "expired" AWA employees at the appropriate time to achieve a collective agreement.²²

• QWAs

The QCU called for the removal of the provisions of the IRA that provide for Queensland Workplace Agreements (QWAs). The reasons advanced by the QCU for this proposition were that QWAs were inconsistent with State Government policy and that individual contract arrangements have been shown to directly affect pay equity by reducing women's wages and worsening the gender pay gap. The QCU noted that QWAs comprise only 0.1% of pay setting methods in Queensland so that the abolition of legislative provisions providing for their establishment would have a negligible effect on Queensland businesses.²³

None of the employer organisations that made submissions to the Inquiry or the Queensland Government responded to the call made by the QCU.

Although QWAs provide for an individual wage setting method they differ from AWAs in the following significant respects:

- s 193 of the IRA requires that:
 - provisions relating to discrimination are included in the QWA;
 - the QWA provides for equal remuneration;

¹⁶ Peetz p 6.

¹⁷ Peetz p 3.

¹⁸ van Barneveld p 172.

¹⁹ *Workplace Relations Act 1996 (Cth)* s 358 and *Workplace Relations Regulations 2006* Reg 8.5 Ch 2.

²⁰ *Workplace Relations Act 1996 (Cth)* s 381.

²¹ *Workplace Relations Act 1996 (Cth)* ss 450 and 495.

²² van Barneveld p 177.

²³ QCU Submission p 11.

- s 196 specifically allows for the appointment of bargaining agents in the making, approval, amendment or termination of a QWA; and
- importantly, a no disadvantage test is applied before the QWA is approved.

Elsewhere in this report the Inquiry accepted the overwhelming evidence that AWAs made pursuant to the Work Choices legislation have had a negative impact on women's wages and commented on the impact that the legislation generally is having on particular industries, occupations and individuals. QWAs are clearly not a wage setting method of choice in Queensland. Although no data about their impact on women's wages separate from that relating to AWAs were presented, the 2000 statistics cited in *Worth Valuing* cautiously suggested that women were not faring as well as men under QWAs.

In the circumstances the Inquiry believes that merit exists in the Queensland Government considering the continued relevance of QWAs in the current industrial relations environment.

Summary

All of the available research highlights that women are not faring well under individual wage setting arrangements. This trend was identified in *Worth Valuing* and is likely to be exacerbated by the impact of WorkChoices through the loss of the no disadvantage test. Although it is still too early to discern the impact of the fairness test on the gender pay gap it is expected that it will do little to reverse the trend of an increasing gender pay gap. However, Work Choices may have a more insidious impact with the prospect of discrimination creeping into individual wage setting. As AWAs are confidential the capacity to take discrimination claims is diminished. Overall the Inquiry considers that it is difficult to find any benefits in the individual wage setting arrangements under Work Choices for women as a group or as individuals.

4.1.3 Implications of wage setting under the AFPC

The HREOC submission to this Inquiry highlighted that "[I]n the current environment, the AFPC is the key agency with responsibility for pay equity" with both HREOC and the AIRC having some oversight role.²⁴ HREOC supported a significant and active role for the AFPC in addressing discrimination and pay inequities.

Associate Professor Whitehouse, in her submission to the current Inquiry, concluded that one of the risks of Work Choices to pay equity is the move to wage setting under the AFPC. This move is seen as threatening the capacity of the Australian wage setting system to prevent the overall widening of wages distribution and the extension of low pay. Whitehouse discussed the importance of the minimum wage in this context.

The submission by Whitehouse succinctly summarised the research that indicates that Australia's relatively good standing historically in terms of international comparisons of gender earnings ratios is a consequence of centralised wage fixing. The centralised wage fixing system not only permitted equal pay cases and work value cases to result in wages movements across awards, it also limited the extension of low pay. The limitation on the extension of low pay resulted in good outcomes for women. The earnings of low paid women (10th percentile) as a percentage of men's median pay have been considerably higher in Australia than the UK and the US.²⁵ However women in the US fare better at the higher end of the pay scales. Women's high pay (90th percentile) as a percentage of men's

²⁴ HREOC Submission p 8.

²⁵ Whitehouse Submission p 4 figure 2.

median earnings are comparable in Australia and the UK, both of which are lower than the US.²⁶

Whitehouse expressed alarm about developments under Work Choices which have changed the criteria on which the minimum wage is set. The AFPC must have regard to "the capacity for the unemployed and the low paid to obtain and remain in employment" and "employment and competitiveness across the economy", with the goal of "providing a safety net for the low paid" third on the list.²⁷ Whitehouse concluded:

The capacity to mainstream gender pay equity through an enhanced minimum wages system in Australia would thus require the political prioritisation of a decent (living) wage for an individual, regardless of their household situation, and recognition that the management of unemployment and inflation is not dependent on depressing the minimum wage. The appropriate level of the minimum wage would be the subject of debate: some flexibility could be maintained by setting a permissible range, with guidelines drawn from historical experience in Australia (which suggests a floor of around 60 per cent of the median wage²⁸) and possibly reference to international standards (such as the 'decency threshold' proposed by the Council of Europe, initially specified as 68 per cent of the adult mean wage). Other key features of a minimum wage system with the potential to enhance gender pay equity include the requirement for regular adjustments and avoidance of the full flow-on of increases to workers at the higher end of the wages hierarchy ...²⁹

The Work Choices legislation directs the AFPC, in exercising its powers, to apply the principle that men and women should receive equal remuneration for work of equal value. The HREOC submission to the first wage review in 2006 argued that addressing pay inequity and workplace discrimination should be central priorities for the AFPC in working within its wage setting parameters and in seeking to promote the economic prosperity of the Australian people. HREOC noted that while the WRA requires the AIRC to take account of pay equity while performing its functions, s 222 requires the AFPC to apply the principle of equal remuneration. Section 222 also requires the AFPC to take account of the principles preventing discrimination against workers with family responsibilities and helping workers reconcile their work and family responsibilities. HREOC argued that because it is the AFPC that has the responsibility for setting the FMW and amending APCs, the AFPC can directly influence the relativities between men and women's wages and lower the gender pay gap.

The following discussion considers the two FMW decisions released to date in terms of evidence of the extent to which pay equity has been an important issue in the Commission's deliberations.

The HREOC submission to the first wage review in 2006 highlighted the potential for indirect discrimination to permeate the setting of minimum wages if the parameters contain unstated bias about the value of certain skills or attributes. HREOC urged the AFPC to establish a specialist unit to undertake on-going research, undertake a series of investigations focused on undervaluation and comparative worth in female dominated occupations and industries, and ensure that APCs contain detailed descriptors covering the full range of skills and employee attributes.

²⁶ Ibid p 5 figure 3.

²⁷ *Workplace Relations Act 1996* (Cth) s 23.

²⁸ The exact figure would be dependent on what data are used and the reference point (median male wage or mean wage for adults working full-time).

²⁹ Whitehouse Submission p 7.

In the face of this cogent submission by HREOC to the first wage review, the response of the AFPC was disappointing. The AFPC said:

No submissions raise specific claims of circumstances where the preserved Australian Pay and Classification Scales do not provide equal remuneration. In making its wage-setting decision, the Commission has applied the principle that men and women should receive equal remuneration for work of equal value.³⁰

In the 2007 wage review by the AFPC, WiSER and the National Pay Equity Coalition made submissions about gender pay equity. The WiSER submission analysed the gender pay gap and the evidence that it will worsen under individualised wage bargaining. WiSER noted that the growth in women's participation in the workforce has been in part-time and casual jobs. Relative to full-timers, part-timers and casuals are much more likely to be dependent on institutions (eg. the AIRC and now the AFPC) for movements in their wages (eg. cost-of-living adjustments). They are particularly under-represented in the bargaining stream. The hourly earnings of award dependent workers are substantially lower than those on collective and individual agreements. WiSER concluded:

Given the important role of institutional forces in the attainment of pay equity it is incumbent upon the AFPC to explicitly give consideration to pay equity both in the determination of the FMW and other rates within its control. Similarly, the AFPC should avoid setting wages on the basis of perceived family needs or tax-income tradeoffs; the principle of equal remuneration for work of equal value recognises the right of the individual to be properly valued at work.³¹

Again the AFPC response was disappointing. Although it acknowledged that under s 222 of the WRA it can consider submissions that raise specific claims relating to gender pay and equal remuneration it went on to say:

In making its wage-setting decision, the Commission has applied the principle that women and men should receive equal remuneration for work of equal value. However, no submissions to the 2007 wage review have raised a specific claim of circumstances where Pay Scales do not provide equal remuneration. In such an event, the Commission will apply the principles of equal remuneration when they arise.³²

On the basis of the AFPC's response to the HREOC and WiSER Submissions, it is clear that the AFPC will not provide a vehicle for addressing gender pay inequity unless some evidence is presented about a particular APCS which does not provide equal remuneration for work of equal value.

The AFPC also noted that some submissions addressed "the operation and effect of the anti-discrimination considerations included in s 222 of the *Workplace Relations Act 1996*". In particular, it was noted that some submissions addressed the effects of the gender pay gap on incomes above statutory minimum wages. In response to those submissions the AFPC identified that a gender pay gap existed but commented that it only had the power to affect

³⁰ *Wage-Setting Decision October 2006* p 134 available at <http://www.fairpay.gov.au/fairpay/PreviousDecisions/MinimumWageDecisionOct2006/MinimumwagedecisionOctober2006.htm>.

³¹ WiSER *Submission to the Australian Fair Pay Commission March 2007* p 21.

³² Australian Fair Pay Commission, *Wage Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007, p 103.

minimum wages not actual earnings and could not consider equal remuneration matters which are beyond the level of minimum wages.³³

In a recent seminar³⁴ the Chairman of the AFPC confirmed that the AFPC sees pay equity in the narrow terms of specific gender based direct discrimination and is not prepared to embark on exercises that address the undervaluation of "female" work in a highly segregated labour market.

At the same seminar, the Chairman also confirmed that the focus of the AFPC in its minimum wage setting function, is primarily to set a minimum wage that minimises any negative employment impact. The difficulty with this approach is that low minimum wages have the biggest impact on women. As the AFPC itself acknowledges,³⁵ low paid workers are likely to be women. Consequently, the minimum wage as it is currently set is likely to do little to alleviate the gender pay gap.

It is also important to note that the 2007 AFPC decision states that:

Low-paid workers tend to work in low-skilled occupations in industries such as retail, hospitality, child care, aged care, labouring, agriculture and clerical services.³⁶

The statement that the industries specified are low skilled is made without any reference to supporting information and in apparent ignorance of the qualifications required to be possessed both under the AQF and in awards, particularly, but not exclusively, in the predominantly female industries of child care, aged care and clerical services. It also ignores the recent decisions of the AIRC, NSWIRC and the QIRC in child care. In each of those decisions the Commissions were at pains to point out the qualifications held by children's services workers, a Certificate III, and the equivalence of that qualification to other Certificate III qualifications held by the predominantly male occupations in the metal trades industry.

In its January 2005 decision,³⁷ the AIRC said:

[372] *Prima facie*, employees classified at the same AQF levels should receive the same minimum award rate of pay unless the conditions under which the work is performed warrant a different outcome.

The AIRC went so far as to say:

[183] If anything the nature of the work performed by children's services workers and the conditions under which that work is performed suggest that they should be paid more, not less, than their *Metal Industry Award* counterparts.

In the Inquiry's view the AFPC is in significant error in suggesting that those who hold Certificate III qualifications, the trade qualification, are low skilled. While noting that

³³ Australian Fair Pay Commission, *Wage Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007, p 101.

³⁴ "Setting pay rates under Work Choices: The work of the AFPC", Corporate Law and Accountability Research Group/ Work and Employment Rights Research Centre Seminar, Melbourne, 23 July 2007.

³⁵ Australian Fair Pay Commission, *Wage Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007, p 64.

³⁶ Australian Fair Pay Commission, *Wage Setting Decisions 2/2007, 3/2007, 4/2007 and Reasons for Decisions*, July 2007, p 64.

³⁷ Print 954938.

children's services workers across Australia have recently received significant pay increases due to work value or pay equity claims, the Inquiry acknowledges that workers in the industries mentioned are low paid relative to predominantly male occupations with similar qualifications. The reasons for that however, are unrelated to skill and are due to such factors as identified in the undervaluation profile. In addition, because of the factors present in the undervaluation profile, employees in these industries are less able to access enterprise bargaining.

Based on the above it is apparent that the AFPC is not intending to address the pay equity issues that State governments, human rights, women's organisations and research bodies consider so important. Moreover, given that State industrial commissions have had their capacity to determine appropriate wages and conditions for employees significantly reduced, it is apparent that other than industrial measures are necessary to address the pay inequity that exists and is worsening under the current industrial relations/wage fixing system.

4.1.4 Impact on leave provisions and work/life balance

Much debate has ensued around the Federal Government's claim that Work Choices would provide additional flexibility to assist workers better balance their work and caring responsibilities. Submissions to this Inquiry, however, have raised concerns with respect to the impact of Work Choices on workers' access to leave provisions and their work/life balance.

The HREOC submission to this Inquiry highlighted that one of the areas in which pay equity has significant effects is in relation to the arrangements that families make for the care of children and other family members. Despite many younger couples moving to more equal sharing of work and family roles, simple economics mean that it still overwhelmingly the lower paid woman in a couple who reduces her paid work when the couple is struggling to balance work and family responsibilities. This affects the father's ability to be more involved in child care.³⁸ Not only then is pay equity relevant to the quality of both women's and men's working lives, but pay equity and flexible work practices for parents are interconnected.

Access to various types of leave, such as paid sick leave, paid sick leave for carer purposes, annual leave and maternity leave, are important in affecting women's ability to manage their family responsibilities. Pre-Work Choices, women reported low levels of access to leave. For example, in August 2006, 27% of employees had no leave entitlements and of these 53% were women and 63% were part-time. Access to leave in female dominated industries is shown in the table overleaf.

With the shift to individualised bargaining, employees' access to improvements in non-wage conditions beyond the AFPC Standard is likely to be minimal. The early evidence on AWAs showed that, based on 2004 data, while 71% of all Australian employees have access to annual leave, only 59% on AWAs have that entitlement. Almost half of all women on AWAs do not have access to annual leave. Only 61% of employees on AWAs have access to sick leave, compared to 71% of all employees. There are gender inequalities in access to family friendly provisions under AWAs with 66% of men having access to some kind of general work and family provision compared to half of women on AWAs. In 2004, 8% of AWAs provided paid maternity leave compared to 10% of collective agreements.³⁹

³⁸ HREOC Submission p 10.

³⁹ Barbara Pocock and Helen Masterman-Smith, 'Workchoices and Women Workers' (2005) 56 *Journal of Australian Political Economy* 126 at pp 133-135.

Table 2: Access to leave entitlements in Female Dominated Industries

Industry	% employees who are women	% female employees who access the following leave		
		Annual	Sick	Maternity
Health care & social assistance	79.5	77.8	77.7	51.2
Education & training	69.0	80.5	82.4	63.6
Accommodation & food services	59.5	30.5	31.0	12.3
Administrative & support services	58.5	60.1	61.3	31.4
Retail trade	56.2	52.7	52.9	25.9
Financial & insurance service	53.8	87.8	88.1	66.2
Public administration & safety	50.0	91.5	91.7	80.2

Source: ABS 6310.0 August 2006 Table 12

In addition, the erosion of the award system reduces the capacity for centralised setting of certain employment conditions that assist employees to improve their work/life balance and which are also instrumental in reducing the gender earnings gap. One particular consequence of the Work Choices amendments to the WRA is the loss of the benefit of the AIRC's decision in the *Family Provisions Test Case* in 2005.⁴⁰

Prior to the *Family Provisions Test Case*, earlier test cases in the AIRC⁴¹ had resulted in the following entitlements being able to be inserted into federal awards upon application by the parties:

- 52 weeks unpaid parental leave;
- simultaneous unpaid parental leave of one week; and
- carer's leave (including bereavement leave) of 5 days per year.

The *Family Provisions Test Case* increased carer's leave entitlement to 10 days carer's leave per year and an additional two days unpaid leave per occasion for an employee who has exhausted paid leave or for a short-term casual to not attend work.

The *Family Provisions Test Case* also established the right of employees to make a reasonable request to their employers for:

- access to a further 52 weeks unpaid parental leave (in addition to the entitlement to 52 weeks unpaid leave);
- extension of simultaneous unpaid parental leave to 8 weeks; and
- part-time work until the child reaches school age.

With the exception of carer's leave, these gains have not been protected by Work Choices either as statutory minima or protected award provisions. The AFPC Standard consists of 5

⁴⁰ *Family Provisions Test Case* AIRC PR082005 8/8/07

⁴¹ *Parental Leave Test Case* AIRC Print J3596 26/7/1990; *Family/Carer's Leave Test Case* AIRC Print J3596; *Personal/Carer's Leave Test Case* AIRC Print L9600.

minima, one of which is 10 days carer's leave and an additional two days unpaid leave per occasion.⁴²

None of the gains under the *Family Provisions Test Case* are allowable award matters under the WRA as amended by Work Choices. This means that after 27 March 2006, no application could be made to insert the provisions into any federal award. Neither are they protected allowable award matters. Under the fairness test, an agreement has to contain fair compensation if it excludes or modifies protected allowable award matters. Employees covered by awards which were amended to include the gains from the *Family Provisions Test Case* before 27 March 2006 have no guarantees of preserving these provisions under Work Choices agreements.

On 22 February 2006, the IRA was amended to incorporate the entitlements from the *Family Provisions Test Case*.⁴³ The new IRA provisions went further than the Test Case in that they impose on employers the requirement to provide reasons if refusing a reasonable request for extended parental leave or part-time work. The legislation also specifies the matters that the employer must take into account when considering a request.

The Queensland statutory provisions override an industrial instrument (State award or State agreement) to the extent that the State industrial instrument provides a less favourable benefit.⁴⁴ Employees who were covered by State industrial law and moved into the federal jurisdiction by Work Choices will retain the benefit of the *Family Provisions Test Case* because the family leave provisions of the IRA are incorporated into the terms of the NAPSA or PSA. However the NAPSA or PSA ceases to have effect as soon as a Work Choices agreement is made or after 3 years after 26 March 2006.

As HREOC noted, pay inequity is a major factor in determining the choices that men and women make about balancing work and family. As these provisions are extremely important measures for addressing part of the disadvantage experienced by women in the workforce and ultimately in assisting families in making choices about their caring arrangements, the Inquiry considers that further steps should be taken to enshrine them as a right.

The origins of the employer's obligation to reasonably consider a reasonable request for flexible work practices is in anti-discrimination law.⁴⁵ Accordingly, the Inquiry considers that the *Anti-Discrimination Act 1991* (ADA) should be amended to not only provide protection of some of the gains made through the *Family Provisions Test Case* but to ensure the enforceability of the right to request/duty to consider provisions in respect to employees of constitutional corporations.

The ADCQ submission⁴⁶ recognised that refusal to reasonably consider a request for flexible work arrangements could be the subject of a complaint to the ADCQ. Such complaints can already be made under the ADA because it is unlawful to discriminate in employment on the grounds of family responsibility, however, there is an advantage in amending the ADA to provide for the right to request flexible work arrangements, employee rights and employer

⁴² The other four minima in the Standard are 52 weeks unpaid parental leave, four weeks annual leave, ordinary hours and minimum wages.

⁴³ See *Industrial Relations Act 1999* (Qld) Chapter 2 Part 2.

⁴⁴ *Industrial Relations Act 1999* (Qld) s 41.

⁴⁵ S Williamson, 'Family Provisions and WorkChoices: Where to now?' (Paper presented *Our Work Our Lives: National Conference on Women and Industrial Relations*, Brisbane, 12-14 July 2006) p 164 noted that in preparing the claim for the Test Case, the ACTU relied on a substantial body of anti-discrimination case law that had been steadily developing in Australia. These cases had found unlawful discrimination on the grounds of family responsibility and/or gender when employers refused to accommodate a request to work part-time or other flexible work practices such as altered start and finish times.

⁴⁶ ADCQ Submission p 10.

obligations in this area of discrimination will be articulated. Once articulated they are easier to protect. Such provisions in the ADA could be accessed by employees of constitutional corporations because the ADA is not a law that applies to employment generally and the subject matter is properly characterised as discrimination rather than conditions of employment.

RECOMMENDATION 5

That the Queensland Government amend the *Anti-Discrimination Act 1991* (Qld) to provide employees with carer responsibilities the right to make a reasonable request for flexible work practices including part-time work, altered start and finish times, and telecommuting. Carer responsibilities should not be limited to care of children but should include care of other family members. The amendments should also provide:

- appropriate notice procedures;
- an employer obligation for reasonable decision-making;
- matters which must be considered by the employer;
- a requirement that the employer provide written reason for a refusal; and
- the capacity to have the Anti-Discrimination Commission Queensland or the Anti-Discrimination Tribunal determine complaints and consider whether the employer's response is reasonable or not.

• Paid maternity leave

A further issue that must be mentioned is paid maternity leave. As already noted, the HREOC submission stressed the importance of pay equity in relation to the arrangements that families make for care of children and other family members.⁴⁷ These choices impact significantly on women's engagement in the workforce and their life time earnings. Paid maternity leave is thus seen as critically important in establishing equity in both paid and unpaid work.

HREOC recommended that as an important mechanism for advancing pay equity:

that the Australian Government as a matter of priority introduce a national, government funded scheme of paid maternity leave of 14 weeks at the level of the federal minimum wage, as recommended by HREOC in a *A Time to Value: Proposal for a National Paid Maternity Leave Scheme* (2002).⁴⁸

Support for HREOC's recommendation and its rationale was given by a number of organisations that made submissions.⁴⁹

The Inquiry notes that a new pre-requisite for the EOWA Employer of Choice For Women citation to operate from 2008 is a minimum of six weeks of paid maternity leave after 12 months of service.

The Inquiry is of the view that paid maternity leave is an extremely important employment equity issue. Although it is beyond the scope of this Inquiry to make a recommendation in

⁴⁷ HREOC Submission p 9.

⁴⁸ Ibid p 12.

⁴⁹ See, for example, NFAW, *What Women Want*, p19; ADCQ Submission p 10; QWWS Submission p 12; QCU Transcript p 114; AMACSU Transcript pp 136-137.

the nature of that made by HREOC, the Inquiry endorses the view that paid maternity leave is a necessary measure in the pursuit of pay equity.

4.2 Impact of Work Choices on industries, occupations and individuals

Several organisations made submissions to the Inquiry which highlighted the impact of Work Choices on industries, occupations or individuals. In particular, the submission from Queensland Council of Social Service Inc (QCOSS) provided information on the community services sector and the particular challenges facing that industry under Work Choices. Shop assistants, nurses employed in the aged care sector and clerical and administrative employees were identified as occupations being at risk of receiving lower wages and conditions as a result of Work Choices. To highlight their concerns AMACSU called a number of witnesses to give evidence of their experiences of the impact of Work Choices. A list of the witnesses called is included as Appendix 6.

The QCU in its submission highlighted the cases of several individuals whose employment had been affected by Work Choices. The Queensland Working Women's Service (QWWS) also provided case studies concerning the impact of Work Choices on individuals. The National Foundation for Australian Women (NFAW) provided its report, *What Women Want*, to the Inquiry which sheds further light on how women are faring under Work Choices and is used here to supplement the information directly supplied to the Inquiry about the impact of Work Choices on pay equity. The discussion here provides an overview of these submissions to the Inquiry. It is not the intention of this report to address each of the individual concerns raised in submissions rather they are discussed here as illustrative of the concerns emanating from Work Choices for particular industries, occupations and individuals and are addressed where possible. This section concludes with a discussion about the vulnerability of women in respect of workplace bargaining.

4.2.1 Industries

The Community Services Sector

The QCOSS submission to this Inquiry highlighted the particular challenges to the community services sector as a consequence of the introduction of Work Choices. The submission reports that this industry, which has largely been regulated in the federal jurisdiction, will be split across State and federal jurisdictions with some organisations moving coverage to the State from the federal system and vice versa, depending on whether the employer is a constitutional corporation. This sector, which has many of the characteristics of the undervaluation profile, and which receives major funding from the Queensland Government raises particular pay equity issues. Other submissions concerning the community services sector were received from the Queensland Government, the QSU and QCCI.

The information presented here on the community sector is drawn from the *Queensland Community Services Sector Mapping Report May 2006* prepared by Social Pty Ltd for QCOSS and the QCOSS Submission to the Pay Equity Inquiry which included the following reports, *Impact of WorkChoices on the Non-government Health and Community Services Sector Project Survey Report 2007* and the *Building Social Inclusion in Australia 2007* Discussion Paper commissioned by the Australian Services Union.

The community services sector comprises a variety of types of services. The vast majority of the sector operates on a not-for-profit basis and is highly reliant on government funding for its operation.

The types of services included in the sector include:

- aged care;
- child care;
- child welfare;
- community information and referral;
- community development;
- community care;
- employment services;
- health services;
- housing services;
- individual and family relationship counselling and support;
- legal services;
- advocacy services; and
- disability services, including supported accommodation for people living with a disability.

The community services sector in Queensland is a growing industry with over 20,000 people employed and approximately two thousand employers and, as already stated, displays many of the characteristics of the undervaluation profile, including:

- a very high proportion of small workplaces;
- predominantly female workforce (87%);
- high proportion of part time (56%) and casual (20%) employment;
- award reliance (approximately 72% of community sector organisations⁵⁰);
- very few instances of over-award payments being made to employees;
- a lack of ability for widespread collective bargaining to occur;
- workers in the community services sector are more likely to have a post school qualification than other workers but have lower weekly income; and
- low wages: almost 75% of workers earn less than \$41,599 per annum. The average weekly wage of direct care workers is around \$400 per week.⁵¹

The ACOSS Community Sector Survey 2007 showed that in 2006 there was a staff turnover of 23% in Queensland with 63% of respondents to the survey indicating that they had experienced difficulty in attracting suitably qualified employees to their organisation. This high turnover is further exacerbated by the ever widening gap between community sector workers and their equivalent colleagues employed by State government and/or local authorities. This latter group of workers receives far higher levels of remuneration. This disparity has occurred because of enterprise bargaining and the ability of public sector employers to afford wage increases. QCOSS submitted that high turnover in the sector is a public interest issue that will affect the delivery of community services to disadvantaged groups and individuals if not addressed.⁵² QCOSS also submitted that increased levels of funding to public sector levels need to be dedicated to increasing wages in this sector to reduce the social and financial expense of turnover.⁵³

In 2000, \$1131.1 million was expended by 1318 non-Government not-for-profit organisations representing 58% of the total State community services expenditure. Seventy-three Government organisations spent \$447.2 million (22.9% total State community services expenditure) and 497 for profit organisations spent \$370.7 million (19% of total State community services expenditure). In general terms Government funding equates to 70% of

⁵⁰ QCOSS, *Impact of WorkChoices on the Non-government Health and Community Services Sector Project Survey Report 2007*, p 13.

⁵¹ QCOSS, *Queensland Community Services Sector Mapping Report, May 2006*.

⁵² QCOSS Submission p 4.

⁵³ QCOSS Submission p 5.

funding of the non-Government not-for-profit community sector, with wages accounting for 70-80% of these organisation's expenditure. The Queensland Government is a major funding source for the community sector.

The introduction of Work Choices has had significant impacts on the sector. While many community organisations will remain in the federal jurisdiction, QCOSS estimates that approximately 43% of organisations will come under State industrial regulation.⁵⁴

For the proportion of the sector that is covered by the Work Choices legislation because of constitutional corporation status, the dismantling of the award system and the absence of collective bargaining strength will leave women workers vulnerable to increasing pay inequity. Those organisations that are not respondent to the federal award are only bound by the minimum standards under Work Choices.

For the proportion of the sector that does not meet the criteria of a constitutional corporation and will transition into the State system within the next three years there is further capacity for pay inequity as there is no equivalent State industrial regulation (for example a State award) yet in existence. The opportunity then arises for even the currently paid award minima to be sidestepped and replaced with minimum pay and conditions established by State legislation. Despite the IRA establishing a number of beneficial conditions the prospect of the application of minimum wage provisions in particular will increase pay inequity within the sector and more broadly.

Through its role as a funding body, the Government has a major opportunity to directly address the undervaluation of "women's" work in the community sector, regardless of which industrial jurisdiction applies. It is not appropriate that the work of community sector workers is undervalued because it has the characteristic of the feminine attribute of a "caring" vocation.

The Queensland Government submitted that the consequences of Work Choices for this sector are complex.⁵⁵ The question of how to progress pay equity, either through the establishment of a State award which mirrors their current entitlements or through a separate pay equity case, adds to the difficulties facing this sector. The Queensland Government noted that each strategy had its own particular difficulties and neither was preferred over the other.

It would not be appropriate to impose on small community sector organisations obligations to undertake pay equity audits, or prepare pay equity plans etc. The not-for-profit part of the sector does not necessarily have the financial or human resource management capacity to undertake these activities. It is appropriate for Government to assist the sector to achieve pay equity through funding standards that are designed to progress pay equity.

In relation to the community sector the QCCI submission called for the "Queensland Government to consider" the following proposition:

Provide increased funding to employers where employees are performing work which is principally funded by the State Government so that the employee will receive wages equal to what is being paid to public sector employees performing similar duties.⁵⁶

⁵⁴ QCOSS, *Impact of WorkChoices on the non-government Health and Community Services Sector Project Survey Report 2007* p 14.

⁵⁵ Queensland Government Submission p 77.

⁵⁶ QCCI Submission p 3.

QCROSS made a similar recommendation arguing that such funding of pay arrangements, while enhancing the ability of the community services sector to attract and retain suitably qualified staff, would also assist in ensuring the pay gap does not widen.

The Inquiry believes that a State award is imperative for this sector to avoid the pitfalls identified above. While employees would likely benefit from the conduct of a pay equity case as part of the establishment of a State award that issue is one for consideration by the industrial parties and there are risks attached. While the QIRC must ensure a new award provides for equal remuneration for men and women employees for work of equal or comparable value,⁵⁷ the parties to the application have a responsibility in ensuring adequate information is before the Commission upon which to make a decision.

Apart from the establishment of a new State award the Inquiry considers that specific pay equity measures should be introduced with respect to the non-government community sector. Moreover, the Inquiry is satisfied that the measures recommended below will assist in properly evaluating the "women's" work performed in this sector which, in turn, will help to address the gender pay gap.

RECOMMENDATION 6

That the Queensland Government actively investigate and support measures to establish pay equity benchmarks as the basis for funding the not-for-profit community sector and for purchasing outsourced services. Such measures could include providing funding and technical support for the making of a new common rule award for the community sector that contains a classification and remuneration system which is properly valued in accordance with the Equal Remuneration Principle and which takes into account the inability of employees in the community sector to access enterprise bargaining.

Employees of non-constitutional corporations in the community sector would benefit directly from such a common rule award and the award could be used by the Queensland Government as the basis for funding the community sector. The non-governmental organisations which are constitutional corporations would be obliged contractually, by these funding and procurement arrangements, to pay at least the equivalent of the new common rule award in addition to complying with any relevant federal industrial instrument.

Another measure would be the advisory classification and remuneration benchmarks which were discussed earlier in terms of the loss of classification and remuneration systems from awards and formed the basis for recommendation 4.

4.2.2 Occupations

Shop assistants

The SDA made submissions on the impact of Work Choices on pay equity in the retail and fast food sectors. The SDA has coverage of a number of occupational areas including retail, fast food, pharmacy and motor vehicle sales. The vast majority of their membership is engaged in the retail industry such as supermarkets, department stores, takeaway and fast food outlets, specialty stores, hardware stores and petrol service stations. The retail industry

⁵⁷ *Industrial Relations Act 1999* s 126(e).

is a seven day a week industry with most stores permitted to trade in Queensland seven days per week with varying hours. Some stores are able to trade for 24 hours per day.⁵⁸

The SDA provided data that showed that 64% of its membership is female with more than 50% of women aged up to 30 years. Another 33% were aged between 31 and 50 years. As the SDA draws a significant proportion of its membership from large retailers and large fast food companies only about 5% of its membership is award reliant. However, the SDA readily concedes that the majority of employees of small retailers are reliant on the *Retail Industry Award - State* 2004. That the retail industry is heavily award reliant and low paid is supported by the AFPC in its latest decision.⁵⁹

Penalty rates are an important condition for employees in this industry whose employment, outside of the major retail chains, has, until the introduction of Work Choices, been regulated by the *Retail Industry Award - State* 2004. This Award is now a NAPSA for those workers. Although penalty rates have become a protected allowable award matter (from 1 July 2007), it is not yet clear how the recently introduced fairness test will apply. As a result the SDA considers that its membership remains vulnerable under Work Choices. As a result of the allowable trading hours, penalty rates have been an important condition for employees

The SDA remains concerned about the effect of Work Choices on women in the retail industry. Its concerns are that many women are reliant on increases granted by the wage setting decisions of the AFPC. Their reliance is either direct, ie by having no other industrial coverage except the Award (or NAPSA), or indirect. The SDA submitted that the increases secured in major retail certified agreements over the last decade have been closely linked to the level of safety net increases granted by the AIRC, with some additional increases attributable to productivity gains and profitability. To illustrate this point the SDA provided the following table:

Table 3: Wage rates in the retail sector: award and selected major retail certified agreements

	Retail Employees Award - State	Coles Supermarkets	Woolworths Supermarkets
Wage rate as at Sept 2000	\$459.40	\$504.00	\$492.30
Wage Rate as at June 2007	\$562.80	\$622.20	\$615.60
Wage increases (since Sept '00)	\$103.40	\$118.20	\$123.30
%	22.51%	23.45%	25.05%

Source: SDA Submission p 11

The second concern of the SDA is that the pay equity gap will only increase for women employees in the retail industry under Work Choices. To support this contention the SDA relied on a submission made by the Office of the Employment Advocate (OEA) to the 2005 Senate Inquiry into Workplace Agreements.⁶⁰ The OEA analysed ABS data⁶¹ and showed that women's wages under AWAs as a percentage were just over half of men's wages.

⁵⁸ SDA Submission p 9.

⁵⁹ Australian Fair Pay Commission, *Wage-Setting Decisions 2/2007, 3/2007 4/2007 and Reasons for Decisions*, July 2007, p 62.

⁶⁰ Office of the Employment Advocate, Submission No 19 to the 2005 Senate Inquiry into Workplace Agreements, p 39.

⁶¹ ABS Cat No 6306.0.

Clerical and administrative employees

AMACSU noted that clerical and administrative employees work in every industry and in every enterprise with women being concentrated at lower and middle levels. Such work is generally identified as "women's work", although AMACSU hastened to acknowledge that men are employed in these occupations and are affected by the gender segmentation of the workforce.

- **Jurisdiction**

AMACSU identified that confusion over the industrial jurisdiction into which clerical and administrative employees fell was a negative impact of Work Choices and further, delays experienced over the resolution of jurisdictional issues affected the pay and conditions of employees. The argument was that these delays exacerbated, or at least, failed to contribute to the minimising of, pay inequity.

The issue of jurisdiction concerns whether an organisation is a constitutional corporation or not. In this regard the Australian Communications Exchange (ACE) was given as an example. In this case, AMACSU submitted that dispute over whether ACE was a constitutional corporation had left the union powerless to pursue another State certified agreement until that issue was resolved. ACE filed submissions in response to the evidence called and the submissions filed by AMACSU rejecting the contentions made by AMACSU. In particular, ACE reiterated its contention that it is a constitutional corporation and hence federal industrial legislation applies. With AMACSU preferring to negotiate a State agreement ACE contended there was no option but to pursue a federal non-union agreement.

The Inquiry is unable to comment on the specific case of ACE. However, the Inquiry is prepared to accept that competing views over whether an organisation is properly defined as a constitutional corporation may contribute to delays in finalising enterprise agreements especially where one party is opposed to the jurisdiction being contended for by the other party. Until the High Court provides greater guidance on the issue these delays are likely to continue. The extent to which the jurisdictional issues are contributing to pay inequity is unknown.

- **Dispute Resolution**

AMACSU also pointed to concerns over the changes to dispute resolution in the AIRC as a result of Work Choices which have negatively impacted on their women members. In respect of this matter, AMACSU led evidence and provided submissions about a dispute colloquially referred to as the Qantas Mums case. This dispute concerns a decision by Qantas to alter a custom and practice arrangement whereby Qantas employees returning from maternity leave and who work as Customer Service Agents at the Brisbane International Airport were offered flexibility in their hours of work until their child turns two years of age. That decision by Qantas was taken in October 2006.

AMACSU attempted to have the dispute brought on before the AIRC but Qantas declined to participate in the process. Part 13 Division 3 of the WRA sets out the alternative dispute resolution process conducted by the AIRC relevant to this dispute. These provisions do not enable the AIRC to compel attendance or to make an order or award. As the dispute could not be resolved in the traditional industrial forum, AMACSU made a complaint of direct and indirect discrimination on the grounds of family responsibilities to the ADCQ. There, conciliation failed and AMACSU sought a hearing of the matter in the ADT. A hearing date is unable to be obtained until September 2008, some 15 months after the conciliation.

Qantas responded to the material put by AMACSU only in relation to the initiatives taken by them at the Brisbane International Airport to support employees with family responsibilities. In particular, Qantas outlined its actions and reasons regarding the change in the number of shifts performed by the Customer Service Agents who were returning to work after maternity leave. It is important to note that Qantas denies that the complaints made to the ADC disclose conduct that constitutes direct or indirect discrimination under the ADA.

AMACSU raised this case to highlight two issues:

1. the difficulty in pursuing dispute resolution under Work Choices; and
2. the delays experienced by the ADT in dealing with industrial matters.

While highlighting the inadequacy of the voluntary dispute resolution processes under the federal legislation this aspect falls outside the Inquiry's Terms of Reference. However the case is of concern for another reason. The Inquiry has previously noted the importance of work and family issues to the achievement of pay equity. The Inquiry's concern regarding the Qantas Mums dispute rests with the delay in having an issue dealing with work and family resolved. From the information provided 15 months is a long time to wait for a dispute over working conditions, which directly impinge on the pay and conditions of women workers, to be resolved.

RECOMMENDATION 7

That the *Anti-Discrimination Act 1991* (Qld) be amended to provide that the Queensland Industrial Relations Commission be granted jurisdiction under that Act to hear and determine complaints made in the area of work to the Anti-Discrimination Commission. This jurisdiction is to be shared with the Anti-Discrimination Tribunal.

Complainants are to be given the right to elect to proceed to a hearing before the QIRC or ADT in the event conciliation in the ADC fails. Where the complainant elects to proceed in the QIRC, the QIRC would also have jurisdiction to conduct a further conciliation.

The implementation of this recommendation would allow for the expeditious resolution of complaints by a tribunal specialising in matters affecting employment. The QIRC has a reputation for being able to list, hear and determine disputes expeditiously. Further, the QIRC has shown itself to be adaptable to new jurisdictions, as evidenced by the recent new jurisdiction of hearing appeals from decisions of Q-COMP. For these matters the QIRC has been granted shared jurisdiction with the Magistrates Court under the *Workers' Compensation and Rehabilitation Act 2003* (Qld).

• Public Sector

The written and oral submissions by AMACSU raised three cases where it considered that Work Choices had adversely impacted on their (previously) public sector membership. These were:

1. Golden Casket Lottery Corporation;
2. Mater Misericordiae Health Services Brisbane Limited; and
3. Caboolture Hospital Emergency Department.

Each of these matters concerned the movement of clerical and administrative employees from the protection of State awards, certified agreements or other arrangements either immediately or over time. The concern held by AMACSU is that the wages and conditions of their membership are deleteriously affected by the movement of such employees into the federal jurisdiction where Work Choices applies. AMACSU argued because clerical and administrative employees are predominantly women that the gender pay gap would be exacerbated as a result.

Although some comments were made about these matters on transcript, the comprehensive response of the Queensland Government is contained in its correspondence of 2 August 2007. In essence the Queensland Government refuted much of the information provided by AMACSU and highlighted the efforts made to ensure that as far as possible employees who were affected by Work Choices had their terms and conditions of employment shielded from its impact for the next few years. AMACSU replied to this further response by letter of 17 August 2007.

After considering the information provided by both AMACSU and the Queensland Government the Inquiry acknowledges that some employees who were previously immune from the impact of Work Choices either through industrial regulation or by agreement are likely to be regulated by that legislation if it survives into the future. The Inquiry considers that the Queensland Government has taken a number of measures to protect those employees as much as is able in the current industrial relations environment. As this Inquiry is focused on pay equity, the Inquiry calls upon those employers who have employees whose terms and conditions of employment were previously regulated in the Queensland jurisdiction to safeguard those conditions which particularly impact on pay equity. These would include superannuation contributions, work and family arrangements, access to career paths and parity with public sector wages.

In addition, the issues raised pertain to the more general concerns identified by the Inquiry with respect to the impact of Work Choices on pay equity and which are addressed by the key recommendation of this Report.

Nurses in the Aged Care Sector

The Queensland Nurses' Union (QNU) has approximately 35,000 members employed in the public and private sectors in Queensland of whom the vast majority are women. The QNU said that the jurisdiction that governs their members' industrial relationships has fundamentally changed as a direct consequence of the introduction of Work Choices. Those members who are employed in the public sector have moved from the federal jurisdiction and are now governed by a certified agreement under the IRA, although those employed at the Mater Hospital remain in the federal jurisdiction. The vast majority of the QNU's private sector membership, which was covered by State awards and agreements pre-Work Choices, has now moved to the federal jurisdiction. The QNU submitted that it is this section of their membership that is most vulnerable to pressures of gender based pay inequity.⁶²

The QNU stated three concerns with respect to the impact of Work Choices:

1. The Certificate III rate paid to Assistant Nurses in both the public and the private sectors lags behind many male dominated certified agreements in the private sector. For the public sector, this is despite the significant increases granted to nurses in the last round of enterprise bargaining.

⁶² QNU Submission (Appendix 2 to QCU Submission) p 56.

2. Despite a chronic nursing shortage existing, particularly for Registered and Enrolled Nurses, wages remain suppressed particularly in the aged care sector.
3. Work Choices was seen as having three detrimental effects:
 - diluting and decentralizing collective bargaining;
 - reducing the capacity of independent tribunals to examine the value of work; and
 - removing industrial arrangements from public scrutiny and accountability.

The Inquiry does not make any specific recommendations concerning the issues raised by the QNU. However, the Inquiry considers that the key recommendation of this Report will, if implemented, address many of the concerns raised by QNU concerning the impact of Work Choices on their membership.

4.2.3 Individual cases

Few submissions provided examples of the direct impact of Work Choices on individuals, so, to an extent anecdotal evidence was presented.⁶³ The QCU noted that it had proved very difficult to persuade women employees to provide evidence to this Inquiry out of fear for their jobs. Despite this, however, the information presented to this Inquiry on individual experiences is reflected in the outcomes of a number of other studies which investigated the impact of Work Choices on vulnerable workers.

The QCU raised three cases which will be referred to only briefly here as they were not the subject of evidence and arose out of informal discussions held with the relevant employees, the QCU and a research officer attached to the Inquiry. Each of these cases highlighted that these female employees have been negatively impacted by Work Choices.

In the first case, a dental assistant lost award prescribed conditions when the business in which she was employed changed hands and she was offered an individual contract on a take it or leave it basis. The second case was of a child care worker who had had the terms and conditions of her employment unilaterally altered and offered an AWA as a condition of employment. In both of these cases, the women involved were from rural and remote areas with few employment alternatives in the local area. In the third case, meatworkers were engaged in a relatively new part of the business doing process work. These workers were predominantly women, most with very limited English and with low union membership. Unlike their counterparts in the other part of the abattoir who are employed under a collective agreement, these employees are employed under a Greenfield AWA which provides for significantly inferior pay and conditions to that received by employees under the collective agreement.

The LHMU gave evidence of a female worker employed under an AWA in a bowls club. This agreement also provided significantly inferior pay and conditions than that available under the relevant award. It would seem from the documentation provided that the AWA is a template, used for a range of positions within the club. It is important to note that notice of the evidence to be provided was given to the relevant representative body, however, the evidence was not challenged.

The SDA also provided the AWA applying to employees of Spotlight, a retail store. This agreement too provides significantly lower rates and conditions for employees. Again, no challenge was made to the admission or content of the AWA. While it may be the case that the new fairness test may prevent some of the worst excesses in reducing pay and

⁶³ See, for example, AWU Transcript p 76.

conditions such as were found in the Spotlight and bowls club AWAs, it is still too early to tell how effectively the fairness test will be implemented.

The QWWS submission⁶⁴ noted that a large proportion of their callers are employed in the hospitality, retail and clerical sectors. The sectors in which women predominate, are low paid and award reliant. Two case studies from different organisations were cited involving women and AWAs to highlight the vulnerability of both new and long term employees under Work Choices in respect to their pay and conditions of employment.

4.3 Vulnerability of women under Work Choices

All of the individual stories, however reported, identify the vulnerability of women, especially low paid women, in the present industrial environment. The emphasis on individual arrangements has led to feelings of disempowerment, loss of conditions and in some cases, loss of employment. As noted elsewhere in this Report, the reduction in pay and conditions for women workers which has occurred under Work Choices is a contributor to pay inequity. Although a fairness test has been introduced for the assessment of agreements, there is concern that people in disadvantaged bargaining positions may be more willing to trade off monetary compensation for non-monetary benefits such as flexibility or family friendly provisions.⁶⁵ Moreover, various studies referred to earlier report the adverse effects on women as a result of the individualisation of employment arrangements.

NFAW submitted their report, *What Women Want*,⁶⁶ to this Inquiry in order to highlight these adverse effects. The report was commissioned with support from over 60 women's organisations around Australia and is concerned with the impact of Work Choices on women. This report is a companion to the national research conducted on Work Choices and vulnerable workers.⁶⁷ The Queensland component of the national research, a report, *Tipping the Scales*, was provided to DEIR and was released on their website in August 2007.⁶⁸ The studies undertaken in other States show very similar results and have been collated into a national report entitled *Women and WorkChoices: Impacts on the Low Pay Sector* which was released on 13 August 2007.⁶⁹ These reports are important in identifying and illustrating the vulnerability of women in the labour market.

The *What Women Want* report identifies the confusion and vulnerability that low paid women employees are feeling as a result of the introduction of Work Choices. The report refers to the constant theme of the degree to which women felt they had experienced a loss of dignity, a loss of self-worth in the bargaining process and their vulnerability in raising issues with their employers out of concern for their job security in light of changes made to unfair dismissal laws.⁷⁰

Similar issues are raised in the *Tipping the Scales* report with case studies illustrating the range of factors at work. These case studies show that Work Choices has shifted the power in organisations firmly to the employer with employees having little opportunity to discuss changes to hours or other working conditions and jobs being threatened if employees do not comply with the changes. It seems that since the introduction of Work Choices, the employers reported in this study believe they can make changes unilaterally even if this cannot be done legally. The report highlights that women feel isolated and alone when

⁶⁴ QWWS Submission p 8.

⁶⁵ QWWS Submission p 6.

⁶⁶ *What Women Want*, June 2007.

⁶⁷ Jude Elton et al, *Women and WorkChoices: Impacts on the Low Pay Sector*, August 2007.

⁶⁸ see <http://www.deir.qld.gov.au/pdf/ir/tippingthescales.pdf>

⁶⁹ see <http://www.deir.qld.gov.au/pdf/ir/women-workchoices-fullreport.pdf>

⁷⁰ *What Women Want*, June 2007 p 16.

employers act in this manner and points to the dehumanizing of the workplace as a consequence of the introduction of Work Choices. The case studies also clearly illustrate that the loss of a job, or the threat of the loss of a job, has a range of consequences even if alternative employment is able to be found. These include the time between jobs with no income, the potential loss of social networks and support, and the need to rearrange caring responsibilities. In the case of workers in rural and remote areas and where work places are within convenient distance from child care centres and schools, the loss of a job in itself can be devastating. The *Tipping the Scales* report suggests that the fairness test does little to address the issues of fear and intimidation highlighted in their research.

The Inquiry notes that the federal Minister for Workplace Relations, Joe Hockey MP, has been dismissive of the above report arguing, amongst other things, that most of the experiences reported were unlawful under the WRA.⁷¹ While that may be so the national and State reports highlight the changed industrial environment that Work Choices has ushered in and the vulnerability of low paid women in this environment.

4.4 Summary and Conclusion

This review of the broader impact of Work Choices on pay equity highlights that Work Choices results in the removal of classification and remuneration systems from awards, the move away from collective agreements, a change in minimum wage setting, and the loss of important family leave provisions previously available. All of which are particularly deleterious to the pursuit of pay equity. The Inquiry finds that under Work Choices, there are no effective mechanisms for delivering pay equity, either through comparative wage justice such as work value cases or equal remuneration cases or through a system of minimum wage fixing, which will limit the extension of low pay and the increase in wage dispersion.

⁷¹ <http://www.abc.net.au/news/stories/2007/08/13/2003031.htm> at 13 August 2007.

Section 5

Approaches to Advancing Pay Equity

5. Overview

The relevant Term of Reference here requires the consideration of models and policy and legislative options used in other Australian states and other countries in the pursuit of pay equity. A number of submissions provided comprehensive consideration of a range of policy and legislative options in their discussion while other submissions confined themselves to discussing the policy options advanced in the Discussion Paper. This section begins with a review of the policy and legislative options utilised elsewhere and their efficacy. Rather than providing an exhaustive review of options pursued in other countries and states, the focus of the discussion is on those considered most relevant to this Inquiry. After reviewing the models operating in Australia and overseas the section concludes that a proactive approach provides the best means for delivering pay equity outcomes.

5.1 Types of Approaches

Most of the submissions which considered alternative approaches did so in a framework of differing types of approaches taken to address pay inequity with countries grouped together on the basis of the commonality of their approaches. This is a useful way to consider alternatives as it allows the strengths and weaknesses of different approaches to be examined without the detail of the particular circumstances in each individual country.

The report of the NSW Pay Equity Taskforce, *A Woman's Worth: Pay Equity and the Undervaluation of Women's Skills*,¹ provides a useful classification of responses to pay inequity. The report suggests that there are three broad categories of approaches to addressing pay inequity ranging from a pure complaints based individual human rights model, to a system reliant on centralised wage fixing to deliver pay equity outcomes, to much more positive, proactive approaches which place obligations on employers to eradicate gender wage differentials in their workplaces.

A complaints model was adopted in Ontario and initially in Quebec, Canada, however this method of addressing pay equity has been found to be not the most effective approach. For reasons outlined in Section 3 the Inquiry considers that the complaints model is not suited to addressing pay equity in Queensland.

The Australian industrial relations system has, in the past, provided the best example of the second type of approach. In Sections 1 and 4 of this report, the discussion of the wage setting system showed how the system in Australia has historically delivered relatively good outcomes in terms of pay equity. As the previous section also showed, the dramatically changed industrial relations framework under Work Choices sees the means by which these favourable outcomes were achieved, largely dismantled.

For much of the last century, New Zealand operated under a very similar industrial relations system to Australia until major changes were introduced under the *Employment Contracts Act 1991*. The implications of those changes for pay equity in New Zealand were negative. Since the early 2000s, New Zealand has revisited the issue of pay equity and established

¹ NSW Pay Equity Taskforce, *A Woman's Worth: Pay Equity and the Undervaluation of Women's Skills*, 1996.

several initiatives to advance pay equity. For these reasons, New Zealand provides an interesting case study for consideration in this Inquiry.

The third type of system imposes a positive, proactive obligation on employers to eradicate gender wage differentials in their workplaces. These systems require the lodging of pay equity plans and mandate specific steps to remove pay inequities. The *Pay Equity Act*² in Quebec provides a good example of this approach and was discussed in a number of submissions. Quebec is widely considered as providing the most progressive approach to pay equity and is of interest to this Inquiry.

Before consideration is given to overseas developments, however, it is important to consider the approach taken to the issue of pay equity throughout Australia. The Queensland Government submission provides an overview of the approaches taken by the States and that information is referred to below.

5.2 Pay Equity Initiatives in Australia

5.2.1 Queensland

In addition to implementing the recommendations of the first Pay Equity Inquiry the Queensland Government has taken a range of pay equity and related initiatives in the Queensland Public Sector. Of relevance is the *Equal Opportunity in Public Employment Act 1992* (Qld) (EOPE Act) which requires all Government Departments, Government Owned Corporations, Statutory Authorities and Public Service Departments with more than 350 employees to comply with an equal opportunity and planning process. This process has a number of equal opportunity outcomes which, in respect of women, include the continued increase in the representation of women in middle and upper management as well as in senior officer and senior executive service positions. The Queensland Government submission provides details of various initiatives undertaken by the affected agencies in respect of the legislation.³ The Inquiry notes that AMACSU were critical that Queensland Health had received an exemption in 2005 from submitting equal opportunity plans.⁴

In addition to the equal opportunity arrangements the Queensland Government submission refers to the family friendly conditions in place including 12 weeks paid maternity and adoption leave; access to one weeks paid leave to attend pre-natal visits or pre-adoption leave to attend related interviews.⁵ Reference is also made to the *Family Leave (Queensland Public Sector) Award - State 2004* which provides, amongst other benefits, sick leave to care for family members.

The Queensland Government submission outlines the initiatives taken in respect of advancing pay equity for women in the private sector, including:

- undertaking research in conjunction with universities and other institutions, including policy-makers from various State and Territory governments;
- working with the University of Queensland to conduct a study to assess the impact of the changes in industrial relations legislative frameworks on employees in Queensland and to identify implications for gender equity in employment and work/family balance. The *Tipping the Scales* report mentioned in Section 4 is a product of this study; and

² RSQ c. E-12.001.

³ Queensland Government Submission pp 107-115.

⁴ AMACSU Submission Transcript p 144.

⁵ Queensland Government Submission p 107.

- funding the QWWS.

The Office for Women is also implementing a range of initiatives which target some of the underlying causes of gender pay inequity, especially occupational segregation. Initiatives include *Women in Hard Hats* and *Women on Boards* Strategies.⁶

5.2.2 New South Wales⁷

The NSW Office of Industrial Relations has pursued a number of policy initiatives in relation to pay equity. During the 1990s a Pay Equity Taskforce was established, consisting of experts in the fields of industrial relations, women's remuneration and training, as well as representatives from the public sector, employer organisations and trade unions, and was important in providing further research and information in relation to pay equity. An important outcome of the Taskforce research was the initiation of the 1997 Pay Equity Inquiry.

A major outcome of the Inquiry was the adoption by the NSWIRC of an Equal Remuneration Principle (ERP). The Principle is designed to allow for new assessments of the value of work and rates of pay in awards where the current rate of pay is undervalued on the basis of gender; to ensure that any such reassessment is free of gender bias; and to provide measures for the remedy of undervaluation based on gender. Importantly, the ERP does not require that applicants prove discrimination or make comparisons. While the Principle is limited to awards, actual rates of pay may be considered where they reflect the value of work. To date, the ERP has been successfully applied in NSW to librarians and child care workers. The introduction of Work Choices has had the same effect on the NSW ERP as that in Queensland.

In addition, since 1996 a Pay Equity Strategy has been produced annually, outlining various pay equity policies and initiatives. As part of this strategy the NSW Government has identified five key areas for action, including the redressing of occupational segregation and the undervaluation of women's skills, provision of access to other forms of remuneration, the elimination of discrimination in industrial instruments, the increase of access to career paths and training, and the promotion of the public sector as a model of pay equity excellence.

5.2.3 Tasmania

Tasmania was quick to follow in the steps of the NSW Pay Equity Inquiry and adopted a similar pay equity wage fixing principle in 2000. This Principle applies to workers covered by Tasmanian State Awards, however, this Principle is also now limited in its effectiveness by Work Choices. There have been no cases considered under it. There also appears to have been few recent pay equity initiatives in Tasmania.⁸

5.2.4 Western Australia

Western Australia undertook a review of the gender pay gap in 2004. Following this review, the Pay Equity Unit was established in the Labour Relations Division of the Department of Consumer and Employment Protection in February 2006. The role of the Unit is to implement selected recommendations made by the Review. It aims to:

- raise public awareness of pay equity through education and training;
- work with stakeholders in relevant areas to identify and benchmark gender pay gaps;

⁶ More information about the role of the Office of Women and its initiatives is found in the Queensland Government Submission pp 116-119.

⁷ See New South Wales Office of Industrial Relations <http://www.workandfamily.nsw.gov.au/payequity>.

⁸ Queensland Government Submission p 96.

- develop an implementation plan for the relevant recommendations, and drive and coordinate the implementation of this plan;
- liaise with key stakeholders and oversee their implementation of relevant recommendations;
- assist government and private sector agencies to implement pay equity audits;
- identify and implement appropriate strategies to address gender pay gaps informed by data from pay equity audits and other relevant sources.⁹

The Pay Equity Unit has developed a range of resources to assist employers, employees and unions to understand the extent and nature of the gender pay gap and to implement strategies to remedy it within their organisation. In particular, advice is provided on how to conduct a pay equity audit and links to the pay equity tool developed by EOWA.¹⁰

A post-audit handbook has also been prepared to assist organisations to develop strategies and initiatives to address gender pay gaps and issues in the workplace. The handbook provides information about how to develop a pay equity plan and how to address other causes of pay inequity. This involves the organisation examining the patterns of pay and employment within that organisation and which either directly or indirectly impact on the gender pay gap.

The submission by the Department of Consumer and Employment Protection outlines the benefits of having a dedicated Pay Equity Unit, including the recruitment of specialist pay equity staff and being the focal point for Government pay equity initiatives. The Unit has been successful in raising the profile of pay equity issues with employers, unions and the wider community. The Unit is required to report to the Minister for Employment Protection and the Minister for Women's Interests.

5.2.5 Victoria

An Inquiry into Pay Equity was undertaken by the Victorian Government in 2004, resulting in numerous recommendations. The Inquiry released its findings in 2005, which included a list of comprehensive recommendations such as the development of a Pay Equity Plan of Action involving the establishment of a Pay Equity Unit, the advancement of pay equity through a gender pay equity education campaign, the consideration of the undervaluation of women's work through investigation by way of case study analysis, improving relative income through submissions to Living Wage cases, legislative reform, and gender pay equity audits in the public sector.

Unlike Western Australia, however, a separate pay equity unit has not been established in Victoria. Rather a focus on the need to facilitate and support best practice and a partnership approach to pay equity in Victoria has been adopted, particularly within the finance sector and local government. A number of fact sheets have been developed outlining issues relevant to pay equity in Victoria, key facts about women in the Victorian workforce, and the impact of gender pay equity cases on Victorian workplaces. A link to the EOWA website and that pay equity tool is also provided.¹¹

In addition, Industrial Relations Victoria (IRV) has provided assistance to a joint National Australia Bank (NAB)/Finance Sector Union pay equity audit. IRV has provided research and administrative support in order to develop a case study for wider use. This case study

⁹ See Pay Equity Unit, Department of Consumer and Employment Protection http://www.docep.wa.gov.au/Ir/WorkLife/Pay%20Equity/Pay_equity.html.

¹⁰ http://www.eowa.gov.au/Developing_a_Workplace_Program/Six_Steps_to_a_Workplace_Program/Step_2/ Pay_Equity_Tool/index.htm.

¹¹ See Business Victoria http://www.business.vic.gov.au/BUSVIC.2883876/STANDARD//pc=PC_61635.html.

will be published by IRV and provide details of methodology, hurdles and process with a view to supporting other organisations conducting similar projects.¹²

More recently, in the lead up to the Victorian State Election held in November 2006, the industrial relations pre-election policy commitment of the Bracks Government included the establishment of a Working Families Council. One role of the proposed Council is to "further develop pay equity strategies and initiatives". In addition, the Office of the Workplace Rights Advocate, established in Victoria in 2006 following the introduction of the Federal Government's Work Choices amendments, recognises pay equity as a workplace rights standard, and is engaged in the ongoing development of guidelines and codes of practice relating to pay equity.¹³

5.2.6 South Australia

The gender pay gap is a recognised issue in South Australia (SA) although there has, as yet, not been an Inquiry or review into pay equity undertaken in that state. The policy options pursued by the SA Government as a means of ensuring equality for women may also be seen as relevant to the pursuit of pay equity.

The Office for Women has developed a self-assessment audit tool focused on gender analysis and the process of integrating consideration of gender factors into each stage of Government policy development and analysis. The project involves collaboration with the University of Adelaide, and extends to the University of Western Australia.¹⁴

The self-assessment tool is aimed at ensuring that the various agencies of the SA Government are meeting the needs of all citizens and will explore, develop and refine techniques for making policy gender inclusive. The trial tools available, are based on models from Canada and the Netherlands. It is intended that the project will result in three main outputs: a set of conceptual tools for gender analysis, a practical guide for evaluating policy at the design phase, and an in-house training component. It is hoped that the tool will also reflect any ingrained gender bias in the public sector, and in this sense will assist in the identification of public sector policy-making processes that may contribute to the pay gap.

5.2.7 Northern Territory

Although the Northern Territory (NT) Government has recognised the importance of the right to equal pay for work of equal value in its Workplace Rights Standards, little appears to have been done to directly address the issue of pay inequity within the Territory.¹⁵

5.2.8 Australian Capital Territory

The Australian Capital Territory (ACT) Office for Women has identified pay equity as a key element in the economic security of women in the ACT. However, despite the existence of an Equity and Diversity Toolkit on the Government's website, there appears to have been little practical attempt made to directly address the issue of pay equity.¹⁶

¹² <http://www.business.vic.gov.au/busvicwr/assets/main/lib60047/irv-gender-pay-equity-update.pdf>.

¹³ Queensland Government Submission p 95.

¹⁴ See <http://www.officeforwomen.sa.gov.au/?q=node/18>.

¹⁵ Queensland Government Submission p 97.

¹⁶ Queensland Government Submission p 97; see Office for Women Australian Capital Territory <http://www.psm.act.gov.au>.

5.2.9 Australian Government

Although this Inquiry concludes that the federal Government's Work Choices legislation impedes the progressing of pay equity in an industrial relations context it would be remiss of the Inquiry not to acknowledge that EOWA promotes pay equity. This is done both through their Employer of Choice For Women citations where pay equity has been added as a pre-requisite for 2008 and the development of a pay equity audit tool to which both the Western Australian and Victorian Governments websites are linked. Information about pay equity, some of which is referred to in this report, is included on their website. It is regrettable that the promotion of pay equity by EOWA has not been reflected in Work Choices.

Summary

Some level of renewed interest in pay equity has been shown in the Australian States over the last few years. The measures adopted in Queensland have been the most progressive of the approaches taken to pay equity, although pay equity cases have also been successful in NSW. Measures taken in other states have had a broader focus on pay equity and have relied on the voluntary co-operation of interested organisations. To date, IRV has been involved in an important co-operative pay equity audit in the finance sector.¹⁷

It is obvious that, while these are important initiatives, the voluntary approach is slower than a legislative based approach in delivering real pay equity gains for women. Research has shown that in the absence of compulsory practices, organisations are left to make their own judgments about what is equitable for employees and profitable for business. Further, organisations are only certain about what to do when policies are clearly spelt out in legislation.¹⁸

5.3 International Initiatives

The Queensland Government submission provided an overview of a number of pay equity initiatives undertaken in other countries. Much of this information was taken from the ILO report, *A Comparative Analysis of Promoting Pay Equity: models and impacts*,¹⁹ which also provided the basis for the review of overseas models presented in the Discussion Paper. Another useful report is the European Commission report, *The Gender Pay Gap - Origins and Policy Responses: A comparative review of 30 European countries*.²⁰ As stated previously, it is not the intention here to provide a review of all of those countries' pay equity initiatives, however the table below does provide an overview of some of the different approaches.

¹⁷ see http://www.business.vic.gov.au/BUSVIC/STANDARD/883326206/PC_62142.html

¹⁸ Strachan and French Submission citing research by Glenda Strachan, John Burgess and Anne Sullivan, 'Affirmative Action or Managing Diversity – What is the Future of Equal Opportunity Policies in Organisations' (2004) 19(4) *Women in Management Review* 196.

¹⁹ Marie-Therese Chicha, *A Comparative Analysis of promoting Pay Equity: models and impacts*, International Labour Office, Geneva, 2006.

²⁰ European Commission, *The Gender Pay Gap – Origins and Policy Responses: A comparative review of 30 European countries*, 2006.

Table 4: Examples of National Initiatives to fight the Gender Pay Gap²¹

Belgium	<ul style="list-style-type: none"> ➤ <i>Guidebook</i> on job classification available for employers and trade unions to avoid and eliminate gender bias in pay systems (2006). ➤ <i>Equal Pay Day</i> established, with the aim of raising awareness of the public about the persistence of gender wage inequality. ➤ 2006 decision by the federal government to establish an <i>annual report monitoring progress</i> in reducing the gender pay gap. First report published in March 2007.
Canada	<ul style="list-style-type: none"> ➤ Pay Equity Taskforce reported in 2004 after undertaking a survey and analysis of pay equity legislation in Canada and internationally. Found that proactive legislation is most suited to supporting and ensuring systemic change in existing discriminatory practices and recommended the enactment of a new stand alone proactive pay equity legislation. ➤ Quebec's <i>Pay Equity Act</i> widely regarded as most progressive approach to pay equity to date.
France	<ul style="list-style-type: none"> ➤ <i>Law on equality of remuneration between men and women</i> (March 2006) strengthening women's rights in respect of maternity leave; obligation for enterprises to take steps to close the gender pay gap by 31 December 2010 and to provide for catch up salary payments to be made following maternity or adoption leave. Obligation of gender pay bargaining in companies and sectors.
Hungary	<ul style="list-style-type: none"> ➤ Law aimed at promoting voluntary regulation on equal opportunities; <i>Equal Opportunity Plan</i> (EOP) to be adopted each year by public employers and private employers with State-owned share over 50% for each year.
Italy	<ul style="list-style-type: none"> ➤ <i>Obligation</i> for public and private firms employing more than 100 employees to provide statistical information on the employment conditions of their employees broken down by gender every two years (1991 Law on Positive Actions; Article 9, Act 125/1991). Companies to give the report to local equality advisors and trade unions.
Luxembourg	<ul style="list-style-type: none"> ➤ <i>Obligation for social partners to bargain on equal pay</i> (law of June 2004). Collective bargaining has to include a provision concerning the implementation of the principle of equal pay between men and women.
Netherlands	<ul style="list-style-type: none"> ➤ <i>Equal pay working group</i> (2005) established, bringing together organisations relevant to equal pay - employees and employers organisations, the Equal Treatment Commission, the Dutch Human Resources Policy Association and the Dutch Association for Employee Participation.
New Zealand	<ul style="list-style-type: none"> ➤ <i>Pay and Employment Equity Unit</i> established in 2004 to implement the Pay and Employment Equity Plan of Action.
Portugal	<ul style="list-style-type: none"> ➤ <i>Obligation</i> for all employers to display in November in a visible place for a period of at least 30 days, the list of their staff indicating each employee's earnings (Law N° 35/2004, of 29 July, Articles 452 to 457 and 490), with the exception of central, regional and local administrations, public institutes and other collective public entities, as well as employers of domestic service workers. ➤ Training on gender equality for judges and other agents involved in

²¹ Adapted from Commission of the European Communities, *Tackling the Pay Gap between Women and Men*, 2007, p 28-29.

	the process of justice administration, promoted by the Commission for Equality in Labour and Employment.
Spain	➤ Adopted in March 2007 a <i>new gender equality law</i> that notably includes provisions on fighting discrimination, allowing positive action measures in collective agreements, encouraging reconciliation of work and family life, promoting equality plans and fostering good practices.
Sweden	➤ <i>Equal Opportunities Act</i> provides that all employers with a minimum of ten employees are required to prepare an annual equal opportunities plan as well as a plan of action for equal pay.
United Kingdom	➤ <i>Equality Act</i> (2006) places a statutory duty on all public authorities to have due regard to the need to eliminate unlawful discrimination and harassment and promote equality of opportunity between men and women.

This table illustrates that countries adopt a range of strategies for promoting pay equity. More starkly, it illustrates that pay equity is treated as a critical equity issue deserving of government intervention in many overseas countries. The situation in Australia is markedly different because of the lack of initiative, drive and perhaps interest around the issue by institutions in this country. These international comparisons only serve to highlight the inferior attention that pay equity receives as a social issue here. Given the challenges that Work Choices presents to pay equity (discussed in Section 3), the importance of a proactive approach cannot be over emphasised.

The discussion now turns to a fuller consideration of the situation in two contexts: New Zealand and Canada.

5.3.1 New Zealand

As already mentioned, historically New Zealand has operated under a very similar industrial regulatory system as in Australia. New Zealand also has historically been seen as progressive in its approach to pay equity. This was particularly demonstrated in the passing of the *Employment Equity Act 1990*, which provided for pay equity, equal employment and the establishment of the Employment Equity Office. This Act was, however, repealed three months after its enactment by the incoming National Government under the *Employment Contracts Act 1991*.²²

The *Employment Contracts Act 1991* saw significant deregulation of the New Zealand labour market. This Act was designed to "decollectivize and decentralise industrial relations" in New Zealand and its "explicit objective was efficiency" with little regard paid to equity.²³ Considerable concern was expressed at the time in relation to potential impacts on women in the labour market and on pay equity. These concerns were confirmed in a study by Hammond and Harbridge²⁴ which reviewed a database of New Zealand employment contracts and found that women's wages increased at a lower rate than men's and showed a widening of the gender pay gap. For the lowest adult rate in each contract, the gender pay gap was shown to have grown from \$7.75 per week in November 1992 to \$17.10 per week in June 1994.²⁵ The study also found that women had lower access to penalty rates despite

²² P Hyman, *Equal Pay for Women in New Zealand – History and Evaluation*, (1995) http://www.vuw.ac.nz/education/staff/education-studies/documents/8_epy93.doc

²³ Suzanne Hammond and Raymond Harbridge, 'Women and Enterprise Bargaining: The New Zealand Experience of Labour Market Deregulation' (1995) 37(3) *Journal of Industrial Relations* 361 at p 362.

²⁴ Ibid.

²⁵ Ibid p 371.

their overrepresentation in industries requiring work during unsociable hours and for all workers there was a general erosion of employment conditions.

A subsequent study in 2002 revisited the same topic and found that the gender pay gap had not recovered from the initial marked drop in 1994 but had remained relatively static since then, that women continued to be less likely to access penalty rates than men, and the general observation that once employment benefits are lost or removed from a settlement they are not easily reinstated.²⁶ It was found, however, that better leave arrangements were evident in female dominated settlements. These outcomes are particularly relevant to the Australian situation given a shared common industrial history although the broader economic environments differ.

The *Employment Contracts Act 1991* was replaced by the *Employment Relations Act 2000*. The new Act has aimed to reintroduce "fairness" to the employment relations system and has re-legitimised the role of trade unions.²⁷ Along side these reforms has been a renewed interest in pay equity.

In 2003 the New Zealand Government established a Taskforce to specifically examine how the factors that contribute to the gender pay gap apply in particular parts of the New Zealand Public Service and in the public health and public education sectors. The Taskforce was also required to advise on a five-year plan of action for achieving pay and employment equity.²⁸

In response to the recommendations of the Taskforce, the Government established the Pay and Employment Equity Unit in 2004 which is responsible for implementing the Pay and Employment Equity Plan of Action. This Plan allows for the development of a review process and an equitable job evaluation tool. The Unit also administers a contestable fund that is available to Public Service, public education and public health employers and unions to undertake specific projects to support pay and employment equity, to undertake pay and employment equity reviews, and to provide ongoing training and support.

- **The pay and employment equity unit**

The Pay and Employment Equity Unit (the Unit) is guided by a tripartite Steering Group consisting of an independent chair, the Equal Employment Opportunity Commissioner, and representatives of public service, education and health sector employers and unions. The Unit's main functions are to assist organisations covered by the plan of action to:

- take a systematic approach to eliminating the causes of inequity;
- develop tools for a pay and employment equity review process and for gender-neutral job evaluation;
- provide and deliver training materials for organisations conducting reviews;
- administer a contestable fund for employers and unions;
- support organisations to carry out their reviews;
- provide information, including fact sheets, associated research, case studies and guidelines;
- facilitate networking to encourage organisations involved in the reviews to share experiences; and

²⁶ Raymond Harbridge and Glen Thickett, 'Gender and Enterprise Bargaining in New Zealand: Revisiting the equity issue' (2003) 28(1) *New Zealand Journal of Industrial Relations* 76 at p 77.

²⁷ Ibid p 77.

²⁸ The information here is taken from the website of the Pay and Employment Equity Unit, Department of Labour, New Zealand see <http://www.dol.govt.nz/services/PayAndEmploymentEquity/>.

- monitor and report on progress on pay and employment equity.

The Unit also provides assistance to organisations undertaking pay equity reviews through the provision of a contact person who can assist with such reviews, and holds regular informal meetings for pay equity review project managers.

- **Five-year plan of action**

Following the Taskforce recommendations in 2004 which addressed pay and employment equity in the public service, the New Zealand Government developed a five-year action plan aimed at addressing the issue of pay equity. The aim of the plan is to ensure that remuneration in New Zealand is free of gender-bias, and to remove barriers to employment equity for women.

Monitoring of the ongoing development of the plan of action is also undertaken by a tripartite Steering Group, chief executives and sector leaders from public sector education, health and the State Services Commission are responsible for the implementation of the plan of action. Sector leaders are expected to make six-monthly progress reports to their respective Ministers.

The plan of action consists of three phases:

Phase One

The first phase of the plan places emphasis on the implementation of pay and employment equity in New Zealand's public service, public health and public education sectors. It is expected that all reviews of pay equity in these sectors will be completed by the end of 2008.

The first phase of the plan also incorporates a six step process outlined in a Pay and Employment Equity Review Workbook. Reviews undertaken via this process consist of a partnership involving employees through appropriate unions. The workbook helps organisations to establish whether women and men have an equitable share of rewards, whether they participate equitably in all areas of the organisation, and whether both women and men are treated with respect and fairness. The final step of the process focuses on the development of a response plan addressing any pay equity issues the review committee has identified as part of its review.

This stage of the plan also features an annual contestable fund of one million dollars, available to assist employers and unions to participate in the plan of action. This fund is managed by the Unit. Recommendations for funding are made by the Steering Group.

In addition to the above measures, phase one of the plan also involves the undertaking of pay investigations in occupations that are at least 70% female or were at least 70% female when equal pay was introduced. Following a review of the value of the work and the factors and processes affecting remuneration of certain occupations, a pay investigation may be recommended in the review response plan, or may be initiated by the employer or through the bargaining process.

The Pay and Employment Equity Unit has also developed a gender-neutral job evaluation tool titled, *Equitable Job Evaluation: Working Towards Gender Equity*, as part of phase one of the plan of action, for both general use and use in pay investigations. Standards New Zealand, the trading arm of the Standards Council, a Crown entity operating under the *Standards Act 1988*, has also developed a Gender Inclusive Job Evaluation Standard in collaboration with various stakeholders.

Significantly, the New Zealand Government has provided that claims for additional funding for remedial pay settlements arising from pay and employment equity reviews will be considered within existing budget processes, as advised by a tripartite process. Any such claims need to be accompanied by clear evidence indicating the existence of pay inequity, and information that addresses whether the organisation in question can fund such claims through re-prioritisation, and the management of relativities-based claims.

Future phases (Phase Two and Three)

The New Zealand Government is currently developing phases two and three of the pay equity plan of action. Phase two will deal with the implementation of reviews of crown entities, state-owned enterprises and contract workers funded by the New Zealand Government. Phase three will consider the issue of pay equity in relation to other employers, including local government and private sector employers.

• Effectiveness of pay equity measures adopted in New Zealand

It is clear that the New Zealand Government has approached the issue of pay equity with renewed vigour and commitment. The Pay Equity Plan of Action places a requirement on New Zealand's public service, public health and public education sectors to review and address pay equity issues. The Pay and Employment Equity Unit has also developed a range of high quality resources for use in this process. To date, 12 out of 37 public service agencies have completed reviews and provided response plans and eight are currently conducting their reviews.²⁹ Phase two of the plan is set to begin in 2008.

The head of the Pay and Employment Equity Unit, Ms Phillipa Hall, in an address to the recent pay equity symposium conducted in Queensland, reported positively on the review process undertaken to date. While some resistance was evident early on, much of that was reported as dissipating once the outcomes of pay investigations were known and responses could be formulated. A no blame or fault approach to the process was seen as important in garnering this support. Although, Ms Hall expressed the view that it was not possible to readily quantify the progress being made in relation to pay equity as each organisation addressed issues identified as important in their individual organisations and as responses to issues tend to be mainstreamed through human resource management policies and practices. Nevertheless, Ms Hall identified a number of clear gains that were evident across organisations including:

- promotion of greater openness and transparency of wage and promotion systems;
- greater clarity of job specifications;
- employee participation in equity issues;
- constructive interaction with unions; and
- improved organisational communication.

The Queensland Government submission shows New Zealand figures from 2006 which indicate that women continued to lag behind their male counterparts, earning 87% of the average hourly earnings of men. This does, however, represent an improvement on the figure of 84% (based on 2002 data) which was provided in the discussion document of the Ministry for Women's Affairs.³⁰

The Queensland Government submission also makes the point that the focus (in the first phase) of New Zealand initiatives on issues of pay inequity within the public sector, which

²⁹ As at August 2007.

³⁰ Ministry of Women's Affairs, *Next Steps towards pay Equity: a discussion document*, Wellington, New Zealand 2002.

represents only about 18% of the New Zealand workforce, limits the effectiveness of the measures. The Pay and Employment Equity Unit website reports figures that show that in 2006, there were some 210,000 employees in the sectors targetted in the first phase. The website also shows, however, the predominance of women employees in these sectors. In the Public Service, women made up 59.4% of employees, across 38 agencies. In the public health sector, which includes the 21 district health boards and the New Zealand Blood Service, women made up 80% of employees. The public education sector includes employees in kindergartens, state and state-integrated schools, the correspondence school, and tertiary education institutions with more than twice as many women as men employed in the sector. These numbers suggest that these sectors are relevant sectors to be addressed. The second phase of the Plan of Action covers Crown agents, Crown entities, state-owned enterprises and local government organisations and a program to develop a pay and employment equity responsible contracting policy for outsourced Government services.

Another important element of the approach in New Zealand has been the contestable fund. According to the New Zealand Public Service Association, the effectiveness of the contestable fund is indicated by the fact that four applications for funding were approved in the first year of the fund's existence, including funding for two positions to help unions take part in the review process. According to the Association, a further 10 applications were approved in 2005 and 2006. Such funding has likely been very important in supporting participation in reviews and responses.

A further important consideration in New Zealand, which distinguishes it from the Australian situation, is that pay equity is a policy issue given importance and driven by a national government. Although pay equity reviews are not legislated, it is a Cabinet decision that the key agencies are required to conduct reviews. The Pay and Employment Equity Unit provides the assistance and resources to conduct these mandatory reviews.

Also important here is the likely impact of a change in Government in New Zealand at the next election. In response to a question at the Queensland pay equity symposium, Ms Hall indicated that she thought it possible that a change in Government would result in a scrapping of the Pay and Employment Equity Plan of Action and a dismantling of the Pay and Employment Equity Unit. Ms Hall expressed optimism though, that the efforts and outcomes to date would not all be lost in such a change because of the culture change that had already occurred in many organisations. It would seem, however, that much could potentially be lost including almost certainly the important next phases of the action plan.

In summary, New Zealand provides important insights into possibilities for policy options to address pay equity. In particular, the common industrial history of the two countries highlights that there is a very real threat to Australia's current good standing in terms of the gender pay gap in the current regulatory environment. New Zealand also demonstrates that a good deal can be achieved through renewed energy and commitment by governments. Limitations of the New Zealand approach include that the reviews have been confined to the public sector with its already relatively advantaged 18% of the workforce and that much could be immediately lost by a change of government at the next election. In addition, the relevance of the model is limited in terms of its application in Australia as it is the national government which has driven the pay equity policy agenda. Absent such a commitment pay equity is likely to lose priority on the political and social agenda.

5.3.2 Quebec

In September 2006, the ILO released a Working Paper entitled, *A comparative analysis of promoting pay equity: models and impacts*, in which a number of legislative models aimed at promoting pay equity are highlighted. The Working Paper describes the model found in

Quebec as "seeking to correct discriminatory pay practices and eliminate the discriminatory pay gap". Legislation compels companies "to adopt an action plan that ranges from the analysis of pay determination systems to implementing the required pay adjustments to ensure that jobs of equal value receive an equal pay".³¹ The following discussion focuses on the situation in Quebec and much of the information is drawn from the ILO report as well as the Canadian report, *Pay Equity: A New Approach to a Fundamental Right*.³²

In 1996, Quebec adopted its own proactive pay equity legislation which came into effect for employers as of November 1997. The Quebec model was based to a large extent on the Ontario model, while attempting to remedy certain weaknesses identified with the Ontario legislation.³³ In addition, Quebec has entrenched the principle of pay equity in section 19 of the Quebec *Charter of Human Rights and Freedoms* since 1975.

The Quebec *Pay Equity Act 1995* covers all aspects of pay equity implementation and applies to any employer with 10 or more employees. This Act has been regarded as representing the most advanced policy in the sphere of pay equity.³⁴

For employers who employ 50 or more staff the Pay Equity Act prescribes the development of a four stage pay equity plan designed to determine the cause of gender pay discrimination. In summary, the four stages are:

- the identification of predominantly male jobs and those which are predominantly performed by women;
- development of job evaluation methodology;
- job evaluation, calculation of pay disparities and implementation of pay adjustments; and
- determination of the timeframe for making pay adjustments. The Pay Equity Act prescribes a four year time frame from the development of the pay equity plan to the implementation of pay adjustments.³⁵

Employers with more than 100 employees are required to establish a pay equity committee representing employers and employees and these representatives are responsible for developing stages 1 to 3 of the process. The committee must comprise at least two-thirds employee representatives, of which at least half must be women. Furthermore, employers must provide training and information to the committee representatives to allow them to carry out their responsibilities.

Businesses employing between 50 and 99 employees are not required to establish a committee, rather the employer and the union must jointly formulate a pay equity plan. Businesses employing between 10 and 49 employees are also not required to establish a committee, nor are they required to develop a formalised pay equity action plan. However, they are still required to identify and correct any discriminatory pay gaps.³⁶

The Pay Equity Commission is the administrative arm of the Pay Equity Act. The Pay Equity Commission was established one year prior to the legislation coming into effect for employers with a view to providing information and resources to assist in giving effect to the Act. Despite this, there were substantial delays due to issues of underfunding and understaffing of the Pay Equity Commission. As a consequence, many employers were late

³¹ Chicha p 10.

³² Pay Equity Taskforce Final Report, *Pay Equity: A New Approach to a Fundamental Right*, 2004, Ottawa.

³³ Ibid p 129.

³⁴ Séverine Lemièrre, *Un salaire égal pour un emploi de valeur comparable*, Travail, genre et société, 2006, 15, Avril, 83-99 cited by Chicha, p 12.

³⁵ Chicha pp 12, 13.

³⁶ Ibid p 13.

in applying the Pay Equity Act. In response in 2002, a new Pay Equity Commissioner was installed and a temporary agency - the pay equity office - created to support mainly small and medium sized organisations.³⁷ These measures have led to an improvement in compliance.

Other features of the Quebec legislation include:

- flexibility with respect to methodological criteria in order to adapt implementation to different workplaces;
- that several employers may work together to develop aspects of their pay equity plans;
- provision for sectoral joint committees (subject to approval by the Pay Equity Commission);
- the important role of joint employer-employee pay equity committees in large organisations; and
- an obligation to maintain pay equity.

In terms of control and auditing, the Quebec legislation does not require employers to file reports with the Pay Equity Commission. However, the Pay Equity Commission may decide to conduct investigations on its own initiative. It must also produce reports. The first report on organisations with fewer than 50 employees was produced in 2002. The Pay Equity Commission has also introduced a systematic audit program.

Effectiveness of the Quebec model in addressing pay equity

The ILO report suggests the main failings of the Quebec Act are:

- the absence of an obligation on the part of organisations to report on their compliance; and
- the monetary sanctions attached to non-compliance are perceived as "relatively weak".³⁸

The Queensland Government submission supports this contention and states that "[D]espite the level of detail and structure in the PEA, its weakness is that employers are not required to report back to any institution or governing body, thereby reducing the level of compliance and restricting the effectiveness of the legislation."³⁹

The ILO report also notes positive results of the PEA with more than 80% of employers employing more than 200 staff having completed pay equity plans. The pay increase for the predominantly female occupations was 5.6% whereas for predominantly female occupations found in businesses employing between 10 and 49 employees the average pay increase was 8.4%.⁴⁰

The Queensland Government submission suggests that the approach taken in Quebec (and in Sweden which also has a legislative model) stands out in its effectiveness to identify and correct pay discrimination. The submission suggests that this is the case due to the use of legislation and mandatory obligations on employers, and the existence and provision of technical support by specialised bodies. The submission also refers to the ILO report which found that of all the models considered, only Quebec and Sweden produced a high level of compliance.⁴¹ The submission also notes that in France, where there was not a specialised body to provide assistance to employers and ensure their compliance, compliance was low.

³⁷ Pay Equity Taskforce final report p 131.

³⁸ Chicha p 14.

³⁹ Queensland Government Submission p 84.

⁴⁰ Chicha pp 14-15.

⁴¹ Queensland Government Submission p 89.

Similarly, a specialised body (as seen in the UK and the Netherlands) was found to have a weaker impact in a voluntary system.⁴²

The Queensland Government submission also refers to the Gender Gap Index in demonstrating the effectiveness of the Quebec model. The Index is compiled by the World Economic Forum (WEF) and examines the gender gap or level of equality, between men and women in 115 countries (representing over 90% of the world's population) in four fundamental categories or subindexes: economic participation and opportunity, educational attainment, health and survival and political empowerment. By comparing countries, the Index serves as a benchmark to identify existing strengths and weaknesses and as a guide for policy development by highlighting countries that have greater success in promoting gender equality.⁴³

The Index does not include variables that measure input variables (such as country specific policies or means used to eliminate the gender gap) rather it seeks to capture gaps in outcome variables.

The WEF concludes that no country in the world has yet managed to eliminate the gender gap between women and men. However, Sweden stands out as the most advanced, having closed over 80 per cent of its gap.

The table below provides some indication of performance in pay equity for selected countries. The figures indicate that Sweden and Canada are able to demonstrate a significantly lower gap between men's and women's earnings. This outcome implies that strategies adopted in those countries to address pay inequity may have a positive effect. The Queensland Government submission concludes that these models therefore warrant closer scrutiny and may serve as appropriate models for Australia.⁴⁴

Table 5: Comparison of the gender gap according to the variable 'wage equality for similar work (survey)' across selected countries (sample average 0.64)

Country	Rank	Score & female-to-male ratio
Canada	28	0.71
Sweden	31	0.87
Australia	45	0.65
Netherlands	51	0.65
United Kingdom	58	0.63
New Zealand	59	0.63
Switzerland	64	0.62
France	109	0.47

Source: Gender Gap Index, *Global Gender Gap Report 2006*, World Economic Forum, <http://www.weforum.org/pdf/gendergap/report2006.pdf>

The Canadian report, *Pay Equity: A New Approach to a Fundamental Right*, suggests that in several respects, the Quebec legislation took into account the lessons learned from the implementation of Ontario's legislation with a number of key improvements. Notable among these are the almost universality of application of the Act and the provision for proxy comparisons where no male comparator exists.⁴⁵

⁴² Ibid p 89.

⁴³ Ibid p 89.

⁴⁴ Ibid p 89.

⁴⁵ Pay Equity Taskforce final report p 129.

The report also commissioned research into the effectiveness of pay equity measures in Quebec. These studies are reported as having found positive sentiments with respect to pay equity among both employers and employees. Organisations were reported as believing that the implementation of pay equity would have more positive than negative effects and employees as viewing pay equity as a positive initiative. Other responses included an indication that the effects of the legislation were positive leading to a better understanding of what employees do through clearer job descriptions for staff as well as updated pay policies. These survey results were seen as supporting the view that pay equity could enhance business competitiveness and assist in attracting employees.⁴⁶

Other significant findings of the Canadian report include that unionised organisations were much more likely to have completed the process. Given the concentration of non-unionised women in smaller workplaces where there is no obligation to establish a pay equity committee, the report notes that the situation of such women is a concern.⁴⁷

The report summarise the key advantages and disadvantages of the Quebec model as:

- Advantages
 - resulted in numerous pay equity adjustments;
 - adjustments made in relatively short time frame;
 - employers have found the impact to be positive;
 - positive impact on financial independence of female workers;
 - improves perception of the worth of women's work; and
 - negligible impact on the employment level for women.
- Disadvantages
 - initial delays in the process;
 - non-unionised female workers appear to have been overlooked;
 - need for rigorous auditing; and
 - does not accommodate small organisations.⁴⁸

The report concludes that proactive legislation has had a very positive impact and has resulted in the greatest number of female workers obtaining concrete recognition of a fundamental right without lengthy and costly litigation. The report recommended the adoption of similar stand alone proactive legislation by the Canadian national government.

5.4 Summary and Conclusion

This section has canvassed the various policy and legislative models that operate in Australia and overseas in respect of pay equity. The Western Australian and Victorian Governments have adopted voluntary, educative approaches which are being shown to have success particularly in raising awareness about the issue. The Victorian assistance to the NAB pay equity audit has been a high profile example of the success of a partnership approach.

Overseas, the approaches have ranged from policy to legislative initiatives taken by governments. The New Zealand approach is an example of a successful policy approach which is driven by a committed central government. Given it is not underpinned by legislation its continued operation and ultimately its effectiveness relies on continued central

⁴⁶ Pay Equity Taskforce final report pp 136-137.

⁴⁷ Ibid p 137-138.

⁴⁸ Ibid p 138-139.

government policy commitment which can be subject to change. In contrast, Quebec is illustrative of a proactive legislative model which has proven to deliver pay equity outcomes to a significant number of women. Although legislation also relies on government support, once in place, it is more likely to garner community support, as evidenced by the Quebec experience. This model then is instructive.

In light of the various advantages and disadvantages that these models have, the next section considers which type of approach would be the most effective for the Queensland Government to adopt to advance pay equity in Queensland.

Section 6

Advancing Pay Equity in Queensland

6. Overview

This section considers the relevance of the three broad categories of approach to addressing pay equity canvassed in the previous section. The complaints based model is not considered to be the most effective for advancing pay equity and the model reliant on centralised wage fixing is no longer available in Queensland. The discussion then turns to a consideration of the proactive approach such as that developed in Quebec. Although the current regulatory environment provides challenges the conclusion is reached that a legislative approach is both effective and workable. The contents of such legislation are then considered and various recommendations made including recommendations about the content and administrative oversight of the legislation. The section concludes that by implementing the legislation the Queensland Government will lead Australia and that such legislation will prove to be the most effective mechanism for advancing pay equity in Australia.

6.1 The Way Forward

Section 3 of this Report considered the impact of Work Choices on the legislative measures addressing pay equity under the federal and state industrial relations systems. The conclusion reached is that Work Choices has curtailed the effective application of the equal remuneration provisions of the WRA and the IRA and the Equal Remuneration Principle (ERP). Section 4 concluded that the approach of the AFPC to equal remuneration shows that pay equity will not be as effectively addressed as under the IRA and ERP in Queensland. The question then is what legislative or policy measures are open to the Queensland Government to ensure that pay equity is appropriately addressed.

In Section 5 three broad categories of approach to addressing pay equity were mentioned:

- complaints based human rights model;
- system reliant on centralised wage fixing; and
- proactive approach which focuses on workplace responses.

Consideration has been given by the Inquiry as to whether the first of the above mentioned categories of approach would be appropriate to take in Queensland. The *Anti-Discrimination Act 1991 (Qld)* provides for a complaints based process. In Section 3 the Inquiry concluded that the legislative intention and scheme of that Act, as outlined in the submission by the ADCQ, provides for remedies that compensate for past harms caused by discrimination and generally have an individualised focus. Constraints exist in the application of a remedy to a third party or on a collective basis. These constraints diminish the effectiveness of a complaints based approach to pay equity.

The Quebec experience confirms that a human rights complaints based mechanism is not especially effective for redressing pay inequity.¹

Until now in Queensland pay equity has been considered in an industrial relations context, that is, the second broad category of approach has been adopted. By its Terms of Reference the first Queensland Pay Equity Inquiry required consideration of industrial relations solutions by the development of a Principle that could be used by industrial parties and applied by the QIRC to address undervaluation of work predominantly performed by women. The Queensland Inquiry also made recommendations, which were accepted in large part, for legislative change. As discussed earlier the effectiveness of this approach has now diminished and the broader industrial context has been fundamentally altered as a consequence of Work Choices. Despite submissions urging the continued addressing of pay equity in a centralised context,² the Inquiry considers that this option is no longer available now and perhaps, into the future. A fresh approach is warranted.

The Inquiry considers that the time is ripe to take a bold step and to look outside the prism of pay equity as an industrial issue. Industrial relations solutions can only take the issue so far when in fact the causes of pay inequity go beyond industrial concerns and encompass broader social issues. This report has highlighted that pay equity can also be considered a measure to address discrimination and to advance equal employment opportunity. The various international treaties concerning discrimination clearly identify this and moreover, two such treaties are attached as schedules to relevant anti-discrimination legislation.³

The submission from Professor Glenda Strachan and Dr Erica French identified that practices within organisations, such as recruitment, promotion and access to training and development, impact on pay equity. Appropriately designed and implemented, these processes can be effective equal employment opportunity measures. They noted that although organisations are aware they must not discriminate and take action to avoid sexual harassment, the achievement of gender equity (which is a broader concept than pay equity) in the workplace is generally left to the discretion of individual organisations. The concern of Strachan and French, highlighted through their research,⁴ is that the current policy mix allows organisations to selectively implement policies and practices which may have uncertain outcomes for gender equity. They argued that gender equity can only be achieved in workplaces if there is a legislative underpinning to the policies that affect the employment and promotion of women in the workplace. Their proposition is that cohesive, universal legislation premised on equal opportunity and anti-discrimination principles is required if gender equity, including pay equity, is to be achieved.

EOWA clearly considers that the pursuit of pay equity is an equal opportunity measure and identifies pay equity as a key agenda item for women to achieve equal employment

¹ Nan Weiner, 'Effective Redress of Pay Inequities' (2002) 28 Supplement 1 *Canadian Public Policy* 101 at p 101.

² QCU Submission p 30.

³ International Labour Organisation Convention No 111, Convention concerning Discrimination in respect of Employment and Occupation, is a schedule to the *Human Rights and Equal Opportunity Act 1986* (Cth) and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women is a schedule to the *Sex Discrimination Act 1984* (Cth).

⁴ Glenda Strachan, John Burgess and Lindy Henderson, 'Equal Employment Opportunity Legislation and Policies: the Australian Experience' (Paper accepted for publication in (2007) *Equal Opportunities International*); Glenda Strachan and Erica French, 'Equal Employment Opportunity – Disentangling promise from achievement' (Paper submitted to the Gender Work and Organisation Conference, Keele University, UK, June 2007).

opportunity.⁵ EOWA identifies the equal opportunity factors contributing to the earnings gap as including:

- differential in working times, as women have less access to paid overtime and are more likely to be in part-time or casual positions;
- occupational segregation of labour into 'men's work' and 'women's work' across industries and within occupations;
- less access to training for women workers;
- inflexible structures and workplace practices which restrict the employment prospects of workers with family responsibilities; and
- greater likeliness of women to take time off work for family responsibilities.⁶

The Inquiry acknowledges that these factors, while being addressed as causes of pay inequity in *Worth Valuing*, are not ones that received attention by means of the industrial relations system as a result of the first Pay Equity Inquiry either through legislation or the ERP.

Nan Weiner, a Canadian academic in the field of pay equity, argues that pay equity redresses systemic gender based wage discrimination.⁷ Systemic discrimination refers to discrimination which generally occurs as a result of an often unintended consequence of an organisation's policies or practices, which are apparently neutral on their face but which have the effect of discriminating against members of the minority group.⁸ In Queensland it is possible to deal with systemic discrimination by direct or indirect discrimination under the ADA but is generally more effectively addressed through organisational change.

From the above it is apparent that the international treaties, research and the federal government's own agency, EOWA, clearly identify pay equity as an appropriate measure to advance equal employment opportunity and to eliminate discrimination against women in the workplace. It allows for more than just pay to be considered and considered in an industrial context. It allows for the examination of policies and practices relating to recruitment, promotion and access to training, typical measures used to advance equal opportunity.

Accordingly, this Inquiry believes that scope exists for the Queensland Government to enact legislation which focuses on pay equity as an equal opportunity and anti-discrimination measure. The scheme of the legislation would require an individual organisation focus which is consistent with the model being promoted by the federal government. Employers, employees and their unions would be required by law to take a more pro-active approach to pay equity by examining whether and the extent to which pay inequity exists in the workplace, along with its causes. The participants would then be required to develop measures to rectify the identified pay inequity.

⁵ http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/About_Equal_Opportunity/Key_Agenda_Items.asp at 21 August 2007.

⁶ http://www.eeo.gov.au/Developing_a_Workplace_Program/Six_Steps_to_a_Workplace_Program/Step_2/ Pay_Equity_Tool/about_pay_equity/how_did_unequal_pay_arise.htm at 21 August 2007.

⁷ Ibid 101, 103.

⁸ *Slater v Brookton Farmers Co-operative* (1990) EOC 92-321.

RECOMMENDATION 8

That the Queensland Government enact a Pay Equity Act which has as its principal object the achievement of pay equity by the promotion of equal opportunity and the prevention of discrimination.

The approach being recommended should not be construed as a cost to business. EOWA argues that equal opportunity measures in general boost productivity and profitability and pay equity in particular makes good business sense by:

- managing risk by reducing the possibility of discrimination claims;
- attracting and retaining staff;
- increasing motivation by ensuring the opportunities for advancement are equally available that equal remuneration is paid;
- contributing to the success and sustainability of a business, including increased market share through alignment of the organisation with stakeholder interests;
- improve operational efficiency by reducing stress, improving morale and increasing productivity.⁹

The benefits of addressing pay equity were confirmed by John Stewart, Group CEO of National Australia Bank, who, in his address to the Queensland pay equity symposium, identified the pay equity audit as a workforce engagement strategy for the organisation. The process of addressing pay equity was described as improving organisational communication and commitment and enhancing the understanding within the organisation of the jobs undertaken by individuals.

6.1.1 Scope

Legislation that deals with pay equity on the basis of the prevention of discrimination and the promotion of equal employment opportunity should thus be capable of applying to all employers in Queensland, both public and private sector, constitutional corporations and non-constitutional corporations.

The Inquiry considers that some exclusions from the proposed Pay Equity Act are required. One of these has already been alluded to: the community services sector. However, the Inquiry does not recommend a blanket exclusion for this sector given that some of the organisations that operate within it are quite large and have significant operating budgets. While approximately 56% of community services sector organisations employ fewer than 15 employees and a further 20% employ between 15 and 30 employees, the QCOSS Survey Report¹⁰ also shows that almost 9% of organisations employ more than 100 employees while approximately 15% employ between 30 and 100 employees.

In light of the workforce demographics present in the community services sector, the particular issues facing this sector and the specific pay equity measures already recommended, the Inquiry considers that community services sector organisations employing fewer than 30

⁹ [http://www.eowa.gov.au/Australian Women In Leadership Census/About Equal Opportunity/Why EO Makes Business Sense.asp](http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/About_Equal_Opportunity/Why_EO_Makes_Business_Sense.asp).

¹⁰ QCOSS, *The Impact of WorkChoices on the Non-government Health and Community Services Sector Project*, Survey Report, March 2007.

employees should be excluded from the Pay Equity Act but have the capacity to voluntarily opt into it.

In terms of employers more generally, the Inquiry notes that the Quebec *Pay Equity Act*¹¹ (the Quebec Act) excludes employers who employ fewer than 10 employees. The QIRC Policy concerning Termination, Change and Redundancy (TCR) provides an exemption for employers who employ fewer than 15 employees was inserted when the Policy was first made in 1987.¹² The rationale for this approach was to ensure the viability of small businesses. That exemption continued until 2003 when it was amended to exclude employers who employ employees, whether casual, part-time or full-time, working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The change was made to reflect the changing nature of work patterns and to overcome difficulties that had been experienced in ascertaining numbers of employees employed by a particular employer.¹³

Although the legislation being proposed is premised on other than industrial principles, the Inquiry considers that the method and rationale used to exempt employers from the payment of severance benefits by reference to a calculation of hours is apposite to pay equity.

Given the variety of working arrangements that now exist in organisations the Inquiry recommends that the approach to calculating the number of employees for the purposes of the exemption and other requirements to be mentioned later should be that developed by the Full Bench of the QIRC in the TCR case. For convenience however, the Inquiry will continue to refer to actual numbers of employees with reference to various provisions of the Pay Equity Act.

Other organisations seeking to be excluded from the application of the Act will be able to make application for exemption to the body charged with the administration of the Act, however, the Inquiry considers that the grounds for exemption would be few. They may include that the organisation is in a parlous financial state or that it can be demonstrated that pay equity has already been achieved.

RECOMMENDATION 9

That the Pay Equity Act apply to employers employing 15 or more employees, except in the community services sector where it shall not apply to organisations employing fewer than 30 employees.

6.1.2 Requirements

The Quebec Act imposes different requirements on an organisation depending on the number of employees employed, viz, over 100 employees, 50-100 employees and 10-50 employees. The Inquiry considers these are a useful guide to the provisions of the Pay Equity Act being recommended for establishment in Queensland, albeit that the provisions relating to organisations with fewer than 50 employees be interpreted to mean organisations that employ between 15 and 49 employees. The following table sets out those provisions:

¹¹ RSQ, c E-12.001.

¹² (1987) 125 QGIG 111.

¹³ (2003) 173 QGIG 1417 at 1427-1428.

Table 4: Provisions of the Quebec *Pay Equity Act*

Size of Organization	Pay Equity Committee	Pay Equity Plan
Organization with 100 or more employees	Mandatory	Mandatory
Organizations with 50 to 99 employees	Optional Only obligation: joint process	Mandatory
Organizations with fewer than 50 employees	Optional	Optional Only obligation: determination of salary adjustments

Source: Pay Equity Taskforce Final Report 2004, *Pay Equity: A new approach to a fundamental right*, Table 4.5 Organisation by size, p 130.

The Inquiry considers it appropriate that the proposed legislation set out requirements regarding pay equity plans and pay equity committees.

• **Pay Equity Plans**

A pay equity plan needs to be developed for each organisation. As a minimum any pay equity plan would need to address the matters included in the Quebec Act which has a narrow focus on the identification and evaluation of predominantly male and female job classes within that organisation. Comparisons across organisations or industries would not generally be permitted unless exceptional circumstances exist such as those mentioned above. Another such circumstance is if there are no predominantly male job classes within the organisation. The Inquiry notes that in Quebec gender predominance is found where at least 60% of the job class belongs to one sex.¹⁴ Regulations may need to be developed to detail the exceptional circumstances and processes to be followed where such circumstances arise.

However, the Inquiry advocates a broader approach to address the multiple causes of pay inequity, including systemic discrimination. Accordingly, the Inquiry considers that the types of matters to be reviewed as part of the development of a pay equity plan would include:

- the identification of predominantly male jobs and those which are predominantly performed by women;
- development of job evaluation methodology;
- job evaluation;
- the recruitment procedure, and selection criteria, for appointment or engagement of persons as employees;
- the promotion, transfer and termination of employment of employees;
- training and development for employees;

¹⁴ Report of the Task Force on Pay Equity, *Working Through the Wage Gap*, 2002.

- work organisation;
- conditions of employment; and
- arrangements for dealing with employees with family responsibilities.

The pay equity audit tool developed by EOWA may be useful in this process. Also relevant are the resources developed by the New Zealand Pay and Employment Equity Unit including the New Zealand Standard on Gender-inclusive Job Evaluation.

The Inquiry acknowledges that the EOWW Act provides that employers employing more than 100 employees must develop and implement workplace programs which deal with many of the measures recommended for inclusion in the Queensland Pay Equity Act. The Inquiry is of the view that the EOWW Act does not cover the field in relation to pay equity for two reasons. First, it excludes employers who employ fewer than 100 employees and second, it does not mandate pay equity outcomes. However, the Inquiry is conscious that much of the work done in organisations as the consequence of complying with the EOWW Act may be capable of forming the basis of a pay equity plan. This should minimise the cost of compliance to organisations as much as possible while at the same time ensuring the object of the proposed Act, that is, pay equity is achieved.

The Inquiry also noted in the previous section the obligations placed upon public sector employers to prepare equal opportunity management plans under the EOPE Act. These management plans may be capable of adaptation for the requirements of the Pay Equity Act.

The Inquiry does not consider that an exemption from completing plans under either Act would be grounds for an exemption under the Pay Equity Act.

• **Pay Equity Committees**

The Inquiry also considers essential the establishment of a pay equity committee of at least three members within organisations employing 100 or more employees. Two-thirds of the committee are to come from employees and at least one-half are to be women. The establishment of such a committee is to be optional for organisations to which the Act would apply and which employ fewer than 99 employees but the legislation should provide that such a committee should be established where it is reasonable and practicable to do so or where the majority of female employees request it. Consent from the employer should not be unreasonably withheld. Where a committee is not established then the Inquiry considers that for all organisations that fall within this category a process for reviewing pay equity and implementing any outcomes should be agreed between the employer and employees.

The Inquiry supports the representation of unions on the committees where a union has membership in the workplace or is requested to represent employees in the development of a pay equity plan.

Committee representatives need to be trained to understand pay equity as an equal opportunity measure as well as its causes, and the use of tools to evaluate policies and practices.

• **Industry Committees**

The Inquiry does not generally support the establishment of industry committees (or sector committees as they called in the Quebec Act) believing that such committees may deflect attention from the areas requiring attention in individual organisations. However, a need may be

able to be established for an industry based committee in certain limited and exceptional circumstances such as the commonality of impediments to equal opportunity across the industry or that the industry has previously addressed employment issues as a group eg by way of multi-employer agreement. In certain circumstances a multi-business approach may be appropriate where a multi-business agreement is in place eg Queensland Health. Where an industry committee is sought to be established then approval by the body charged with the administration of the Act will be required.

RECOMMENDATION 10

That the Pay Equity Act contain the following provisions:

- **That pay equity plans be developed but this requirement is subject to the number of employees employed by an organisation.**
- **That pay equity committees be established in organisations employing more than 100 employees and that smaller organisations have the option of establishing such committees but should do so where it is reasonable and practicable or where the majority of female employees request its establishment.**
- **That unions be permitted to be represented on pay equity committees.**
- **That members of pay equity committees receive training.**

6.1.3 Time frames

Provision needs to be made within the Act for various time frames for:

- establishing of the body charged with the responsibility for administering the Act;
- developing a pay equity plan;
- implementing any adjustments arising from the plan;
- reporting on the development of the plan;
- implementing any adjustments that result; and
- reporting on the maintenance of pay equity.

It will clearly take some lead in time for the body charged with the administration of the Act to be established, for organisations, regardless of their size, to be educated and trained in the requirements of the Act and for tools to be available to assist in the process. For these reasons the Inquiry recommends that the provisions of the Pay Equity Act that relate to the implementation in organisations be deferred for a period of 12 months to allow a smooth and informed transition.

RECOMMENDATION 11

That the first 12 months after the date of assent of the Pay Equity Act be devoted to the establishment of the body charged with the administration of the Act, education of major stakeholders about the Act and the development of resources.

That the date of implementation of the provisions relating to the development of pay equity plans and other matters impacting on organisations be deferred for 12 months after the date of assent of the Pay Equity Act.

The Inquiry does not make specific recommendations concerning appropriate time frames for the development of pay equity plans or the implementation of adjustments arising from those plans. However, such timeframes should be provided by the Act.

The Inquiry acknowledges that phased implementation of adjustments may be required. In the Inquiry's view the Pay Equity Act should provide for an outer limit for the phasing in of any adjustments and considers that the timing and quantum of those adjustments are best left to the parties in the organisation to decide bearing in mind the particular organisation's exigencies. The Inquiry considers it appropriate to add that in determining the extent and nature of adjustments, no employee should suffer a reduction in remuneration. This requirement extends to both male and female employees.

6.1.4 Outcomes

The Inquiry does not propose that the Pay Equity Act specify an exhaustive list of the outcomes that may flow from the development and implementation of a pay equity plan. Clearly, the most obvious form of outcome is remunerative, either by pay or adjustment to wages or allowances. Whatever the form of the outcome, it must be documented in a manner so that it becomes legally binding on the employer and affected employees and is enforceable.

6.1.5 Reporting

One of the deficiencies identified in the Quebec legislation and noted in the Queensland Government submission is that reporting of the compliance with the legislation is not required thereby diminishing the effectiveness of the Act. Various submissions also commented on the need to review the effectiveness of any recommendations made by the Inquiry.

The Inquiry considers that it is important to ensure compliance with the legislation and to monitor its effectiveness to be satisfied that it is meeting its statutory objects and above all reducing the gender pay gap. To this end annual reporting is considered necessary and appropriate during the development and implementation phase. Reports are to be submitted to the body charged with the administration of the Pay Equity Act and include information about:

- the methodology undertaken;
- the extent of any gender pay gap that was identified;
- the causes of the gender pay gap; and
- the measures being taken to reduce the gender pay gap, including time lines for implementation.

Reporting is also required once implementation has concluded to ensure that pay inequity does not re-emerge in an organisation. Accordingly, organisations should be required to review their pay equity plans every three years and report on the outcome of that review. In effect, pay equity should become a human resource issue for organisations, which, like any other issue, should be kept under review.

To assist in the reporting process and to minimise administration costs a standard reporting form should be developed and issued to affected organisations.

RECOMMENDATION 12

That the Pay Equity Act provide that organisations be required to report on compliance with the Act. In particular, annual reporting will be required on progress towards the development of a pay equity plan.

That organisations be required to report annually during the period that adjustments are being made and thereafter three yearly on the status of pay equity within the organisation.

6.1.6 Sanctions

Overseas experience has shown that voluntary compliance is ineffective.¹⁵ The Inquiry therefore considers that some sanctions should be attached to non-compliance. Such sanctions should be used as a matter of last resort and that the primary approach, particularly in the early stages of implementation of the Pay Equity Act, should be education about the principles underpinning the legislation, the obligations imposed on organisations and the benefits to organisations of reducing the gender pay gap.

The Inquiry considers that a range of sanctions be prescribed in the Pay Equity Act to take account of the different types of circumstances that will emerge from uncertainty to wilful non-compliance. The sanctions may include the issuing of improvement or compliance notices where required through to the imposition of fines as a matter of last resort.

6.1.7 Administration

The Inquiry considers that the Minister for Transport, Trade, Employment and Industrial Relations is best placed to have responsibility for the Pay Equity Act. Within DEIR measures are already being taken to consider work and family issues, labour market participation issues and other issues that affect pay equity.

The Inquiry notes that a number of submissions are supportive of a pay equity unit being established in the Department of Employment and Industrial Relations. The Queensland Government's submission proposes the establishment of a Work, Family and Equity Unit to further research the main causes and extent of pay inequity in Queensland and to make recommendations for pay equity policies that are appropriate in light of the Work Choices amendments.

In light of the recommendations made the Inquiry does not support the existing Work and Family Unit being extended to include an equity function and that Unit being then responsible for the day to day administration of the Pay Equity Act. The provisions of the Act as recommended by the Inquiry require a specific focus and require a team dedicated to overseeing the implementation of the legislation, informing and educating employers, employees and unions

¹⁵ Marie-Therese Chicha, *A comparative analysis of promoting pay equity: models and impacts*, International Labour Office, Geneva, 2006, p 69.

alike about the legislation, its requirements and benefits. The advantages of having a dedicated pay equity team was highlighted in the submission from the Western Australian Department of Consumer and Employment Protection and referenced in Section 5. For these reasons the Inquiry considers that the most appropriate way to ensure the efficient administration of the Act is for a Pay Equity Commission to be attached to the Department of Employment and Industrial Relations as a public service office.

The specific functions of the Commission are to be expressed in the Pay Equity Act and include several of those identified in the Queensland Government's submission as it related to the Work, Family and Equity Unit, viz,:

- raise public awareness of pay equity and the legislation through education and training;
- develop information, best practice guidelines and training modules in consultation with unions and employer associations; and
- set and monitor targets and time frames for gender pay equity ratios in Queensland.

In addition to functions mentioned above other statutory functions would include:

- assisting organisations implement the Pay Equity Act;
- overseeing the establishment and maintenance of pay equity plans where relevant;
- development/modification of tools to assist in the achievement of pay equity in organisations; and
- monitoring and reviewing progress on pay equity.

Because of the work already being undertaken in DEIR in relation to issues that impinge on pay equity it is important that strategic linkages are developed between those units and the Pay Equity Commission. This would ensure that the work of all relevant bodies is co-ordinated and targeted ensuring the most effective policy outcomes. The Inquiry also considers that the Commission should be responsible for co-ordination of policy with state government departments and agencies, including the Office for Women and the Department of Education, Training and the Arts where responsibilities overlap, eg, in the area of vocational training for women and girls.

RECOMMENDATION 13

That a Pay Equity Commission be established as a public service office attached to the Department of Employment and Industrial Relations.

The Pay Equity Commission would be headed by the Pay Equity Commissioner who would have specific statutory responsibilities expressed in the Pay Equity Act. Because this is a new initiative, without precedent in Australia, it is important that the Commissioner be a person capable of ensuring the efficient implementation of the Act, with knowledge of the issue, the principles underpinning it and skilled in educating stakeholders about the issue and have the capacity to interface at senior levels in the public and private sectors. For these reasons it is essential that the position be established at the level of the Senior Executive Service.

RECOMMENDATION 14

That the head of the Pay Equity Office be the Pay Equity Commissioner with remuneration established at the level of the Senior Executive Service.

6.1.8 Disputes process

The Quebec Act contemplates the possibility that disputes may arise over the application of the Act and gives the Pay Equity Commission established under the Act the power to investigate and try to resolve complaints that have been filed. The Inquiry considers that a dispute process should also be contained in the Pay Equity Act being recommended.

Because of the proposed administrative structure the Inquiry considers that the Pay Equity Commissioner or their delegate should have responsibility to try to resolve disputes through investigation and conciliation. The Commissioner would not have power to make determinations.

Consideration also needs to be given to the situation where a complaint remains unresolved. Accordingly, the Inquiry considers that a Pay Equity Tribunal be established under the Pay Equity Act with powers to determine disputes over the application of the Act, especially in relation to the implementation of any outcomes from pay equity reviews undertaken within organisations. The Tribunal would be constrained from issuing equal remuneration orders because of the effect of the WRA, however, it may be possible for the Tribunal to ensure the implementation of the binding agreements that the parties in the organisation have made. Other powers may include the imposition of penalties for non-compliance with the Act or avoidance of payment of pay equity adjustments. Any powers and functions conferred upon the proposed Tribunal need to be consistent with the principles upon which the proposed legislation is based.

Given the current legislative environment it is not appropriate for another tribunal to be given this jurisdiction, although the Inquiry can see no impediment to a Member of the QIRC being appointed under the Pay Equity Act to perform the functions of the Pay Equity Tribunal.¹⁶

RECOMMENDATION 15

That the Pay Equity Commissioner be given the power under the Pay Equity Act to resolve disputes over the application of the Act.

RECOMMENDATION 16

That a Pay Equity Tribunal be established under the Pay Equity Act with its powers and functions specified in the Act.

¹⁶ *Industrial Relations Act 1999* (Qld) s 265(1).

6.1.9 Summary

In summary, the Inquiry is proposing legislation which has pay equity as its principal object. The scope of the proposed Pay Equity Act is all employers in Queensland (with specified exemptions for small business and the community services sector). The Act will provide the requirements for examining pay equity within organisations; reporting on actions undertaken and sanctions for non-compliance. A Pay Equity Commission will be established to administer the Act with a specialist tribunal established to respond to disputes over the application of the Act.

The Inquiry also acknowledges the limitations of the approach being recommended. With certain exceptions pay equity is to be addressed within organisations. The proposed Act does not generally provide for comparisons across organisations within an industry or between industries. However, no approach is perfect - this was the experience of the scheme that is currently in place but has still managed to deliver improvements. In addition, there exists considerable experience in Canada of similar legislation which can be learnt from and drawn on in the development of the Queensland legislation. It is the view of the Inquiry that this approach provides the most effective and workable way forward for pay equity in Queensland.

6.2 Pay Equity and Collective Bargaining

The Inquiry recognises that some employers will raise concerns about the economic effect of possible additional remuneration adjustments that will be required as a result of the recommended legislation being implemented. In response to any such arguments the Inquiry notes the availability of phased in outcomes which will ameliorate the cost impost. More importantly, however, the Inquiry refers to the business benefits of pay equity and further argues that rectification of discrimination in the organisation can only be regarded as a positive measure.

The Inquiry also recognises that some of these concerns will be raised in the context of enterprise bargaining, particularly as many enterprise agreements contain no extra claims clauses. Two approaches are possible:

- to include pay equity in the enterprise bargaining process; or
- to establish pay equity as a stand alone process.

In the Inquiry's view pay equity must be considered separately to the enterprise bargaining process. It is important that impediments to pay equity are identified and addressed separately to the myriad of other important issues which are included in enterprise bargaining agendas. The Inquiry is also concerned that the structures put in place to enterprise bargain do not necessarily allow for the effective representation of women especially in organisations where the majority of employees are men; the occupations found in the organisations are predominantly male or the organisation operates in a traditionally male industry. The structures may also inhibit the raising or addressing of issues that impact on women's employment from being addressed in a comprehensive and systematic way.

Pay equity requires specific knowledge and focus and should not become bogged down in enterprise bargaining generally. Moreover, enterprise bargaining is often about compromise - developing agreed outcomes but with the final package comprising a mixture of changes the employees sought and those pressed by the employer. Some issues on the agenda can be overlooked and others downplayed. Not always are absolute outcomes achieved. In contrast,

pay equity demands absolute outcomes, outcomes that must be implemented in order to avoid perpetuating discrimination.

Additionally, the recommended method of addressing pay equity removes the issue from the industrial relations system. There is no recourse to industrial tribunals in the event of a breakdown in enterprise negotiations. It will be important to ensure that enterprise bargaining does not re-introduce mechanisms that have been identified in pay equity plans as being an impediment to pay equity and that wage leapfrogging does not occur as a result of relativities or conditions of employment being affected. The Inquiry considers that the recommended amendments to the certified agreement provisions of the IRA should assist in this regard. Further, the reporting measures should assist in minimising these effects. It would simply not be in an employer's interest to allow leapfrogging to occur and pay inequity to reoccur.

The Inquiry acknowledges there may be some overlap between the processes involved in enterprise bargaining and the processes being recommended here. The Inquiry also accepts that in determining the instalments for pay equity adjustments or enterprise bargaining increases account may need to be taken of the outcomes from the other process. However, these are insufficient reasons for a single process to be established.

6.3 State Purchasing Policy

As one of the means to advance pay equity in Queensland consideration has been given to extending the Queensland Government's industrial relations compliance obligation in its State Purchasing Policy (SPP) to require suppliers to indicate action being taken to identify and rectify pay inequity in their organisations. Several submissions supported this proposal¹⁷ however, it was opposed by AIG.¹⁸

In light of the key recommendation made by the Inquiry that the State Government enact a Pay Equity Act the Inquiry does not consider detailed purchasing measures are necessary. However, the Inquiry considers that the SPP provides a useful backup tool to ensure compliance with the proposed Act and confirms to organisations that the Queensland Government is serious about achieving pay equity. To this end the Inquiry recommends that the SPP tender documents be amended to enable an organisation to indicate whether it has submitted a report in compliance with the Pay Equity Act or is exempt from the Act. A check list approach is all that is considered necessary.

To ensure accuracy and consistency the proposed Pay Equity Commission should establish a data base so that the relevant agency can confirm compliance before awarding a contract. A process to manage inconsistencies would also be required to be established.

RECOMMENDATION 17

That the State Purchasing Policy tender documents be amended to allow organisations seeking to be awarded a State Government contract the ability to indicate that they have complied with, or are exempt from, the Pay Equity Act.

¹⁷ AMACSU Submission p 30, LHMU Submission p 11, QCU Submission p 37.

¹⁸ AIG Submission p 11.

6.4 Summary and Conclusion

This section has provided details of the key recommendation of this Inquiry - that the Queensland Government enact legislation which has as its principal object the achievement of pay equity by the promotion of equal opportunity and the prevention of discrimination. Now that the industrial landscape has changed so dramatically it is time to implement a different approach that takes account of the constraints in place and has the capacity to deliver constructive outcomes for all parties. The Inquiry considers that the Quebec experience shows that inroads can be made into the gender pay gap with the approach being recommended. Further, when all of the recommendations made are taken as a package, the Inquiry considers that once implemented, the Queensland Government can once again lay claim to having the most progressive pay equity system in place in Australia.

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Appendix 1



Queensland Industrial Relations Commission

PAY EQUITY INQUIRY

STATEMENT

On 8 March 2007, International Women's Day, The Honourable the Minister for State Development, Employment and Industrial Relations, John Mickel, MP, announced that pursuant to s 265(3) of the *Industrial Relations Act 1999* he was directing the Queensland industrial Relations Commission to hold an Inquiry to examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on pay equity in Queensland. The Vice President has allocated the conduct of the Inquiry to me.

The purpose of the proceedings today is to announce the formal commencement of the Inquiry today, 26 March 2007, to advise of the Inquiry's Terms of Reference and how the Inquiry is intended to be conducted.

The Inquiry's Terms of Reference are as follows:

1. Examine the effectiveness of the outcomes of the previous Pay Equity Inquiry conducted by the Commission in 2000/01 in advancing pay equity.
2. Assess the impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* on the legislative measures addressing pay equity under the federal and state systems.
3. Examine the current and possible future impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* on pay equity, including its impact on industries, occupations as well as individuals.
4. Consider alternative models and specific policy and legislative options used in other Australian states and other countries in pursuit of pay equity.
5. Recommend possible policy and legislative options for the Queensland Government to consider implementing in further progressing pay equity.

The establishment of the Inquiry has been reported on the Commission's website www.qirc.qld.gov.au. The page relevant to this Inquiry also has a link to *Worth Valuing*, the Report of the Pay Equity Inquiry conducted by the Commission as constituted in 2000/01. Further publication of the establishment of the Inquiry will appear in the "Courier Mail" and various regional newspapers this Saturday, 31 March 2007.

The Inquiry will release a Discussion Paper on 30 April 2007. The Discussion Paper will provide background information about pay equity and the progress that has been made since the last Inquiry presented its Report. In addition it will canvass each of the Terms of Reference and will pose a series of questions designed to stimulate debate about the issues. As the purpose of the Inquiry, as can be seen from the Terms of Reference, is to make recommendations on policy and legislative initiatives that can be considered by the Queensland Government, I hope that the Discussion Paper will be used as a vehicle to generate practical and reasonable proposals for measures to advance pay equity in this State.

On 30 April 2007 a hard copy of the Discussion Paper will be posted to all industrial organisations, other organisations that regularly appear in this Commission, to those persons and organisations who register an interest as a result of the advertisement this Saturday and to other people and organisations considered to have an interest in the subject matter of the Inquiry. The Discussion Paper will also be available on the Commission's website, the address for which I have already given you.

I am advised that the Department of Employment and Industrial Relations will be holding a symposium in late May/ early June on pay equity. This symposium is being conducted independently of this Inquiry, however, I hope that together with the Discussion Paper, the issues raised at the symposium will help inform submissions to the Inquiry.

Interested people and organisations are invited to make written submissions to the Inquiry by close of business on 14 June 2007. Details of where and how to make submissions will be included in the Discussion Paper. It is the intention of the Inquiry to publish all submissions on the website so electronic submissions are preferred. Confidentiality of submissions will be respected where this is requested and there is a reasonable basis for doing so.

Although the Terms of Reference on their face do not seem to lend themselves to an Inquiry where evidence is called I do not exclude this possibility. Accordingly, any person or organisation that wishes to call evidence is to notify the Industrial Registrar's Office in writing by 14 June 2007. An outline of the evidence will need to be provided to the Inquiry and other interested persons and organisations on 21 June 2007.

Public hearings are scheduled to be held in Brisbane on 27, 28 and 29 June 2007. The Inquiry will sit in regional centres if requested and will list further dates if required. On the dates set aside interested persons and organisations will have the opportunity to expand on their written submissions if desired, and to respond to other submissions. Evidence, if required, will also be taken on these dates.

The Report of the Inquiry is to be presented to the Minister on 28 September 2007.

The Terms of Reference flag the possibility that in the changed industrial relations environment since the last Inquiry was conducted that a combination of policy and legislative options and not just straight industrial relations solutions may be the way to progress pay equity. This opens up the possibility of other than industrial parties having an interest in the Inquiry. This Inquiry is independent and I encourage all who have an interest in the matter, whatever their views may be to ensure that those views are heard.

In that context I wish to foreshadow two other initiatives the Inquiry intends to take. I particularly encourage those organisations that were involved in the two pay equity cases already conducted in the Commission to make a submission to the Inquiry if only in respect to the first term of reference. To ensure that the views of these organisations can be given frankly I propose that my research staff meet informally with those organisations to discuss the operation of the Equal Remuneration Principle and the conduct of pay equity cases generally. My Associate will be in contact with those organisations in the near future.

Secondly, after I have had an opportunity to consider the submissions that have been received and to develop some policy and legislative options, I propose to hold a workshop of interested people and organisations to work through those proposals in order to ensure appropriate and feasible recommendations are made. It is envisaged that this workshop will be by invitation with participants drawn from a cross section of the industrial and academic communities, from government and relevant community groups. If you have a particular interest in participating in this workshop please contact my Associate. The precise details for the operation of the workshop have yet to be determined.

No dates have yet been scheduled for either the informal discussions or the workshop. It is however anticipated the informal discussions will be held in May and the workshop in early July. Contact will be made with those involved by my Associate at an appropriate time.

Finally, I record that it may be necessary to reconvene the Inquiry as circumstances dictate and notifications will be sent in the usual way. Updates about the Inquiry will be posted on the website and specific enquiries can be made to my Associate.

I would now invite any person or organisation appearing today to make any comment.

Commissioner Fisher
26 March 2007.

Appendix 2

Advertisement – 31 March 2007



Queensland Industrial Relations Commission

Progressing pay equity an Inquiry

The Inquiry, set up under s.265(3) of the *Industrial Relations Act 1999* at the direction of the Minister for State Development, Employment and Industrial Relations, the Honourable John Mickel, has begun. It will examine the impact of the Federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on pay equity in Queensland.

The Inquiry will assess the advances in pay equity over the last 5 years and will examine the current and possible future impact of Work Choices on pay equity across industries, occupations and individuals from a Queensland perspective. Consideration will also be given to policy and legislative initiatives to further progress pay equity.

The Inquiry commenced on 26 March 2007. The process to be followed includes:

- release of a discussion paper on 30 April 2007 highlighting issues to be considered
- invitations to interested persons or organisations to make written or oral submissions
- public hearings and workplace inspections as required across the state
- final report to Government by 28 September 2007.

The terms of reference can be found at www.qirc.qld.gov.au.

To obtain a copy of the terms of reference or for further information contact:
The Industrial Registrar, QIRC, GPO Box 373 Brisbane Queensland 4001
Tel (07) 3227 8060 | Fax (07) 3221 6074 | Em: qirc.registry@deir.qld.gov.au



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Appendix 3

Advertisement – 28 April 2007



Queensland Industrial Relations Commission

Progressing pay equity an Inquiry

Release of Discussion Paper

The Inquiry set up under s. 265(3) of the *Industrial Relations Act 1999* at the direction of the Minister for State Development, Employment and Industrial Relations, the Honorable John Mickel, will release a Discussion Paper on 30 April 2007. The Discussion Paper summarises the main issues to be considered in the Inquiry. It also includes questions to assist the preparation of submissions. Dates:

- 14 June 2007—Closing date for written submissions
- 27–29 June 2007—Public hearings

The Inquiry specifically encourages individuals or organisations in regional centres to make submissions. Sittings will be held in regional centres if requested.

The terms of reference for the Inquiry and the Discussion Paper can be found at www.qirc.qld.gov.au.

To obtain a copy of the Discussion Paper
or for further information contact:

The Industrial Registrar, QIRC
GPO Box 373 Brisbane Queensland 4001
Tel (07) 3227 8060 | Fax (07) 3221 6074
Email: qirc.registry@deir.qld.gov.au



Appendix 4

Written Submissions:

- Anti-Discrimination Commission Queensland
- Australian Communications Exchange Limited
- Australian Industry Group
- Australian Municipal, Administrative, Clerical and Services Union Central & Southern Queensland, Clerical and Administrative Branch
- ENERGEX Limited
- Associate Professor Gillian Whitehouse, School of Political Science and International Studies, University of Queensland
- Government of Western Australia, Department of Consumer and Employment Protection
- Human Rights And Equal Opportunity Commission
- Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
- National Foundation for Australian Women
- Qantas Airways Limited
- Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers
- Queensland Council of Unions

Appendices:

- Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
- Queensland Services, Industrial Union of Employees
- Queensland Teachers' Union of Employees
- Queensland Nurses' Union of Employees
- Queensland Council of Social Service Inc.
- Queensland Government
- Queensland Working Women's Service Inc
- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
- Professor Glenda Strachan, Department of Management, Griffith University AND Dr. Erica French, School of Management, Queensland University of Technology
- The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers.

Appendix 5

List of Appearances:

Australian Municipal, Administrative, Clerical and Services Union Central & Southern Queensland, Clerical and Administrative Branch	Turner, Mr A., and with him Bignell, Ms J.
The Australian Workers' Union of Employees, Queensland Branch	Schinnerl, Ms S.
ENERGEX Limited	Myburgh, Mr J.
Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees	Crank, Mr K.
Qantas Airways Limited	Black, Ms S., of Blake Dawson Waldron
Queensland Council of Unions	Grace, Ms G., and with her Virine, Ms J.
Queensland Teachers' Union of Employees	Seed, Ms K.
Queensland Government	Rafferty, Ms C., and with her Valentine, Ms J. and Lee, Mr W.
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	Town, Ms P.
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	Law, Mr K.
Queensland Private Child-care Centres Association Organisation and the Australian Community Services Employers Association	Shields, Mr R., of Livingstones (Australia)
Queensland Rail	Negline, Ms R.
UniTAB Limited	Franken, Mr J., of Livingstones (Australia)

Appendix 6

List of Witnesses:

AMACSU:

- FLANAGAN Nicole, a former Customer Service Agent at Qantas Airways Limited
- FRENCH Helen, a Relay Officer at the Australian Communications Exchange Limited
- JENKINS Tamar, a former employee of UNITAB
- McFARLANE Ruth, Systems Implementation Training Support Officer for Queensland Health
- STENHOUSE Ross, Senior Systems Analyst and Programmer at Spark Solutions, a company owned jointly by ENERGEX Limited and Ergon Energy Corporation Ltd, a Union Delegate

LHMU:

- CRANK Kevin, Research Coordinator for the LHMU.

