



Australian Government

**House of Representatives Standing Committee on
Employment and Workplace Relations**

**Inquiry into: Pay Equity and Associated Issues
Related to Increasing Female Participation in the
Workforce**

**Supplementary submission on the provisions of the
Fair Work Bill 2008**

**Submission by the Department of Education,
Employment and Workplace Relations
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1. Introduction

1.1 In September 2008, the Department of Education, Employment and Workplace Relations (the Department) made a submission to the House of Representatives Standing Committee on Employment and Workplace Relations Inquiry into Pay Equity and Associated Issues Related to Increasing Female Participation in the Workforce (the Inquiry).

1.2 At that time, the Australian Government was progressing substantial reforms to the federal workplace relations system. However, the legislation to support the reforms was not sufficiently advanced to enable the Department to provide information to the Committee on the Government's proposed new workplace relations system, particularly those aspects which will impact on the issues of pay equity and women's participation in the workforce.

1.3 The Fair Work Bill 2008 (the Bill) was introduced into the House of Representatives on 25 November 2008 and was passed by the House on 4 December 2008. The Bill was referred to the Senate Standing Committee on Education, Employment and Workplace Relations on 25 November 2008. The Committee has called for public submissions by 9 January 2009, and is due to report its findings by 27 February 2009.

1.4 The Bill outlines substantive reforms to the federal workplace relations system, intended to form the basis of a modern, fair and flexible system. The new system will commence on 1 July 2009 and will be fully operational from 1 January 2010.

1.5 The Bill gives effect to the *Forward with Fairness* policy commitments the Government took to the election in 2007 and follows on from earlier transitional legislation, the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (the Transitional Act), that commenced operation on 28 March 2008.

1.6 The purpose of this supplementary submission to the Inquiry is to provide the Committee with information regarding the pay equity provisions included in the Bill which are relevant to the Committee's considerations.

- A link to the Fair Work Bill is provided [here](#).
- A link to the Fair Work Bill Explanatory Memorandum is provided [here](#).

Outline of submission

1.7 The submission is presented in five sections.

1.8 This opening section introduces the submission and outlines the purpose of the submission.

1.9 Section 2 of the submission provides a general overview of the Bill and the key features of the Government's proposed new workplace relations system, including a fair and comprehensive safety net of minimum employment conditions, protection for

the low paid, and measures to help employees achieve a balance between work and family life.

1.10 Section 3 details those measures of the Bill that are particularly relevant to pay equity and women's participation in the labour force. Issues examined include the Bill's equal remuneration provisions, work value claims, anti-discrimination provisions, the relevance of the safety net to women and a new bargaining stream being introduced for the low paid.

1.11 Section 4 outlines the impact of the Government's proposed workplace relations reforms on the balance between work and family responsibilities. It outlines provisions which will enhance flexibility in the National Employment Standards (NES), in enterprise agreements and in modern awards.

1.12 Finally, Section 5 of the submission informs the Committee of additional issues which may be of interest, including issues related to industrial coverage for private sector employees and employers arising from the Bill. It also provides information on two inquiries currently underway: one into paid maternity, paternity and parental leave and the other into the effectiveness of the Commonwealth Sex Discrimination Act.

2. General overview of the Fair Work Bill

2.1 On 25 November 2008 the Government introduced the Bill into the Australian Parliament. The Bill will completely replace the existing *Workplace Relations Act 1996* (WR Act) and underpins the Government's intention to create a new fair and flexible workplace relations system.

2.2 The proposed new workplace relations system will commence on 1 July 2009, following the Bill's passage through the Parliament. However, consistent with the Government's election policy commitment, the NES and modern awards will commence on 1 January 2010.

2.3 The key features of the new system include:

- a fair and simple safety net, with ten NES covering all employees, that cannot be bargained away, with a further 10 minimum conditions for employees covered by new, modern awards;
- an enterprise-level bargaining system, underpinned by good faith bargaining, to drive improved productivity;
- fair treatment in the workplace, with strong but simple protections against unfair dismissal;
- a new independent umpire, Fair Work Australia (FWA), to provide practical information, advice and assistance to deal with workplace relations issues and to ensure compliance with workplace laws; and
- strong compliance measures including clear, tough rules on industrial action.

2.4 The Government also intends to introduce separate legislation in the first half of 2009 setting out various transitional and consequential changes which are necessary to ensure a smooth transition to the new system, while providing certainty and stability.

A fair and comprehensive safety net of minimum employment conditions

2.5 The new workplace relations system will provide clear, comprehensive and enforceable minimum protections for employees. The safety net will comprise two parts - the NES and new modern awards.

2.6 The NES comprise 10 legislated employment standards covering essential conditions such as maximum weekly hours of work, leave, public holidays, notice of termination and redundancy pay and the right to request flexible working arrangements. The NES will apply to all employees in the federal system from 1 January 2010.

2.7 The NES also provide a benchmark for bargaining as they underpin enterprise agreements. The Bill ensures that agreements cannot undermine the guaranteed safety net of minimum terms and conditions set out in the NES and in modern awards. In addition, an enterprise agreement will only come into operation after it has been approved by Fair Work Australia (FWA).

2.8 Modern awards, which are currently being developed by the Australian Industrial Relations Commission (AIRC), may be industry or occupation-based.¹ It is intended they will streamline and simplify existing awards, which number in excess of 2,500. Modern awards will be able to build on the NES and may also include an additional 10 minimum conditions of employment. These include minimum wages, types of employment, arrangements for when work is performed, overtime and penalty rates, annualised wage or salary arrangements, allowances, leave entitlements, superannuation, and procedures for consultation, representation and dispute settlement.

2.9 FWA, the new industrial umpire, will review each modern award every four years to maintain a relevant and fair minimum safety net and to make sure it continues to meet the needs of the community. Awards may be varied outside of this process in limited circumstances.

2.10 The Bill also includes specific provisions for employees earning high incomes. A modern award will not apply to an employee while the employee is a high income employee. A high income employee is an employee who has guaranteed annual earnings that are more than the high income threshold. The amount of the high income threshold will be prescribed by regulations. It is intended that the threshold will be \$100 000 a year for full time employees indexed as at 27 August 2007 and adjusted annually from 1 July each year.

Minimum wages

2.11 The inclusion of minimum wages in modern awards will provide employees and employers with a single point of reference for verifying their rights and obligations with regard to minimum wages and conditions of employment. As noted above, modern awards will specify the minimum wages for all award covered employees.² Minimum wages in modern awards will be reviewed annually by a specialist Minimum Wages Panel of FWA.

2.12 In addition, the Minimum Wages Panel will make a minimum wage order each year for employees not covered by a modern award or an enterprise agreement. The order will set:

- the national minimum wage;
- special national minimum wages for junior employees, employees to whom training arrangements apply and employees with a disability; and
- the casual loading for award/agreement free employees.

2.13 The safety net of minimum wages provided in the Bill is further strengthened by the requirement that the base rate of pay under an enterprise agreement cannot be less than the base rate of pay under either the modern award or a national minimum wage order at any time during the life of the agreement.

¹ The *Workplace Relations Amendment (Transition to Forward to Fairness) Act 2008* included provisions enabling the modernisation of awards by the Australian Industrial Relations Commission.

² Under Work Choices, minimum wages were removed from awards and established under separate notional instruments known as Australian Pay and Classification Scales.

Good faith collective bargaining at the enterprise level

2.14 Collective bargaining at the enterprise level is integral to the Bill and the Government's proposed new workplace relations system. The focus of the new system is to encourage employees and employers to bargain together in good faith and reach agreement voluntarily. Where this does not occur the Bill empowers FWA to make orders to ensure compliance with good faith bargaining requirements.

2.15 In most cases an enterprise agreement will be made between an employer and some or all of its employees. There is no requirement for formal notification to commence bargaining – in most cases parties will simply agree to start negotiations. Where an employer refuses to bargain, employees or their representatives can ask FWA to determine if there is majority employee support for negotiating an enterprise agreement. Where FWA finds that the majority of employees wish to collectively bargain, their employer will be required to bargain with them in good faith.

2.16 The Bill does not make a distinction between union and non union agreements. Employees can ask someone to represent them in bargaining and employers must respect that choice. An employer must recognise and bargain in good faith with any bargaining representative, including any union that represents the employees.

Collective bargaining for the low-paid

2.17 The Bill includes a new stream of multi-employer bargaining designed to assist low-paid employees and their employers access the benefits of bargaining. Employees in industries like child care, community work, and cleaning, which typically employ women, part-timers, casuals or recent migrants, often find it difficult to bargain with their employers. Often, these are female-dominated industries which are typically characterised by low-rates of pay and limited access to collective bargaining.

2.18 Provisions relating to collective bargaining for the low-paid are examined in greater detail in Section 3 of the submission.

Rules on industrial action

2.19 An important feature of the new workplace relations system will be clear, tough rules on industrial action.

2.20 Employees will be able to take protected industrial action to support or advance claims during collective bargaining. Action will only be protected if it has been authorised by a mandatory secret ballot and it is in accordance with all other requirements. Industrial action by employers or employees in response to industrial action by the other party will also be protected. FWA will have powers to stop unprotected action.

2.21 The four hour rule with respect to strike pay will remain for unprotected industrial action, but will be removed for protected action. Pay will be withheld for the period of action only when protected action is taken. The Bill clarifies the treatment of bans, including partial work bans.

2.22 Where protected action is causing or is threatening to cause significant harm to the Australian economy or part of it, or endangers the safety, health or welfare of the population or part of it, FWA will be required to order the parties to stop taking industrial action. If further conciliation does not lead to an agreement, FWA may determine a settlement.

Right of entry

2.23 The right of entry provisions in the Bill are designed to achieve a balance between the right of employees to be represented by unions and the right of employers to run their businesses without interference.

2.24 A union's right of entry will be linked to the right of the union to represent the industrial interests of employees who work on the premises, rather than coverage by a type of instrument.

2.25 When entering to investigate a breach of legislation or to hold discussions with employees, unions will continue to comply with very strict conditions of entry: they must hold a permit; give 24 hours' notice; and comply with strict requirements for conduct on site. Sanctions will apply to a permit holder who misuses entry rights or acts inappropriately.

2.26 Where a union exercises entry for discussion purposes, it can only hold discussions with workers who want to participate and these must be in non-working hours.

Protections from unfair dismissal for all employees

2.27 The Bill includes new protections for employees regarding unfair dismissal while enabling employers to manage under-performing employees. The laws provide important protection for vulnerable employees in the workplace.

2.28 The Bill extends unfair dismissal remedies to many more employees than is currently the case. It removes the current 100 employee exemption and replaces it with qualifying periods, with the needs of small business being particularly recognised.

2.29 Employees of a small business will not be able to claim for unfair dismissal until they have served a qualifying period of twelve months, while for larger businesses, the qualifying period is six months.

2.30 The new system also provides for the publication of a simple Small Business Fair Dismissal Code which will make it easier for small business employers to follow and comply with unfair dismissal laws.

A balance between work and family life

2.31 There are a number of provisions in the Bill that will assist employees to balance their work and family life, including individual flexibility arrangements and the strong safety net of conditions provided by the NES. These provisions are particularly

important for female employees in the context of assisting employees with their family responsibilities. A more comprehensive discussion of the NES and flexibility in awards and agreements is provided in Section 4 of the submission.

The right to be represented in the workplace

2.32 Employees will remain free to choose to be, or not to be, a union member along with the choice of whether or not they wish to participate in collective activities such as bargaining for an enterprise agreement or taking protected industrial action.

2.33 The Bill will enable representation at work by recognising the right of employees to be represented through a legitimate workplace representative or union delegate.

2.34 It will be unlawful for a person to be dismissed or discriminated against because they were representing employees in the workplace for example in the negotiation of an enterprise agreement.

Fair Work Australia—a ‘one-stop shop’

2.35 The Australian Government made a commitment to creating a new independent umpire, Fair Work Australia, to oversee the new workplace relations system.

2.36 Fair Work Australia will be a modern accessible institution. It will focus on providing fast and effective assistance for employers and employees.

2.37 Fair Work Australia will have the power to vary awards, make minimum wage orders, approve agreements, determine unfair dismissal claims and make orders on such things as good faith bargaining and industrial action to assist employees and employers to resolve disputes at the workplace.

2.38 There will also be an inspectorate headed by the Fair Work Ombudsman and specialist Fair Work Divisions will be created in the Federal Court and Federal Magistrates Court to hear matters which arise under the new workplace relations laws.

3. Fair Work Bill measures relevant to pay equity and women's labour force participation

3.1 Several submissions to this inquiry have raised substantive concerns with the current federal workplace relations system including measures introduced by Work Choices.³ Criticism of the current federal legislation has included the inadequacy of the equal remuneration provisions; the negative impact of Australian Workplace Agreements (AWAs); limited capacity for award test cases following the removal of wages from awards; continued discrimination of women; and the undervaluation of female dominated work.

3.2 The *Workplace Relations Amendment (Transition to Forward with Fairness) Act* enacted earlier in February 2008 and the Fair Work Bill currently before the Parliament fundamentally change the legislation governing workplace relations in the federal jurisdiction. Together they remove many of the Work Choices measures that impeded the pursuit of pay equity. Of particular note is the reinstatement of minimum wages in modern awards and the removal of statutory individual agreements or Australian Workplace Agreements (AWAs) that have proven to be detrimental to vulnerable groups of employees, including women.

3.3 The framework for the new national system seeks to establish a fairer and stronger safety net and, in addition, provides enhanced capacity to pursue pay equity. In particular, the Bill will enable pay equity to be advanced through:

- the extension of equal remuneration provisions to include work of comparable worth;
- the inclusion of equal remuneration as a guiding principle for FWA in conducting its modern award and minimum wage fixing functions;
- capacity to take a work value claim to FWA;
- enhanced anti-discrimination protection; and
- specific benefits for the low-paid under the new multi-employer bargaining stream.

Equal remuneration provisions

3.4 The Bill provides a comprehensive regime with regard to claims for equal remuneration including important changes to the current provisions of the WR Act. Key elements of the Bill dealing with equal remuneration include:

- powers for FWA to make equal remuneration orders;
- broadening of the equal remuneration concept to include work of equal or comparable value;
- removal of current obstacles and restrictions relating to equal remuneration applications;
- limit on application of equal remuneration orders to national system employees;

³ For example, see submissions from the Australian Council of Trade Unions, Australian Education Union, National Council of Women of Australia, and the Australian Human Rights Commission.

- simpler and effective compliance measures; and
- inclusion of equal remuneration as a guiding principle for FWA in conducting its modern award and minimum wage fixing functions.

3.5 Under the proposed new system, FWA will be able to make orders for equal remuneration for men and women for work of equal or comparable value (clause 302 of the Bill). The term remuneration encompasses monetary entitlements in addition to wages.

Principle of equal remuneration for work of equal or comparable value

3.6 The inclusion in the Bill of an equal remuneration principle within the modern award and minimum wage setting functions of FWA is particularly significant. Submissions to this inquiry have recommended the inclusion of an equal remuneration principle in workplace relations legislation and in minimum wage setting.⁴

3.7 The Bill incorporates the principle of equal remuneration for work of equal or comparable value as a guiding principle underpinning the provisions of the Bill.

3.8 The equal remuneration principle is incorporated in the modern awards objective ensuring that FWA must take the principle into account when considering the operation of the safety net through modern awards (paragraph 134 (1)(e)).

3.9 Importantly, the equal remuneration principle is also incorporated in the minimum wages objective, ensuring that FWA must take the principle into account when setting or varying award minimum wages (paragraph 284 (1)(d)).

3.10 The principal object of the Bill also requires FWA to take into account Australia's international labour obligations (paragraph 3(a)). Australia has international labour obligations under instruments including ILO Convention 100 concerning equal remuneration for men and women workers for work of equal value.

3.11 It is likely that the objects of the Bill will assume particular significance in the early stages of the new system as FWA and the courts adapt to a substantially changed legislative regime. The principal object and specific modern award and minimum wages objective provisions in the Bill confirm and communicate the Government's key policy positions on workplace relations. The principle of equal remuneration for work of equal or comparable value forms a fundamental consideration for FWA and its inclusion is significant in this context.

3.12 FWA will be a new independent body and will be making decisions in a new workplace relations system within a substantially amended framework. The principles within the legislation and explanatory material for the Bill will provide important guidance to FWA in determining the intention of any legislative provisions relevant to the particular matters under consideration.

⁴ For example, see submissions from the Australian Council of Trade Unions, Australian Education Union, Australian Nurses Federation, and the Australian Human Rights Commission.

Comparable value

3.13 The inclusion of equal remuneration for work of ‘comparable value’ in the Bill enhances the scope and effectiveness of the equal remuneration provisions by removing historic obstacles to successful claims for equal remuneration in the federal jurisdiction. It intentionally broadens the current provision in the WR Act and allows comparisons to be carried out between different, but comparable, work for the purpose of assessing an equal remuneration claim.

3.14 The concept of comparable value was originally developed to address equal pay concerns in occupations and industries that are dominated by one gender. The amendment will in part address the issue of undervaluation of the work traditionally performed by women.

3.15 In a claim for equal remuneration, comparable worth is a method for comparing females’ jobs with dissimilar (and generally male) jobs using job and skill evaluation techniques. For example, in the successful NSW Librarians case in 2000, comparable value was established by comparing the skills, educational requirements and level of responsibility in various positions in several professions including librarians and geo-scientists or geologists that demonstrated the existence of gender based valuations.⁵

3.16 The inclusion of comparable value also supports the concept of a national system through consistency with state equal remuneration principles in legislation and state industrial tribunal wage fixing principles.

3.17 Attachment A provides a table comparing the equal remuneration provisions in the Bill to the provisions in the current WR Act and the states. Not all states incorporate equal remuneration provisions in their legislation, but instead, provide capacity to make claims for equal remuneration through the wage fixing and award variation principles of their respective industrial tribunals (see New South Wales (NSW), Western Australia (WA), Tasmania (TAS) and South Australia (SA)).

3.18 NSW, Queensland (QLD), WA and SA have each adopted the concept of equal or comparable value in either legislation, wage fixing principles or both. In TAS the wage fixing principle encompasses work of equal value only; however the principle provides further guidance which clarifies that the intention is for a broad interpretation that includes the undervaluation of work performed by women (Tasmania, State Wage Case 2008, Statement of Principles).

Discrimination should no longer be a threshold test

3.19 Case history, in both federal and state jurisdictions, has shown that requiring a comparator group that performed work of ‘equal value’ effectively meant that discrimination (on the basis of sex) in the setting of remuneration needed to be found for a pay equity claim to proceed. Establishing discrimination thus became a threshold test for equal remuneration claims in the federal jurisdiction through the requirement for ‘equal’ comparison and also through the AIRC’s interpretation of the International

⁵ Decision [2002] NSWIRComm 55 – 28 March 2002, Application under Equal Remuneration Principle.

Labour Organisation (ILO) Convention for equal remuneration⁶. The reliance, by the AIRC, on the ILO convention was in turn linked to the constitutional basis for the equal remuneration provisions which drew from the external affairs power.

3.20 By expanding the test to include ‘comparable’ value as well as ‘equal’ value, and no longer relying on the external affairs power, the Bill’s provisions should remove this threshold requirement that discrimination has occurred in the setting of remuneration from the application of the equal remuneration provisions. Instead, an applicant will be required to only demonstrate that there is not equal remuneration for work of equal or comparable value.

Coverage by equal remuneration provisions - national system employees only

3.21 Unlike the current WR Act, equal remuneration orders under the Bill are limited to national system employees. The equal remuneration provisions no longer rely on the external affairs power for application, but apply through the provisions of the Bill for national system employees and employers (see clauses 13 and 14).

3.22 Limiting the provisions to national system employees does not exclude any state covered employees from pursuing equal remuneration. State legislation already contains equal remuneration provisions and these provide appropriate protection for employers and employees who are outside the national system (see Attachment A).

Process for obtaining an equal remuneration order

3.23 The Bill enables an employee, a union, or the federal Sex Discrimination Commissioner to apply for an equal remuneration order (Subclause 302(3)). FWA will be able to make an order if it is satisfied that there is not equal remuneration for work of equal or comparable value (subclause 302(5)). In making an order, FWA will be required to take into account, in so far as is relevant, orders of the Minimum Wages Panel and the reasons for those orders (subclause 302(4)).

3.24 In making an order, FWA may increase, but not reduce, employees’ rates of remuneration by an equal remuneration order (clause 303). This means, for example, that FWA could not reduce the higher rates of remuneration of a male comparator group to bring the rates into line with the lower rates of remuneration of female employees subject to the application.

3.25 Importantly, in issuing an equal remuneration order, FWA may phase in increases to remuneration over an appropriate period of time where FWA considers that it is not feasible for employers to immediately implement an order in full (clause 304).

3.26 The Bill prevents FWA from dealing with an application for an equal remuneration order under clause 302 if there is an adequate alternative remedy that would ensure equal remuneration for work of equal or comparable value for the relevant employees (Clause 721). For example, an employee may have access to an

⁶ International Labour Organisation *Equal Remuneration for Men and Women for Work of Equal Value Convention* (Convention 100).

adequate alternative remedy under anti-discrimination laws in federal or state jurisdictions. A remedy under an anti-discrimination law that consists solely of compensation for past actions however, is not an adequate remedy for this purpose (Subclause 721(2)).

3.27 In deciding whether to make an equal remuneration order, FWA must take into account orders and determinations by the Minimum Wage Panel. This requirement, however, does not restrict equal remuneration orders in the way the current provisions of the WR Act do. The current provisions restrict the ability of the AIRC to deal with equal remuneration applications where they may be inconsistent with terms under the Australian Fair Pay and Conditions Standard (s622). In contrast, the Bill requires FWA to consider minimum wage decisions but does not restrict FWA from continuing to hear an equal remuneration application.

3.28 FWA will have the capacity to best determine how to run cases involving equal remuneration claims and inform itself as it sees fit. Under the WR Act, the AIRC is required to attempt conciliation or mediation between the parties before starting to hear and determine an equal remuneration matter. While it would be open to FWA to adopt a similar process of conciliation or mediation in the first instance it is not a mandatory requirement under the Bill and FWA will have flexibility to determine the most appropriate approach to take in each case.

Compliance

3.29 Compliance measures under the Bill provide that an employer must not contravene a term of an equal remuneration order (Clause 305). This is consistent with the WR Act.

3.30 The civil remedy provisions have been simplified and consolidated in Part 4-1 of the Bill. Under these provisions, an employee affected by a breach, an organisation eligible to represent an employee affected by a breach, or an inspector, may bring proceedings to remedy that breach (subclause 539(2)). A breach of this section is punishable by a maximum penalty of 60 penalty units (\$6,600) for an individual and 300 penalty units (\$33,000) for a company (subclause 546(2)). The Federal Court or the Federal Magistrates Court may also make any other order that the court considers appropriate.

Work value claims

3.31 An important historical avenue for award review, particularly for female dominated occupations or industry sectors, has been work value claims in state and federal industrial tribunals.

3.32 For example, a number of work value claims in federal and state child care awards led to increased wages for the long day care sector of child care.⁷ Two related cases were also conducted under state equal remuneration principles (QLD and NSW).⁸

⁷ AIRC – C2002/5237 (ACT); C2003/4271 (VIC)

⁸ NSW: Librarians Case – [2002] NSWIRComm 55; Child care workers case – [2006] NSWIRComm 64; QLD: Dental assistants case (2005) 180 QGIG 187; Child care workers case (2006) 182 QGIG 318

3.33 In the federal system, prior to Work Choices, claims for work value variations to awards could be made under wage fixing principles established by the AIRC (Principle 6 of the Federal Wage Fixing Principles, determined by the Safety Net Review - Wages Case 2005). The AIRC wage fixing principles also provided for claims for equal remuneration.

3.34 Under Work Choices the avenues for pursuing work value cases in the federal jurisdiction were effectively cordoned off. The previous government made clear in its submission to the Australian Fair Pay Commission's (AFPC) first minimum wage review that the AFPC was not to conduct work value cases. It stated in particular that "under the WR Act the appropriate relativities between the wage rates for different classifications are a matter for resolution through agreement making".⁹

3.35 Under the provisions of the Bill modern award minimum wages can generally only be varied in annual wage reviews. This is designed to provide employers and employees with certainty and predictability over minimum wage rate adjustments. However, work value reasons constitute one of the limited exceptions in which minimum wages can be varied outside the annual review process.

3.36 Specifically, the provisions allow FWA to vary or set modern award minimum wages outside the annual review process, either as part of the system of four yearly reviews, or under limited circumstances outside four yearly reviews, if FWA is satisfied that the variation is justified by work value reasons.

3.37 Work value reasons are defined in the Bill as those justifying the amount an employee should be paid for performing a particular kind of work. These reasons may relate to the nature of the work, the level of skill or responsibility involved in doing the work, or the conditions under which the work is performed.

3.38 The work value provisions reflect the pragmatism of the new workplace relations legislation. Work value reviews tend to relate to a specific award or occupation and as such have limited relevance to the broader, economy wide focus of annual wage reviews. It makes sense, both in terms of being more appropriate and efficient, that they be undertaken as a separate process.

Anti-discrimination protections

3.39 Discrimination in the workplace has an implicit and explicit relationship to pay equity. The Australian Human Rights Commissioner has identified strengthening anti-discrimination laws and achieving greater balance between paid work and family responsibilities as priority policy areas for the Government.¹⁰

3.40 The Bill enhances protections from workplace discrimination and anti-discrimination is a guiding principle for FWA in the performance of its functions.

⁹ 2006 Minimum Wage Review, Australian Government Submission, paragraph 1.60.

¹⁰ Elizabeth Broderick, Federal Sex Discrimination Commissioner, "Gender equality in 2008: What matters to Australian women and men", speech at the Launch of the Listening Tour Community Report and Plan of Action Towards Gender Equality, 22 July 2008.

Anti-discrimination Principles

3.41 As mentioned earlier, the principal object of the Bill requires FWA to take into account Australia's international labour obligations (paragraph 3(a)). Australia has international labour obligations under instruments including ILO *Discrimination (Employment and Occupation) Convention* (Convention 111).

3.42 In performing its functions, FWA will be required to take into account the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (clause 578). Under the WR Act, both the AIRC and the AFPC are required to take anti-discrimination into account in the performance of their respective functions. Under the Bill, carer's responsibilities is an additional discriminatory ground that FWA must consider.

Anti-Discrimination Provisions

3.43 The Bill expands anti-discrimination provisions to more effectively protect employees from workplace discrimination and to provide consistency with state and territory laws. The Bill has restructured and consolidated existing provisions that provide protections for employees, such as anti-discrimination and termination of employment provisions, into the General Protections provisions (Part 3-1). Consolidating the general protections into one part of the Bill makes the protections simpler for employers and employees to both understand and apply.

3.44 Protection from workplace discrimination is a specific object included in the General Protections provisions.

3.45 The General Protections provisions broadly replicate measures in the WR Act which make it unlawful to dismiss an employee for discriminatory reasons. However, protection has been expanded to prohibit any adverse action on discriminatory grounds. As noted above, the protections against discrimination also expand on the current legislation by adding carer's responsibilities as a ground of discrimination.

3.46 The Bill prohibits an employer from taking adverse action, such as dismissing an employee, altering their position or paying them less, against an employee or prospective employee of the employer because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (subclause 351(1)).

3.47 Discrimination on the grounds of family responsibilities is currently only unlawful in the context of dismissal, and discrimination on the grounds of carer's responsibilities is not in the current WR Act at all. Expanding the provisions to provide comprehensive protection against discrimination for all employees with responsibilities for family and/or caring is an important element in addressing pay equity concerns for women. Female employees will benefit directly from the

increased protections which will also assist male employees to more actively engage in family and caring responsibilities.

3.48 The Bill also includes the current unlawful termination provisions under the *Workplace Relations Act 1996* in a separate part of the Bill (Part 6-4) to apply to all employees, not just those in the federal workplace relations system. This gives effect to Australia's international treaty obligations regarding termination of employment and ensures that no employee will lose their current universal protection from unlawful termination.

Discriminatory terms in modern awards and enterprise agreements

3.49 Under the Bill, modern awards will not be able to include discriminatory terms (clause 153). This includes individual flexibility agreements made under a modern award. Under the proposed new system, employees and employers may enter into individual flexibility agreements to provide, for example, flexible hours of work to meet an individual's needs. This element of the new system is discussed in more detail in Section 4 of the submission. FWA will have power to review modern awards, and to remove discriminatory terms from modern awards, on referral from the Australian Human Rights Commission.

3.50 However, a term of a modern award will not discriminate against an employee:

- if the reason for the discrimination is the inherent requirements of the particular position held by the employee; or
- merely because it discriminates, in relation to employment of the employee as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, in good faith and to avoid injury to the religious susceptibilities of adherents of that religion or creed (subclause 153(2)).

3.51 In addition, a term of a modern award does not discriminate against an employee because the term provides a minimum wage for junior employees, employees with a disability or employees to whom training arrangements apply (subclause 153(3)).

3.52 Discriminatory terms are unlawful and cannot be included in enterprise agreements or in individual flexibility arrangements made under an enterprise agreement (clause 194). FWA will not approve an enterprise agreement that contains a discriminatory term (clause 186(4)). The same exceptions that apply to modern awards similarly apply to enterprise agreements (subclauses 195(2) and 195(3)).

3.53 FWA must also review an enterprise agreement if the agreement is referred to it under the Human Rights and Equal Opportunity Commission Act 1986 (clause 218) and vary the agreement to remove terms that require behaviour that would be unlawful under the *Sex Discrimination Act 1984*.

Interaction with state and territory anti-discrimination and equal opportunity laws

3.54 Interaction rules in the Bill ensure employees have access to the most appropriate remedy for their circumstances while also providing protection from

‘double-dipping’. Employees will not be able to seek more than one remedy for the same adverse action by making separate claims under the Bill and other Commonwealth or state anti-discrimination laws.

3.55 The Bill ‘preserves’ certain state or territory laws that might otherwise be excluded by making clear they are intended to apply to national system employers and national system employees (clause 27). This measure includes state or territory laws dealing with discrimination and/or equal employment opportunity. This measure also protects terms in state awards or agreements that deal with “the prevention of discrimination (including discrimination in relation to parental or carer responsibilities)” (paragraph 29(2)(a)).

3.56 The Bill also makes clear that state and territory laws that provide employee entitlements in relation to flexible work arrangements are not excluded and continue to apply to employees where they provide more beneficial employee entitlements than the entitlements under the Bill (clause 66).

3.57 The intention is to ensure the application to national system employers and their employees of more beneficial state or territory laws that confer a right to request flexible work arrangements and deal with discrimination in relation to parental or carer responsibilities. For example, this clause is intended to enable the operation of provisions in the *Equal Opportunity Act 1995* (Vic) that oblige an employer in Victoria to accommodate an employee's responsibilities as a parent or carer and that prescribe remedies if an employer breaches those obligations.

3.58 An employee may also have remedies under relevant discrimination legislation (including federal anti-discrimination legislation) if an employee considers they have been discriminated against by the employer’s handling or refusal of their request.

Relevance of safety net to female employees

3.59 As illustrated in the data below, women are proportionately more reliant on minimum award conditions, than men. It is intended that the strengthened safety net provided in the Bill will establish a fairer framework for employees and a more robust benchmark for agreement making. In their submissions to this inquiry, many women’s and community groups have recommended that one way to ensure women are better remunerated is through a comprehensive minimum safety net.

3.60 Data from the ABS Employee Earnings and Hours (EEH) publication indicate that women are more likely to rely on the safety net (awards and conditions) than men. EEH data show that overall, 19 per cent of employees had their pay set by awards in May 2006.

- Women were more likely to be award-reliant than men in May 2006 (23.4 per cent compared with 14.7 per cent for men), and
- in the private sector 29.7 per cent of female employees were reliant on awards compared with 17.4 per cent of male employees.¹¹

¹¹ ABS *Employee Earnings and Hours* survey, May 2006 (Cat No 6306.0).

3.61 Unpublished data from the EEH survey show that there were 1,577,700 non-managerial award-reliant employees in May 2006. These employees were more likely to be female (60.5 per cent) than male (39.5 per cent).

A new bargaining stream for the low-paid

3.62 The Bill includes provisions to assist low-paid employees and their employers access the benefits of collective bargaining through multi-employer bargaining. The low paid stream is intended to help workers who have not been able to access the benefits of bargaining in the past. These include workers in areas such as child care, aged care, community services and cleaning, who are often paid the basic award rate. These provisions are expected to be of particular benefit to female employees.

Bargaining and awards

3.63 Traditionally, female-dominated industries are characterised by limited access to enterprise bargaining, compared with greater opportunity for bargaining in male-dominated industries. In the absence of bargaining (both collective and individual), employees rely on awards to set their pay and conditions.

3.64 Access to bargaining has clear benefits to employees in relation to wages and conditions. EEH data in Table 1 below demonstrates the, often significant, higher wage rates under collective agreements compared to awards. The earnings differential for collective agreement employees is higher for males (\$8.90) than for females (\$6.40).

Table 1: Average hourly ordinary time cash earnings for adult non-managerial employees by select occupation codes and pay setting method, Australia

	Males		Females	
	Award only	Collective agreement	Award only	Collective agreement
Occupation (ANZSCO 3 digit)	(\$)	(\$)	(\$)	(\$)
Health and Welfare Support Workers (411)	20.80	26.90	22.60	24.60
Child Carers (421)	18.80	19.10	16.70	17.90
Personal Carers and Assistants (423)	20.40	21.80	19.80	20.60
Prison and Security Officers (442)	19.90	24.30	20.30	23.60
Cleaners and Laundry Workers (811)	17.40	19.60	16.70	18.10
Food Process Workers (831)	16.30	21.00	16.30	19.10
Packers and Product Assemblers (832)	16.40	19.10	16.20	16.20
All occupations	19.00	27.90	19.40	25.80

Source: ABS Employee Earnings and Hours (Cat. No. 6306.0) May 2006, unpublished data.

Low Paid Bargaining Stream

3.65 The bargaining stream for the low paid is intended to assist low-paid employees and their employers realise the benefits of bargaining and to consider measures for their workplaces that could improve productivity, such as different work practices, flexible work arrangements, or new arrangements for workplace consultation. This will ensure that any improvements to wages and conditions in these workplaces are based on improved productivity.

3.66 The outcomes of bargaining in the low paid stream will be decided by parties, based on what best suits their particular needs. In some cases, this could mean a single agreement that applies to a number of specified employers, while in other cases it could result in a number of agreements with varying terms applying to different employers.

Fair Work Australia facilitates bargaining and makes determinations

3.67 Employees and employers who are authorised to bargain in the bargaining stream for the low paid will benefit from having access to Fair Work Australia to help negotiate and make an agreement.

3.68 The types of assistance that FWA will be able to provide to facilitate the bargaining process in the low-paid stream include:

- compulsory conferences to bring the bargaining representatives together, as well as directing any third parties to attend, if they have such a degree of control over the terms and conditions of the employees that it is necessary for them to be involved for an agreement to be made;
- conciliation and mediation;
- assisting to identify productivity improvements to underpin an agreement;
- generally guiding the parties through the negotiation process;
- making good faith bargaining orders; and
- making recommendations to the parties.

3.69 In limited, defined circumstances where parties in the low paid bargaining stream have gone through a facilitated bargaining process and there is still no reasonable prospect of agreement being reached, FWA may, as a last resort, make a workplace determination to settle matters that are in dispute.

3.70 FWA must be satisfied that no employer that will be covered by the relevant determination is, or has previously been, covered by an enterprise agreement, or another workplace determination, in relation to the work to be performed by the employees who will be covered by the relevant determination. In addition, FWA must be satisfied that, at the time of the application, the terms and conditions of the employees who will be covered by the determination were substantially equivalent to the minimum safety net of terms and conditions provided by modern awards together with the NES.

3.71 The focus of FWA in deciding whether to make a low-paid workplace determination, and again when it comes to actually deciding the terms of that determination, must include a consideration of how future agreement-making and bargaining can be encouraged. This is important if the low paid bargaining stream is to enable employers and employees in low-paid sectors to move off minimum and award pay rates and into a bargaining culture.

3.72 The Bill provides direction for FWA in determining when it must make a low-paid authorisation. For example, the Bill requires FWA to, among other things, take into account the current wages and conditions of the employees who will be covered

by the agreement in comparison to relevant industry and community standards. In making a low-paid workplace determination, FWA must take into account the interests of the employers and employees who will be covered by the determination, including ensuring that the employers are able to remain competitive.

4. The impact of the proposed reforms on the balance between work and family responsibilities

4.1 Assisting employees to balance their work and family responsibilities by providing for flexible working arrangements is expressly included in the principal object of the Bill. Specifically, the National Employment Standards for parental leave and flexible working arrangements are designed to encourage employers and employees to discuss and consider arrangements that allow employees to balance their work and family responsibilities. Further, the Bill provides that enterprise agreements and modern awards must include a flexibility clause to enable employees and employers to negotiate flexible working arrangements which best meet their individual needs.

Flexibility in the National Employment Standards

Parental leave

Unpaid parental leave

4.2 The proposed parental leave standard is designed to provide parents with the flexibility of up to 24 months' unpaid leave to care for their child. This effectively doubles the entitlement to unpaid parental leave currently provided in the WR Act.

4.3 Parents can choose to use the new provisions in a flexible way. Each eligible parent can access separate periods of up to 12 months of unpaid leave associated with the birth of a child, and the parents can take up to three weeks unpaid leave concurrently. The timing of the concurrent leave may be negotiated with the employer as long as it is completed no later than six weeks after the birth of date of placement.

4.4 Once parental leave has commenced, an employee is entitled to make one extension to the period of unpaid parental leave up to the full 12 months, less any leave taken by the other member of the employee couple in relation to the birth of the child. Additional extensions or a reduction in the period of parental leave can be negotiated by agreement between employers and employees.

Right to request extended parental leave beyond 12 months

4.5 The Bill introduces a new right for eligible employees to request extended unpaid parental leave beyond 12 months. For example, where families prefer one parent to take more than 12 months leave, that parent will be entitled to request up to an additional 12 months of unpaid parental leave from their employer. Employers will only be able to refuse the request on reasonable business grounds. Any extension beyond the initial 12 months of unpaid parental leave reduces the parental leave entitlement of the employee's spouse by an equivalent amount.

Right to Request Flexible Working Arrangements

4.6 The proposed flexible working arrangements (NES) provide an employee who is a parent or has responsibility for the care of a child under school age with a right to

request flexible working arrangements to assist the employee to care for the child until the child reaches school age. Employers will only be able to refuse the request on reasonable business grounds. Where an employer refuses a request they are required to give the employee a written response to the request including details of the reasons for the refusal. The intention is that an employee is able to clearly understand why their request is being rejected. Rather than refusing a request, it would be open for an employee and their employer to discuss the request and come up with an approach that would accommodate the needs of both parties.

4.7 The Bill does not define flexible working arrangements as this could limit the scope or types of arrangements that an employer and employee might agree to. However, flexible arrangements could include a reduction in hours of work (for example, part-time work), a change to non-standard start or finish times, working from home or another location, working ‘split-shifts’ or job sharing arrangements.

4.8 The intention of these provisions is to promote discussion between employers and employees about the issue of flexible working arrangements. Importantly, employees who do not meet the eligibility requirements to request flexible working arrangements, for example employees with less than 12 months service or employees who have children older than school age, continue to be able to make requests for flexible working arrangements. However their request is not subject to the procedures contained in the Bill in relation to the right to request.

4.9 Further, the Bill makes clear that state and territory laws that provide employee entitlements in relation to flexible work arrangements, for example the *Equal Opportunity Act 1995* (Vic), are not excluded and continue to apply to employees where they provide more beneficial employee entitlements than the entitlements in the Bill. The Bill does this by preserving certain state or territory laws that might otherwise be excluded by making clear they are intended to apply to national system employers and national system employees (clause 27).

4.10 An employee may also have remedies under relevant discrimination legislation (including federal anti-discrimination legislation) if an employee considers they have been discriminated against by the employer’s handling or refusal of their request.

Carer’s leave

4.11 The Bill enhances flexibility for employees with caring responsibilities by providing that paid carer’s leave which can be used is no longer limited to 10 days per year. Instead, employees can use any amount of their accrued personal/carer’s leave as carer’s leave to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because of a personal illness or personal injury, or an unexpected emergency.

Flexibility in enterprise agreements

4.12 The Bill allows employers and employees to include arrangements that suit their particular needs in enterprise agreements. Enterprise agreements can provide flexibility when compared to modern awards and the safety net, although they must make employees better off overall compared to their award.

4.13 The Bill also requires that all enterprise agreements contain a flexibility term that enables an employer and an employee to agree to an individual flexibility arrangement that varies the effect of the agreement in order to meet the genuine needs of the employee and employer.

4.14 Any individual flexibility arrangement made under an agreement must be genuinely agreed to by the employer and employee and must make the employee better off than they were under the enterprise agreement. This means that an employee or employer cannot be coerced to make an individual flexibility arrangement and they cannot be used to undermine an employee's terms and conditions of employment.

4.15 Flexibility terms in enterprise agreements are expected to be particularly useful for employees who have caring or family responsibilities, by allowing them to alter arrangements, such as hours of work, in order to meet their commitments.

Flexibility clauses in modern awards

4.16 As part of the award modernisation process, the AIRC will include a flexibility term in each modern award.

4.17 By including a flexibility term in each modern award, an employee and their employer will be able to agree on an individual flexibility arrangement to vary the operation of the award to suit their needs. Flexibility arrangements will assist employees in balancing their work and family responsibilities and improve retention and participation of employees in the workforce.

4.18 Importantly, flexibility through individual flexibility arrangements made pursuant to a modern award will be subject to protections for employees. These protections will ensure that employees will maintain the full benefits of the safety net, should they enter an individual flexibility arrangement with their employer.

4.19 An employer and employee must genuinely agree to any individual flexibility arrangement and an employee must be better off over all than if the arrangement was not agreed. The Bill provides further procedural protections, including that the arrangement be in writing and signed by the employee and employer (or employee's parent or guardian if the employee is under 18), and that a copy of the arrangement is provided to the employee.

4.20 Should an employer fail to meet the requirement for a flexibility term, this will contravene the flexibility term of the applicable modern award. A contravention of a modern award term is a civil remedy provision.

4.21 By providing for flexibility, with appropriate protections, modern awards will promote productivity in workplaces where modern awards and the National Employment Standards provide a safety net of conditions for employees.

5. Other issues of interest

Certainty of coverage for private sector employees and employers

5.1 The Work Choices legislation resulted in significant confusion as to coverage for some organisations, particularly those in the local government and not-for-profit sectors.

5.2 Concerns over coverage in the community services sector in particular were raised by unions and other stakeholders in submissions to the QLD Industrial Relations Commission's Inquiry into the impact of Work Choices on QLD workplaces, employees and employers (INQ 1/2006) and the Federal Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005.

5.3 The concerns raised are relevant to this Inquiry as the community services sector is a large industry comprised overwhelmingly of women workers, with a significant proportion being employed on a part-time or casual basis. The not-for-profit nature of the industry has meant that most workers are employed on minimum wages contained in Australian Pay and Classification Scales and minimum award conditions. The ability to enhance these conditions was negatively impacted by the introduction of the Work Choices legislation:

- in the federal jurisdiction by the removal of wages from awards and restrictions on the capacity to run 'test cases'; and
- through confusion over coverage and the application of state awards.

5.4 The Government recognises that in terms of the local government sector, there is uncertainty as to coverage due to the reliance of the legislation on the corporations power of the Constitution.

5.5 It should be noted that the Queensland Government passed legislation in early 2008 de-corporatising all local councils in Queensland other than the Brisbane City Council, which had the effect of removing the councils from the scope of the federal system. The New South Wales Parliament passed legislation with similar effect in November 2008.

5.6 The Government has committed to the development of a national workplace relations system for the private sector.

5.7 As provided in *Forward with Fairness*, it will be up to state governments to decide whether public sector and local government employees will be part of the national system. Referrals into the federal system by the states will provide certainty of coverage under the national system for all private sector employees and employers, including those in the not-for-profit sector. Discussions between the Commonwealth and the States on the national system are continuing. The States have indicated that they intend to await the passage of the Fair Work Bill by the Senate before making final decisions on whether to refer powers.

5.8 The Bill relies on existing constitutional powers, and will apply to national system employers and their employees. These definitions are supported by the corporations, trade and commerce, and territories powers, and the Commonwealth's power to regulate its own employment relationships. The Bill will also rely on the external affairs power to extend parental leave, unlawful termination and notice of termination entitlements to other employees.

Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave

5.9 The current Inquiry into paid maternity, paternity and parental leave by the Productivity Commission (the Commission) is also of relevance to this Inquiry.

5.10 The Commission was asked by the Government to assess the economic, productivity and social costs and benefits of providing paid parental leave, whilst identifying potential models that could be used to provide such parental support. On 29 September 2008 the Productivity Commission released an interim report on paid parental leave.

5.11 In the interim report, the Commission proposed a paid parental leave scheme that would entitle eligible employees to 18 weeks of paid parental leave available after the birth of the child. The key recommendations of the draft report included:

- 18 weeks paid parental leave (utilised by either mother or father);
- 2 weeks concurrent partner leave on a "use-it-or-lose-it" basis;
- to be eligible, the parents would need to be a primary carer and working at least 10 hours per week for 12 months before the birth of the baby;
- provisions for families who do not meet the eligibility criteria for paid parental leave to be eligible for a new maternity allowance (non-means tested and equivalent to the baby bonus);
- employees would be paid at the Federal Minimum Wage (currently \$543.78 per week);
- obligations for businesses to act as 'paymasters' and make superannuation contributions (capped at nine per cent of the federal minimum wage) for employees with 12 months continuous service with one employer.

5.12 The draft report estimates that the paid parental leave scheme will cost \$450 million a year (paid by the tax payer), with businesses required to pay \$75 million a year in compulsory superannuation contributions. Employees will receive maximum benefits of \$11 854 – made up of \$10 876 for 18 weeks paid parental leave and two weeks partner's leave, plus \$979 in superannuation contributions.

5.13 The Productivity Commission received written submissions and held public hearings on the draft report in November 2008, and will deliver the final report to the Government in February 2009.

5.14 In their submissions to the Pay Equity Inquiry, unions and women's groups recommend a universal paid parental leave scheme as one way to increase women's participation in the workforce.¹²

Senate Inquiry into the Effectiveness of the Commonwealth Sex Discrimination Act

5.15 An inquiry recently undertaken by the Senate Legal and Constitutional Affairs Committee is also particularly relevant to the Committee, particularly as sex discrimination is one factor that contributes to pay inequity. The inquiry into the effectiveness of the Commonwealth *Sex Discrimination Act 1984* (SDA) in eliminating discrimination and promoting gender equality reported to Parliament on 12 December 2008.

5.16 The Reports recommendations are wide reaching and it is expected that it will take some time for the Government to give proper consideration and formally respond to the Report. However, it is worth noting that several of the Report's recommendations go directly to the ability of employees, and particularly women, to balance their work and family or caring responsibilities. For instance, the Report recommends:

- that the SDA be amended to provide a positive duty on employers to reasonably accommodate requests by employees for flexible working arrangements to accommodate family or carer responsibilities;
- the current prohibition under the SDA on discrimination on grounds of family responsibilities be broadened to include indirect discrimination and discrimination in all areas of employment;
- that breastfeeding be made a specific ground for discrimination;
- the SDA be amended to enable protection against discrimination to be provided to same-sex couples; and
- increased funding be provided to Working Women's Centres to ensure they have the resources to provide advice on sex discrimination and sexual harassment matters.

¹² For example, see submissions from the Australian Council of Trade Unions, the National Tertiary Education Industry Union, Chamber of Commerce and Industry of Western Australia, Disability Council of Australia, National Council of Women Australia, Women Into Politics and Brisbane City Council.

Equal Remuneration – State and federal legislation and wage fixing principles

	Fair Work Bill	WR Act	NSW Industrial Relations Act 1996	Queensland Industrial Relations Act 1999
DEFINITIONS	Equal remuneration for work of equal or comparable value means equal remuneration for men and women employees for work of equal or comparable value (302(2)) Remuneration encompasses wages and other monetary entitlements (ex memo)	Equal remuneration has the same meaning as in the equal Remuneration convention (623(2))	Pay Equity = equal remuneration for work of equal or comparable value	Equal remuneration for work of equal or comparable value means equal remuneration for men and women employees for work of equal or comparable value (59)
PROVISIONS FOR EQUAL REMUNERATION ORDERS ?	Yes (302) FWA may make an order requiring equal remuneration	Yes (624) AIRC may make an order to secure equal remuneration	No equal rem provisions in the Act. NSWIRC may make orders under wage fixing principles.	Yes (60(1)) QIRC may make any order to secure equal remuneration
COMPARABLE VALUE ?	Yes	No	NA – no provisions in Act. However, while wage fixing principle does not specify equal or comparable value it is broad enough to encompass comparable value	Yes
ORDERS MAY STAGGER WAGE INCREASES	Yes (304)	Yes (629)	N/A– no provisions in Act. However, wage fixing principle 14(i) allows phased increases.	Yes (63)
OTHER ?	FWA must take into account decisions of the minimum wage panel.	Any orders must be consistent with AFPC decisions (622) Must attempt conciliation (626)	In making equal rem orders the Commission is to determine application of future State Wage Case increases.	The Queensland principle provides a more proactive role for the QIRC in satisfying itself that the principle of equal remuneration has been met in awards or agreements.
ANTI DOUBLE DIPPING?	Yes (721)	Yes (621)	No	Yes (66(1)) – limited to where an application is already underway for an alternative remedy

EQUAL REMUNERATION AS GUIDING OBJECTIVE	Principle of the modern awards objective (134(1)(e) and Principle of the minimum wages objective (284(1)(d))	An object of the equal rem division (620) AFPC must apply principle (222(1)) and AIRC must take principle of equal pay for work of equal value in performing its functions (104(b) and in relation to award modernisation (576B(2)(e))	Principal Object of the Act (3 (f))	
EQUAL REMUNERATION IN AWARDS	Yes - as a Principle of the modern awards objective (134(1)(e)	No - Work Choices removed wages from awards	Awards must have equal rem (21) & (23) Commission to review awards for matters including equal rem (19)	Commission must ensure award provides equal rem (126(e))
EQUAL REMUNERATION IN AGREEMENTS	No legislative requirement	No legislative requirement	No legislative requirement	Commission must not certify unless agreement provides equal rem (156(1)(m))
COMMISSION WAGE FIXING PRINCIPLE ?	In legislation - Principle of the minimum wages objective (284(1)(d))	AFPC required to apply equal rem principle in wage-setting (222(1)(a))	Yes – Principle 14 in 2008 State Wage Case	Yes – wage fixing principles are expressed in the legislation 128(1)
OTHER RELATED MEASURES	A term of an award or agreement has no effect where inconsistent with an equal rem order (306) FWA may vary award or agreement if discriminatory or on referral from human rights commissioner	Award modernisation request requires AIRC to consider equal rem principle	No	No

Qld: http://www.austlii.edu.au/au/legis/qld/consol_act/ira1999242/

NSW: http://www.austlii.edu.au/au/legis/nsw/consol_act/ira1996242/

NSW State Wage case 2008

<http://www.lawlink.nsw.gov.au/ircjudgments/2008nswirc.nsf/c1b955f60eccc5fcca2570e60013ad15/1948edf2ecfb8e56ca2574750014fb9b?OpenDocument>

Fair Work Bill: <http://www.workplace.gov.au/NR/rdonlyres/F902366C-E559-481D-8C99-19D8DFC431EA/0/fwbill2008.pdf>

WR Act: <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/448F63F71820F3EFCA25713B00115508?OpenDocument>

	Western Australia - Industrial Relations Act 1979	Tasmania Industrial Relations Act 1984	SA Fair Work Act 1994
DEFINITIONS	No	No	No
PROVISIONS FOR EQUAL REMUNERATION ORDERS ?	No equal rem provisions in the Act.	No equal rem provisions in the Act.	No equal rem provisions in the Act.
COMPARABLE VALUE ?	Yes (50A(3)(a)(vii))	Wage fixing principle lists equal value only. However, the principle does provide for gender undervaluation and does not require discrimination to be proved as a threshold test for a claim.	Yes (3(1)(n)) principal object
ORDERS MAY STAGGER WAGE INCREASES	N/A No equal rem provisions in the Act.	N/A No equal rem provisions in the Act.	N/A No equal rem provisions in the Act.
OTHER	No	No	No
ANTI DOUBLE DIPPING PROVISION ?	N/A No equal rem provisions in the Act	N/A No equal rem provisions in the Act	N/A No equal rem provisions in the Act
EQUAL REMUNERATION AS GUIDING OBJECTIVE	Principle object of Act (6(ac))	Act requires commission to act according to “equity” (36)	Yes (3(1)(n)) principal object ILO Convention forms Schedule 6 of the Act
EQUAL REMUNERATION IN AWARDS	Award pay rates must provide equal rem (50A(3)(vii))	Awards subject to provisions of other Acts including Anti Discrimination Act 1998 (42)	Remuneration fixed by award must be consistent with equal rem convention (69) Commission must apply equal rem in making an award regulating remuneration (90A)
EQUAL REMUNERATION IN AGREEMENTS	No	No	Remuneration fixed by agreement must be consistent with equal rem convention (69)
COMMISSION WAGE FIXING PRINCIPLE ?	Yes – wage fixing principles in legislation (50A(3)(a)(vii)) Also in commission order at Principle 10	Yes. Principle 10: Pay Equity = equal remuneration for men and women doing work of equal value	Yes (principle 4.9) “to vary an Award to provide for equal remuneration for work of equal value”
OTHER RELATED MEASURES	pay rates for MCE Act must provide equal rem (50A(3)(vii))	No	Remuneration fixed by contract must be consistent with equal rem convention (69)

SA: http://www.austlii.edu.au/au/legis/sa/consol_act/fwa1994114/

SA 2005 State wage case (reviewed wage fixing principles)

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/sa/SAIRComm/2005/29.html?query=wage%20case>

WA: Minimum Conditions of Employment Act http://www.austlii.edu.au/au/legis/wa/consol_act/mcoea1993365/
and Industrial Relations Act http://www.austlii.edu.au/au/legis/wa/consol_act/ira1979242/

WA 2008 State wage case decision: <http://www.wairc.wa.gov.au/WageCase/SWC2008/DirectionsDecisions.aspx>

Tasmania: http://www.austlii.edu.au/au/legis/tas/consol_act/ira1984242/

Tasmanian wage fixing principles 2008: http://www.tic.tas.gov.au/decisions_issued/state_wage_case_decisions/principles_2008