



28 August 2008

The Secretary
Standing Committee on Employment and Workplace Relations
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
Via email to: ewr.reps@aph.gov.au

Dear Ms Scarlett

The Federation of Ethnic Communities' Councils of Australia (FECCA) is pleased to provide its submission to the House of Representatives Standing Committee inquiry into pay equity and associated issues related to increasing female participation in the workforce.

FECCA is the national peak body representing Australians from Culturally and Linguistically Diverse (CALD) backgrounds. We advocate, develop policy and promote issues on behalf of our constituency to government and the broader community.

We welcome the opportunity to discuss or clarify any of the issues raised in this submission. Please feel free to contact FECCA on 02 6282 5755 for further information.

Yours Sincerely

Voula Messimeri AM
FECCA Chairperson

Submission of the Federation of Ethnic Communities' Councils of Australia (FECCA) on an inquiry into pay equity and associated issues related to increasing female participation in the workforce

Introduction

1. A report prepared last year for the Democratic Audit of Australia on gender equality in Australia highlights the disadvantage experienced by Australian women in terms of equal participation in our workforce.¹
2. While Australia is a signatory to several human rights treaties regarding gender equity, notably the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and several International Labour Organisation (ILO) conventions, progress reports indicate that Australia's performance in promoting gender equality has been in steady decline over at least the last ten years. However, FECCA acknowledges the Government's National Interest Analysis proposal that Australia accedes to the CEDAW Optional Protocol as a welcome move towards the protection and promotion of women's rights in Australia.
3. Despite the ratification of ILO's Equal Remuneration Convention that works to ensure equal remuneration for men and women workers for work of equal value (Article 2, 100 Equal Remuneration Convention, 1951), evidence suggests that pay equity remains an issue for Australian women with those in full-time work earning on average 15 per cent less than men and earning an average of \$150 a week less than their male colleagues.²
4. Australia's reservations in the treaties to the provision of paid maternity leave has meant that Australia is now one of only two countries in the

¹Maddison, S. & Partridge, E. (2007). [Online]. How well does Australian democracy serve Australian women? Democratic audit of Australia Report no. 8. ANU. p. 5. available: http://arts.anu.edu.au/democraticaudit/papers/focussed_audits/200703_madpartozdocwom.pdf

²Ibid. P. 15

- OECD not to have a national paid maternity leave scheme, resulting in a further disadvantage to Australian women and their families.³
5. While these statistics reflect the general population of Australian women, those women from Culturally and Linguistically Diverse (CALD) backgrounds experience multiple disadvantage which impacts further on their ability to fully participate in the workforce. According to the Job Seeker Classification Instrument (JSCI)⁴ designed to measure a job seeker's relative labour market disadvantage, highly disadvantaged jobseekers include those with limited English language skills; have a disability or medical condition; and have a low level of educational attainment. Other factors cited as barriers to employment include gender; place of birth; and disability.
 6. As a highly disadvantaged group CALD women tend to show greater representation in unsecured and lower wage jobs. Compounding the situation is the lack of appropriate and available English language programs for certain groups of migrant women; issues surrounding accreditation of overseas qualifications; and lack of access to training and education options within regional areas.⁵
 7. The 2006 CEDAW Committee expressed concerns that immigrant, refugee and minority women and girls in Australia may be subject to multiple forms of discrimination in areas of education, health, employment and political participation (article 28). The UN Committee recommended that Australia take proactive measures to eliminate discrimination against refugee, migrant and minority women and girls.

³ Ibid.p. 11

⁴ Available:

http://www.workplace.gov.au/workplace/Pages/ContentPage.aspx?NRMODE=Published&NRORIGINALURL=/workplace/Programmes/JobNetwork/JobSeekerClassificationInstrumentJSCI.htm&NRNODEGUID={8069024A-F538-45B5-B52D-9AD5B62C1905}&NRCACHEHINT=Guest#highly_disadvantaged

⁵ SUCCESSWORKS (2005a) *CALD Women's Project. Final Report*, Department of Victorian Communities.

8. FECCA would like to see the Government take a leading role in addressing the issues faced by CALD women and girls and to put in place measures (outlined in the following terms of reference) to eliminate barriers faced by CALD women to ensure equitable participation in Australia's workforce.

Adequacy of Current Data

9. The 2006 CEDAW Committee highlighted a lack of statistical data on gender equity, disaggregated by sex and ethnicity, on women with disability; and assessments on the impact of legal and policy measures undertaken to address gender equity and discrimination against women.
10. FECCA supports these recommendations and urges the Government to provide adequate funding for CALD community and women's organisations to collate data on gender equity within the highlighted categories.

Education and Information on Pay Equity

11. With the shift to individualised workplace bargaining, and the corresponding loss of a transparent system of recording the contents of workplace agreements, retrieval of information concerning remuneration has become difficult. Whereas data could, in the past, be retrieved with relative ease from the records of the Australian Industrial Relations Commission, there is no comparable access to individual agreements. This complicates the task of gathering data and of educating and informing stakeholders about equal remuneration.
12. The WorkChoices regime also resulted in the loss of various mechanisms which informed and educated the workforce about the industrial instrument which would regulate their work. For example, CALD women lost one of the safeguards previously afforded to CALD Australians under workplace laws, namely, an obligation for collective agreements to be explained:

'...in ways that were appropriate, having regard to the person's particular circumstances and needs. An example of such a case would be where persons included:

(a) women;

(b) persons from a non-English speaking background; or

*(c) young persons.'*⁶

13. The Australian Industrial Relations Commission has in the past refused to certify agreements which had not been adequately explained to people in their first language.⁷

14. FECCA would ideally like to see a return of such a provision, with general application to industrial instruments and the like. The key advantage of such a provision is that it shifts the onus for such a culturally-based assessment from the employee to a third party, who will examine this aspect of its own initiative, whether or not it has been raised by the employee.

Wage Negotiation

15. The ability to negotiate with employers is often unrealistic for women in the CALD community, many of whom lack the confidence and necessary linguistic skills to negotiate fair wage contracts. The provision for equity support would ensure CALD women employees were assisted in the negotiation of wages and flexible conditions, such as paid maternity leave, that would allow for fairer workforce participation.

Equal Remuneration Provisions in State and Federal Legislation

16. FECCA considers that there is an urgent need for review of equal remuneration provisions at the Commonwealth level, for reasons set out below.

⁶ Former s 170LT Workplace Relations Act 1996.

⁷ In *Re Epona* (PR931064. 6. 5.03) the AIRC refused to certify an agreement involving a clothing manufacturer because information provided to the largely NESB workforce was inadequate.

17. Primary responsibility for wage setting under the *Workplace Relations Act 1996* is given to the Fair Pay Commission, whose brief is essentially to promote economic prosperity.⁸ While s 222 of the *Act* also requires that the Fair Pay Commission have regard to a range of anti-discrimination initiatives, including equal remuneration for work of equal value, we have a concern that the analysis of what is equal remuneration is likely to be submerged beneath the more general focus on economic prosperity and the task of setting minimum wage rates. Although the Fair Pay Commission, in its 2006 decision, made a broad statement that it had applied the principle that men and women should receive equal remuneration for work of equal value,⁹ this was not accompanied by any detailed analysis of how it had applied the principle and the fact remains that the primary task of the Fair Pay Commission is to regulate minimum wages, not to address equal remuneration.
18. This blurring of the focus on equal remuneration is coupled with the parallel reduction in power of the Australian Industrial Relations Commission, after the WorkChoices amendments, to make targeted orders concerning equal remuneration, where rates of pay and the like overlap with certain of those set under the Fair Pay and Conditions Standard. The Commission is prohibited from making equal remuneration orders in such cases.¹⁰
19. The added complication is that, even prior to WorkChoices, the power of the Australian Industrial Relations Commission to make equal remuneration orders was rarely used, because of difficulties in meeting the criteria for establishing inequity of remuneration. There was debate about the meaning of 'discrimination' and an emphasis on the 'comparator' test, rather than one of undervaluation of work.¹¹

⁸ s23 Workplace Relations Act 1996

⁹ at p 134

¹⁰ s 622 Workplace Relations Act 1996

¹¹ see for example the HPM Case Print 9210

20. State tribunals have made more progress in dealing with equal remuneration,¹² but again this is of limited value today, because the *Workplace Relations Act 1996* displaces the operation of State or Territory equal remuneration order mechanisms (s 16 *Workplace Relations Act 1996*).
21. We also note that Maddison and Partridge, in their report for the Democratic Audit of Australia (2007) highlight inconsistencies between states and territory in their commitment to gender equity. The report notes, for example, that South Australia's is 'serving Australian women well' in comparison to New South Wales, that shows 'little or no remaining commitment to gender equality.'¹³
22. The report is supported by evidence from the 2006 CEDAW Committee's concluding remarks on Australia's compliance with the Convention (articles 10 and 12). It noted concerns over Australia's 'inadequate structures and mechanisms to ensure effective coordination and consistent application of the (CEDAW) Convention in all states and territories' (article 10) and the inconsistencies at state and territory level in providing an entrenched guarantee prohibiting discrimination against women and providing for the principle of equality between women and men (article 12).¹⁴
23. FECCA supports the UN Committee's recommendations, that through legislative powers of the Federal Government, treaty obligations are upheld in all states and territories and that steps are taken to prohibit discrimination against women; to promote gender equity and to undertake public awareness and training programs on this issue.

¹² Human Rights and Equal Opportunity Commission submission to the Australian Fair Pay Commission – July 2006 at par 160

¹³ Maddison, S. & Partridge, E. (2007). [Online]. How well does Australian democracy serve Australian women? Democratic audit of Australia Report no. 8. ANU. p. xv. available:

http://arts.anu.edu.au/democraticaudit/papers/focussed_audits/200703_madpartozdocwom.pdf

¹⁴ http://www.ofw.facs.gov.au/downloads/pdfs/cedaw_concluding_comments_2007.PDF

Maternity Leave

24. Recent figures show that only 34 per cent - 101,000 - of employed mothers access paid maternity leave.¹⁵ In addition, access to paid maternity leave is predominantly an entitlement of highly skilled women in full-time work rather than women in more marginal employment and with lower skills,¹⁶ as is the case with many CALD women.

25. FECCA believes that a paid maternity leave scheme would contribute to more flexible working conditions that would allow employed CALD women to balance their employment and family responsibilities and encourage them to return to paid employment. Following this FECCA recommends a comprehensive public education program aimed at informing CALD communities about such a scheme through avenues such as community radio, ethno-specific organisations and migrant resource centres.

Legislative Reform

26. In recent years, working CALD women have been hard hit by the erosion of workplace protection introduced by WorkChoices and costs of seeking justice are beyond the reach of many, particularly those affected by unfair treatment at work. FECCA looks forward to the restoration of fairness in the workplace as a result of the new workplace initiatives.

Disability

27. According to the Job Seeker Classification Instrument (JSCI) job seekers with a disability may experience or encounter discrimination from

¹⁵ ABS *Pregnancy and Work Transitions Australia* Cat No 4913.0 Nov 2005. the ABS *Pregnancy and Work Transitions* survey data, which is collected from birth mothers aged 15 years and over with at least one child less than two years of age living with them at the time of interview.

¹⁶ Maddison, S. & Partridge, E. (2007). [Online]. How well does Australian democracy serve Australian women? Democratic audit of Australia Report no. 8. ANU. p. 5. available: http://arts.anu.edu.au/democraticaudit/papers/focussed_audits/200703_madpartozdocwom.pdf

employers and have higher rates of unemployment and lower employment participation rates than non-disabled people in Australia.¹⁷

28. Women with disabilities are identified by the Human Rights and Equal Opportunity Commission as being particularly vulnerable workers¹⁸. They are less likely to be in paid work than other women, men with disabilities or the population as a whole. Twenty-one per cent of men with disabilities work full time compared to nine per cent of women with disabilities.¹⁹ In addition, women with disabilities earn less than their male counterparts. Figures for 2002 showed fifty one per cent of women with a disability earned less than \$200 per week with only 16 per cent of women with a disability earning over \$400 per week.²⁰ Given these factors CALD women with disability experience multiple disadvantage, with a corresponding degree of vulnerability in the workplace.

Leadership Roles

29. In the general population, women are underrepresented in senior management roles, company boards and committees, politics and the judiciary, in particular within the private sector.²¹ For example 47.1 per cent of companies have no women directors and only 8.6 per cent of board directors in the top 200 ASX companies are women. Within those companies only 11.5 per cent have two or more women directors.²²

¹⁷ Available:

http://www.workplace.gov.au/workplace/Pages/ContentPage.aspx?NRMODE=Published&NRORIGINALURL=/workplace/Programmes/JobNetwork/JobSeekerClassificationInstrumentJSCI.htm&NRNODEGUID={8069024A-F538-45B5-B52D-9AD5B62C1905}&NRCACHEHINT=Guest#highly_disadvantaged

¹⁸ HREOC Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005. Page 43.

http://www.aph.gov.au/senate/committee/eet_ctte/wr_workchoices05/submissions/sub164.pdf

¹⁹ WWDA 2004b use of disaggregated data tables from Australian Bureau of Statistics Disability, Ageing and Carers: Summary of Findings Australia, Cat. No.: 4430.0 2003 purchased from ABS

²⁰ WWDA (2002) [Online] The status of women with disabilities in Australia. Available: <http://www.wwda.org.au/snapshot.htm>

²¹ Maddison, S. & Partridge, E. (2007). [Online]. How well does Australian democracy serve Australian women? Democratic audit of Australia Report no. 8. ANU. p. 5. available:

http://arts.anu.edu.au/democraticaudit/papers/focussed_audits/200703_madpartozdocwom.pdf

²² Equal Opportunity for Women in the Workplace Agency, 2004, 2004 Australian Census of Women in Leadership

30. While women in general are under represented in these fields, women from culturally and linguistically diverse (CALD) communities experience additional barriers. While there is an increasing number of CALD women emigrating with a high level of educational qualification and work skills, a lack of recognition of overseas qualifications for skilled migrant women presents a barrier to working within their field of expertise. Additional education and training is often required before qualifications are recognised.
31. Given the circumstances of newly arrived migrants the additional training must compete with settlement priorities of English language classes, finding appropriate accommodation and employment and settling families into a new environment, often without family support structures. Qualification recognition therefore takes a back seat resulting in downward occupational mobility.
32. FECCA believes there is great scope to harness the skills of migrant women through fair and prompt recognition of professional qualifications; and through investment in flexible bridging training to allow for equitable access to employment in their chosen vocation.
33. FECCA recommends that specific consideration is given to removing constraints that impede CALD women's political and economic participation. This includes strengthening mentoring and leadership programs; increasing the representation of CALD women in decision-making roles; giving greater visibility and voice to CALD women in the media, arts, and sports; and the provision of funding to organisations that specially work with CALD women.