



**Senate Finance and Public Administration
References Committee –
Gender segregation in the workplace and
its impact on women’s economic equality**

February 2017

About United Voice

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members work in a diverse range of industries including aged care, early childhood education and care, cleaning, hospitality, healthcare, security, emergency services and manufacturing.

Two thirds of our members are women, and many work part-time, casually, or in full-time jobs where earnings are close to minimum award rates of pay. United Voice is therefore in a unique position to comment on gender segregation in the workplace and its impact on women’s economic equality.

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Executive Summary

Industrial and occupational gender segregation in the workplace has an important and complex relationship to women's economic equality. United Voice welcomes the opportunity to represent our members' concerns on this crucial issue. Many members of our union work in industries marked by high levels of gender segregation. Two thirds of United Voice's members are women and a significant proportion of them work in highly gender-segregated sectors: Early Childhood Education and Care (ECEC), aged care, disability care and health care.

Australian workplaces are highly gender segregated vertically (the domination of high status jobs by one men), horizontally (the concentration of men and women in separate industries), as well as by employment status (the relative levels of women doing part-time and casual work). In 2010, gender segregation levels were higher in Australia than they were in France, Greece, Israel, Poland, New Zealand and Portugal.¹ They are also increasing over time.

The primary reason for high levels of industrial and gender segregation in Australia is the persistent undervaluing of forms of work that were historically performed by women in the 'domestic sphere' on an unpaid basis.

For most of Australia's history, care work was delineated along gender lines: women would undertake caring work in the domestic sphere on the basis of emotional reward, while their husbands' role was to earn wages to support the household in the public sphere. Under this system, which was entrenched by formally discriminatory industrial relations laws until the last quarter of the twentieth century, work remuneration for women was centrally linked to their gender, rather than the value of the work they performed or the level of skills they used to perform it. Although the formal legal apparatus of gender discrimination has since been dismantled, misconceptions about the low level of skill involved in caring work persist, as does the idea that it is acceptable for caring work outside the home to be low paid because it can be emotionally rewarding.

A variety of legal mechanisms have been introduced in Australia to address the undervaluation of feminised industries since the 1980s, but none has yet proved adequate. Nor can enterprise bargaining remedy the gender pay disparity resulting from gender segregation and the historic undervaluation of care work. The industries where women are highly concentrated are award-reliant, government funded with minimal access to over-award payments.² They are also often largely comprised of small enterprises with a small number of employees, like the ECEC sector. Australian ECEC relies on public subsidies, and is delivered predominantly by single-service providers, making bargaining difficult, with research showing that larger enterprises are more likely to have a collectively bargained agreement over an award.³

The contribution of gender segregation to the gender pay gap (GPG) in Australia is beyond dispute. KPMG estimates that occupational and industrial gender segregation is responsible for 30 per cent of the GPG, and its role in perpetuating economic inequality between men and women is increasing.⁴ The World Economic Forum (WEF) projects it will be another 170 years before the Australian GPG is overcome at the current rate of convergence.⁵

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- 1 Rawstron, K. (2012) 'Diverging Paths: Occupational Sex Segregation, Australia, and the OECD', *The Australian Sociological*
 - 2 House of Representatives Standing Committee on Employment and Workplace relations, (2009) *Making it Fair: Pay equity and associated issues related to increasing participation in the workforce*, p.9; Broadway, B. and R. Wilkins (2015) *Low-paid women's workforce participation decisions and pay equity*, Melbourne Institute of Applied Economic and Social Research, Fair Work Commission, p. 12
 - 3 Rozenbes, D. and S. Farmakis-Gamboni (2015) *Earnings and characteristics of employees by gender and industrial arrangement*, Report to the Pay Equity Unit of the Fair Work Commission, p. 7.
 - 4 KPMG (2016) *She's Price(d)less: The economics of the gender pay gap*. Report prepared for the Diversity Council Australia and the Workplace Gender Equality Agency. October 2016, p. 8.
 - 5 World Economic Forum (WEF) (2016) *The Global Gender Gap Report 2016*.

There is a high personal cost to working in a female-dominant industry. Women in industries that are almost entirely female-dominated have been found in some instances to earn 32 per cent less than women with identical characteristics working in almost entirely male-dominated industries.⁶ In ECEC, low wages in the workforce are associated with significant levels of financial hardship, economic dependence on parents and partners, stress and mental health impacts, and housing insecurity. High levels of gender segregation in Australian industries and occupations negatively affect women's economic security throughout their lives, culminating in particularly impoverished economic circumstances for single women in retirement.⁷

Gender desegregation is an important aspect of a wider structural challenge we face about how to provide high quality care and education to every citizen that needs it, and to do so on the basis of gender equality. We propose a model for care work in which the care of young children and the elderly is shared between high quality state-funded providers and both parents, in a dual-earner model that fosters gender equality in both paid and unpaid work.⁸

Our vision is one in which the caregiving activities historically regarded as 'women's work' are rightly recognised as human work; that they are highly valued and fairly shared in gender terms, whether they are performed inside the home or out. Outside the home, our vision is for care work to be provided on high quality, universally accessible terms, by male and female workers who are paid wages and conditions that reflect the immense social value of their work. Within the home, we argue for a system that expands parental leave and normalises flexible working patterns and policies to strongly encourage the take-up of unpaid caring activities by men. The two essential mechanisms, we argue, for achieving this vision, are significantly higher wages for care work in feminised, historically undervalued industries such as ECEC, together with expanded legislative mechanisms for parental leave and flexible working provisions.

A major increase in government investment in the caring sectors of the economy is not only justified on gender equality grounds, it will also bring wider benefits to the whole economy. Research undertaken by the UK Women's Budget Group indicates that investing 2 per cent of Australia's GDP in the care economy will grow job numbers by 4 per cent for men and women, reduce the gender employment gap, and reduce the gender pay gap by 2.6 per cent.⁹

We also recommend a series of additional measures to promote pay equity, including the introduction of measures to enable the Fair Work Commission's Expert Panel to set a flexible medium-term target for the National Minimum Wage; amendments to the Fair Work Act to enable the Commission to take a more active role in addressing equal remuneration for feminised industries; and measures to address women's economic inequality in retirement.

Our recommendations pertain to an attitudinal shift about the value of care work at a whole-of-society level, starting with leadership from government and replicated through our institutions, legislation and enterprises.

6 Pocock, B. and M. Alexander (1999) 'The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia', *Labour & Industry*, 10:2, p. 84

7 Senate Economics References Committee (2016) 'A husband is not a retirement plan' *Achieving economic security for women in retirement*, The Commonwealth of Australia, April 2016, Canberra; United Voice (2015) *Submission to the Senate Standing Committee on Economics Inquiry into Economic Security for Women in Retirement*, 6 November 2015.

8 De Henau, J. (2016a) *Investing in the caring economy - the case of free universal childcare in the UK*, briefing paper for the Women's Budget Group, UK, p. 6.

9 De Henau, J., Himmelweit, S., Łapniewska, Z. and Perrons, D. (2016) *Investing in the Care Economy: A gender analysis of employment stimulus in seven OECD countries*. Report by the UK Women's Budget Group for the International Trade Union Confederation, Brussels, March 2016

Summary of Recommendations

Measures to professionalise and improve conditions in female-dominated occupations and industries:

- Significantly improve pay and conditions in feminised occupations and industries to achieve economic equality for women and to achieve gender integration in our workplaces, including government-funded 35 per cent wage increases in the children's services and early childhood education industry.

Measures to normalise flexible work arrangements for both men and women and to ensure the equal distribution of unpaid care work:

- Extend the right to request flexible work arrangements under s.65 of the *Fair Work Act 2009* (Cth) (Fair Work Act) to make it available to all workers and include further examples of changing work arrangements.
- Preservation and improvement of paid parental leave measures, including the introduction of 'use it or lose it' father-specific parental leave modelled on the schemes that exist in Nordic countries.

Measures to promote pay equity:

- Amend the *Fair Work Act* to give the Fair Work Commission expert panel the power to introduce a medium-term target for the national minimum wage.
- Reconsider how 'equal remuneration' is dealt with under the Fair Work Act and accord funding to applicants pursuing equal remuneration orders.
- Remove the systemic disadvantage to women within the current superannuation scheme by implementing the recommendations made in the report of the Senate Inquiry into Women's Economic Security in Retirement.

A. The nature and extent of industrial and occupational gender segregation in Australian workplaces relative to comparable jurisdictions, including gender segregation in tertiary education courses

Australia is not unusual in its pattern of industrial and occupational gender segregation. Like most countries, most high status, high paying jobs in Australia are performed by men, while most low status, low paying jobs are undertaken by women.¹⁰ Women worldwide are over-represented in the caring, education, health and social assistance industries, while men predominate in the public administration and STEM (science, technology, engineering and maths) industries.¹¹

In the 1980s, Australia had the most gender segregated workforce in the OECD.¹² Although we are no longer the most extreme – our levels of gender segregation have since been eclipsed by the US and the UK – the level of gender segregation in industries and occupations in Australia remains exceedingly high. In 2010, gender segregation levels were higher in Australia than they were in France, Greece, Israel, Poland, New Zealand and Portugal.¹³

Despite decades of formal legal equality in Australia, levels of segregation appear to be deepening, rather than reducing. The table below (Table 1) shows the change in the percentage of female employees for the four most gender-segregated industries in Australia: Health Care and Social Assistance and Education and Training, which are female-dominated; and Construction and Mining, which are male-dominated.

Over the last twenty years, the percentage of female employees in Health Care and Social Assistance and education and training has increased by 2.8 and 5.2 percentage points respectively; at the same time, the percentage of women employed in construction has decreased by 2.8 per cent, and in mining it has barely increased (0.9 per cent).¹⁴

Table 1: Proportion of female employees by industry, 1995 and 2015¹⁵

Industry	Percentage of female employees in 1995	Percentage of female employees in 2015	Female employees, difference
Health Care and Social Assistance	76.4	79.2	+2.8
Education and Training	65.4	70.6	+5.2
Construction	14.8	12.0	-2.8
Mining	12.0	12.9	+0.9

10 Workplace Gender Equality Agency (WGEA) (2016a) *Australia's gender equality scorecard 2015-16*, p. 6.

11 United Nations Department of Economic and Social Affairs (UN DESA) (2015) 'Chapter 4: Work', *The World's Women 2015: Trends and Statistics*, New York

12 Pocock, B. (1998) 'All Change, Still Gendered: The Australian Labour Market in the 1990s', *Journal of Industrial Relations*, 40:4, p. 590

13 Rawstron (2012)

14 Australian Bureau of Statistics (ABS) (2016a) *Labour Force, Australia, Detailed Quarterly, May 2016*, cat. No. 6291.0.55.003, cited in Workplace Gender Equality Agency (WGEA) (2016b) *Gender segregation in Australia's Workforce*, August 2016, p.5.

15 ABS (2016a)

STEM (science, technology, engineering and mathematics) is a much-vaunted area of employment growth, with 75 per cent of the fastest growing occupational categories requiring knowledge and skills related to science, technology, engineering and maths.¹⁶ STEM fields also have low levels of female employment in Australia, as elsewhere, with around 30 per cent of graduates being women, less than 30 per cent of jobs being held by women, and a gender pay gap of around 30 per cent.¹⁷

One of the most acutely gender segregated industries is ECEC. In 2013, women accounted for 94 per cent of the overall ECEC workforce. Their concentration in Long Day Care (LDC) and Preschool, which account for the majority of ECEC service delivery in Australia, is even higher, at 97.3 per cent in 2013. In the three year period to 2013, gender segregation in ECEC decreased by just 0.42 per cent, a negligible difference (see table 2).¹⁸ Notwithstanding occasional good news stories profiling men bucking gender norms and embracing careers in ECEC, this remains a hyper-feminised industry.¹⁹

Table 2: Gender segregation in ECEC in 2010 and 2013 – Australia²⁰

	2010 Percentage of female employees per service type	2010 Total Staff per service type	2013 Percentage of female employees per service type	2013 Total Staff per service type	Female employees, difference
Preschool	96.4	25,475	97.3	26,952	+0.96
Long Day Care	97.4	67,975	97.3	75,646	-0.10
Family Day Care	98.9	13,576	97.2	14,054	-1.72
In Home Care	97.8	1,050	97.7	1,809	-0.10
Occasional Care	98.3	769	98.5	872	+0.20
Outside School Hours Care	84.6	16,273	82.7	18,086	-2.25
Vacation Care	82.7	14,069	81.7	15,737	-1.21
Total	94.4	139,187	94	153,155	-0.42

As well as being highly segregated vertically (the domination of high status jobs by one gender) and horizontally (the concentration of men and women in separate industries), Australia also exhibits significant gender segregation in terms of employment status, undertaking higher levels of part-time and casual – ‘atypical’ – work to accommodate the inflated share of unpaid care work they perform.²¹ Women make up 71.6 per cent of the part-time workforce,²² with 54.3 per cent of female employees working part-time, as opposed to 24.8 per cent of men.²³ Women are also more likely to be employed as casuals (25.4 per cent) than men (19.7 per cent).²⁴ Women’s segregation into atypical work forms is significant because part-time and casual work is associated with reduced wages and diminished career progression opportunities.²⁵

16 Gilmore, G. (2016) ‘Fourth industrial revolution: Could automation make life worse for women?’, *The Guardian*, 7 December 2016.

17 Gilmore (2016)

18 Department of Education and Training (DET) / The Social Research Centre (2014) *2013 National Early Childhood Education and Care Workforce Census* report, p. 10.

19 Stephens, C. (2016) ‘What it’s like to be a man working in a childcare centre’, *Mamamia*, 11 March 2016.

20 DET / The Social Research Centre (2014), p. 8.

21 Owens, R. (1993) ‘Women, ‘Atypical’ Work Relationships and the Law’, *Melbourne University Law Review*, 19, pp. 399-430.

22 KPMG (2016)

23 ABS (2016b) 6306.0 *Employee Earnings and Hours, Australia, May 2016*

24 ABS (2016b) [These figures include casuals working full time hours.]

25 Schuller, T. (2014) ‘The Paula Principle: why part-time work holds women back’, *The Guardian*, 16 January 2014; Chalmers, J. and T. Hill (2007) ‘Marginalising Women in the Labour Market: ‘Wage Scarring’ Effects of Part-time Work’, *Australian Bulletin of Labour*, 33:2, pp.180-201; Pocock and Alexander (1999), p. 82.

The patterns of female over-representation in low pay work and non-standard employment arrangements converge in ECEC. Over 58 per cent of educators work under part-time or casual arrangements.²⁶ When the high incidence of part-time employment is taken into account, the average weekly earnings for all educators (Certificate III and Diploma-qualified combined) are \$614, as opposed to all occupations' average weekly earnings of \$1,000.²⁷

B. Factors driving industrial and occupational gender segregation in the Australian context

a) The legacy of 'women's work': Low wages and status

The primary reason for high levels of industrial and gender segregation in Australia is the persistent undervaluing of forms of work that were historically performed by women in the domestic sphere on an unpaid basis. The ancient concept of gendered spheres took on new salience in the Industrial Revolution when women were cast as being responsible for child-rearing, house-keeping and religious education within a newly imagined private domestic sphere, while men were designated as agents in the public realms of politics, economics, commerce and the law. In 19th and early-mid 20th century Australia, the separate spheres concept was entrenched by a variety of religious and pseudo-scientific discourses which valorised the capacity for reproduction and selfless caregiving as pre-eminent female virtues, which should be attended by spiritual and moral, rather than monetary, reward.²⁸

Gender segregation in care work was also enshrined by a legal system that was premised on formal discrimination. The *Harvester Decision* of 1907 was predicated on the notion of a male breadwinner, whose wage was expected to support himself, his wife and three children in 'frugal comfort.'²⁹ In 1912, the *Fruit Pickers Case* set the basic female wage at a proportion of the male basic wage.³⁰ The notion that 'separate spheres' of work for men and women was integral to the court's reasoning, with differential rates of female pay being imposed so as to avoid the threat of cheap female labour displacing men from notionally male industries.³¹ A segregated approach to gender and work was further entrenched by the 1917 *Theatrical Case*, which determined a living wage for women based on the 'needs of the sexes', and without reference to work productivity.³²

The legal organisation of work along essentialist gender lines began to break up in the late 1960s. Second-wave feminists agitated to dismantle the discriminatory institutions that circumscribed women's lives to their roles as dutiful mothers and wives. In 1969, Unions applied to the Conciliation and Arbitration Commission in the *Equal Pay Case*³³ to increase all female wages to remove the difference between male and female wage rates irrespective of the work they performed. The Commission formally granted the principle of equal pay for equal work, but declined to increase all female wages in line with

26 DET / The Social Research Centre (2014), p. 2.

27 ABS (2014) 6333.0 *Characteristics of Employment Survey August 2014*, cited in Australian Government (n.d.) 'Child Carers - Weekly Earnings (before tax)', *Job Outlook*, <http://joboutlook.gov.au/occupation.aspx?code=4211&search=keyword&Tab=stats&graph=EA>

28 Baines, D., S. Charlesworth and T. Daly (2016) 'Underpaid, unpaid, unseen, unheard and unhappy? Care work in the context of constraint', *Journal of Industrial Relations*, 58:4, pp. 449-54; Folbre, N. (ed.) (2012) *For Love and Money: Care provision in the United States*, New York: Russell Sage Foundation

29 *Ex Parte H. V. McKay*, (1907) 2 CAR 1., 4.

30 *The Rural Workers' Union v Mildura Branch of the Australian Dried Fruits Association* (1912) 6 CAR 61.

31 *The Rural Workers' Union v Mildura Branch of the Australian Dried Fruits Association* (1912) 6 CAR 61 at 73.

32 (1907) 11 CAR 133, 147.

33 *Australian Meat Industry Employees Union & Others v Meat and Allied Trades Federation of Australia & Others* (Equal Pay Cases) (1969) 127 CAR 1142.

male wage rates,³⁴ excluding work that was 'essentially or usually performed by females' from the equal pay principle.³⁵ At the time, 82 per cent of the female workforce worked in highly feminised occupations, with the consequence that the 1969 equal pay decision affected just a small fraction of women under federal awards.³⁶ Further liberalisation came with the 1972 *National Wage and Equal Pay Cases*,³⁷ which formulated the principle of equal pay for work of equal value and the 1974 *National Wage Case*, which established a single minimum wage for adults and finally removed the 'family needs' concept that had been set in the *Harvester* decision.³⁸

The removal of the formal institutional apparatus of discrimination has only been one aspect of the transition from a society organised around the ideal of families supported by a male breadwinner to one organised around the ideal of a dual-income family. Another has been the partial commodification of care work, as women who previously undertook caring roles in the home entered the paid workforce in significant numbers, and the work of looking after their dependents was transferred, in part, to a paid workforce of dedicated carers and educators. In the same year as the *National Wage and Equal Pay Case*, the Commonwealth government passed the *Child Care Act 1972* (Cth), which allocated federal government resources to non-profit organisations to deliver centre-based care to the 'children of working and sick parents.'³⁹

Quality standards have always been a dimension of the Australian system for care for children outside the home. Although the *Child Care Act 1972* (Cth) was primarily introduced to facilitate increased participation in the workforce by women, it also recognised the necessity of government intervention to ensure that child care was of high quality.⁴⁰ Further professional standards were applied to the sector in the 1990s and, in 2012, a National Quality Framework was introduced.

Despite regulatory standards that mandate a high level of skill in early childhood education and care work, ECEC remains labour that is economically and socially undervalued as a consequence of its historical association with unpaid 'women's work'. The work of early childhood educators is physically and emotionally demanding, and relies on a deep knowledge of childhood developmental stages and the appropriate pedagogies to assist children throughout those stages.⁴¹ And yet misapprehensions as to the level of skill involved in caring work are widespread in Australian society.

Senator David Leyonhjelm, for instance, recently described the work of early childhood educators as nothing more than 'wiping noses and stopping the kids from killing each other.' Educator and United Voice member Chloe Chant responded to this characterisation by outlining the many tasks her role entails in an open letter that received wide media coverage. Chant narrated the complexities of her work week to Senator Leyonhjelm ranging from mandatory reporting requirements; managing a medical emergency for a baby experiencing febrile convulsions; completing observations, learning summaries and analyses pertaining to a child with a learning delay, along with the day to day task of providing individualised education and care for the children in her service.⁴²

34 Ibid at 1156.

35 Ibid at 1159.

36 Hunter, R. (1988) 'Women Workers and Federal Industrial Law: From Harvester to Comparable Worth', *Australian Journal of Labour Law*, pp. 147-171

37 147 CAR 172.

38 157 CAR 299.

39 McIntosh, G. and J. Phillips (2002) *Commonwealth Support for Childcare: Historical Overview of Commonwealth Support/Policy*, Parliament of Australia.

40 Logan, H., J. Sumsion, and F. Press (2013) 'The Child Care Act 1972': A critical juncture in Australian ECEC and the emergence of 'quality', *Australasian Journal of Early Childhood*, 38:4, pp. 84-91

41 C2013/5139 - Third further amended application by United Voice and the Australian Education Union for an Equal Remuneration Order, pp. 13-14.

42 Chant, C. (2017) 'An educator's open letter to Senator Leyonhjelm on childcare', *Women's Agenda*, 12 January 2017.

b) The impact of the 'Second Shift': women performing more unpaid work perpetuates and deepens gender segregation in the workplace

Gender segregation in the workplace and the gendered division of unpaid caring and domestic work are mutually reinforcing processes.

Women in Australia perform on average 311 minutes of unpaid work each day as opposed to men's 171.6 minutes.⁴³ This means that women spend 64.4 per cent of their total work day working in an unpaid capacity whereas for men it is just 36.1 per cent.⁴⁴

The fact that women do more unpaid work at home flows through to their workforce participation. Research comparing multiple OECD countries found that the differential distribution of unpaid care produces inequities in women and men's workforce participation.⁴⁵

These inequities are significantly amplified when men and women become parents. At present, Australian women who have children suffer a 'motherhood penalty' for the rest of their working lives, with an estimated average loss of 17 per cent in lifetime wages, as well as a reduction in work status for those who move to 'mother-friendly' occupations and/or hours of work.⁴⁶ Australian men, by contrast, enjoy a 'fatherhood bonus' when they have a child, enjoying stronger career growth and higher pay compared with childless men.⁴⁷ Research by the Workplace Gender Equality Agency has found that:

- Taking parental leave has a negative impact on wages. Analysis of the 2009 Household Income and Labour Dynamics Australia (HILDA) data showed Australian women returning to work after 12 months' parental leave were subject to an average 7% wage penalty, increasing to 12% over the subsequent year.⁴⁸
- There is evidence that working mothers suffer discrimination at work in terms of pay, conditions and duties, and career advancement opportunities.⁴⁹
- Working mothers are more likely to be in part-time work than working fathers, particularly when they have young children. 84% of working women with a child under two work part-time, while 86% of their partners work full-time. Part-time work attracts an additional wage penalty (over and above the reduced wages that come from working shorter hours), because it is associated with lower status and fewer promotional opportunities.⁵⁰
- Men face barriers to participating in childcare and unpaid domestic labour by lower levels of access to flexible working arrangements.⁵¹

Policies to encourage men to take parental leave, together with greater levels of government investment in ECEC, however, can make a difference. In Sweden, for instance, where there is substantially higher government investment in ECEC, women spend 43.5 per cent of their total work day on unpaid work, while men spend 32.4 per cent – a much lesser difference than Australia.⁵²

43 Organisation for Economic Co-operation and Development (OECD) (2014) *Time spend in paid and unpaid work, by sex*.

44 OECD (2014) 'Balancing paid work, unpaid work and leisure', cited in WGEA (2016) *Unpaid care work and the labour market*: Insight Paper, pp. 4-5.

45 Ferrant, G., L. Pesando and K. Nowacka (2014) *Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes*, OECD Development Centre.

46 WGEA (2016c) *Parenting, work and the gender pay gap: Perspective Paper*, p. 2.

47 WGEA (2016c), p. 3

48 WGEA (2016c)

49 WGEA (2016c)

50 WGEA (2016c)

51 O'Leary, J. and G. Russell (2012) *Men get flexible! Mainstreaming flexible work in Australian business*, The Diversity Council of Australia; WGEA (2016c).

52 OECD (2014), pp. 4-5.

c) The inadequacy of existing legal mechanisms for tackling the historical undervaluation of care work

A variety of legal mechanisms have been used to attempt to remedy the historic undervaluation of women's work since the 1980s. In 1986, Unions attempted to expand the 1972 equal pay for work of equal value principle to recognise 'comparable worth' that would allow female wage rates in predominantly female occupations to be reassessed on a case-by-case basis.⁵³ The Australian Industrial Relations Commission (AIRC) thwarted the attempt to reassess nurses' worth on this basis and directed the parties to the anomalies and inequities principle of the wage fixing principles. The Unions pursued their claim through this mechanism and were subsequently awarded significant pay increases.⁵⁴

In the 1988 and 1989 *National Wage Cases*, the AIRC adopted the structural efficiency and minimum rates adjustment principles for childcare workers, clothing trade mechanists, clerks and some other traditionally female occupations. These gains did not prove 'significant enough at the aggregate level to narrow the average gender pay differential', according to labour scholar Barbara Pocock.⁵⁵

Subsequent industrial legislation has not proved adequate to enable the successful prosecution of equal pay cases for female dominated industries where the pay inequity stemmed from subtle historical undervaluation. *The Industrial Relations (Reform) Act 1993* (Cth) required applicants to prove that discrimination was a cause of the wage inequity, a requirement that was maintained in the subsequent *Workplace Relations Act 1996* (Cth) and the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). These Acts also required that applicants make reference to a comparator group of employees. In the seventeen or so cases that sought equal remuneration orders under these provisions, none were successful.

State-based initiatives for recognising the value of work in feminised industries have been more successful. In New South Wales and Queensland, government initiated inquiries and reviews in 1997 and 2000 lead to state-based industrial tribunals adopting progressive equal remuneration principles (ERPs) that used a wide-range of indicators that may identify undervaluation.⁵⁶ The ERPs were able to recognise pay inequity stemming from systemic gender-based undervaluation of women's work⁵⁷ without the requirement of demonstrating sex-based discrimination or making reference to an explicit comparator group/s to demonstrate undervaluation.⁵⁸ Under these ERPs, wage increases were successfully won at the state level for childcare workers and public sector librarians in New South Wales and for dental assistants, children's services workers and community service workers in Queensland, all being strongly feminised industries and occupations. The Tasmanian, Western Australian and South Australian industrial commissions also implemented wage fixing principles that related to equal remuneration.⁵⁹

53 *Re Private Hospitals' and Doctors Nurses (ACT) Award 1972* (1986) 13 IR 108.

54 *Re Private Hospitals' and Doctors Nurses (ACT) Award 1972* (1987) 20 IR 420.

55 Pocock B. (1999), p. 282.

56 Queensland Industrial Relations Commission Pay Equity Inquiry 2000: Fisher, G. (2001) *Worth valuing, report of the pay equity inquiry*, Queensland Industrial Relations Commission, Brisbane; New South Wales Pay Equity Inquiry 1998: Glynn, L. (1998) *Pay Equity Inquiry; Reference by the Minister for Industrial Relations Pursuant to Section 146(1)(d) of the Industrial Relations Act 1996* (Industrial Relations Commission of New South Wales, 1998), 1, pp. 46-7.

For example, the New South Wales Pay Equity Inquiry identified a number of indicia of under-valuation of work based on gender as including: Work is characterised as feminine; female-dominated; no work value exercises conducted by the commission; inadequate application of equal pay principles; weak union or few union members; consent awards/agreements; large component of part-time and casual workers; lack of, or inadequate recognition of qualifications; lack of access to training or career paths; small workplaces; new industry or occupation; service industry; and home-based occupations.

57 Cortis, N. and Meagher G. (2012) 'Recognition at Last: Care Work and the Equal Remuneration Case' *Journal of Industrial Relations*, 54:3, p. 379.

58 Layton, R., Smith, M and Stewart, A. (2013) *Equal Remuneration under the Fair Work Act 2009: A Report for the Pay Equity Unit of the Fair Work Commission*, Fair Work Commission, p. 51.

59 See Romeyn, J., S.-K. Archer and C. Leung (2001) *Review of equal remuneration principles*, Research Report 5/2011, Fair Work Australia, Melbourne.

The equal remuneration provisions under Part 2–7 of the *Fair Work Act 2009* (Cth) (Fair Work Act) have been successfully used on only one occasion, the social, community and disability services sector equal remuneration case (SACS Case) in 2012. In that case, the Australian Municipal, Administrative, Clerical and Services Union (the ASU) with a number of other applicant unions, won significant pay increases for employees in the social, community and disability services sector, a highly feminised industry, on the basis that:

- a. much of the work in the industry is 'caring' work
- b. the characterisation of work as caring work can disguise the level of skills and experience required and contribute, in a general sense, to a devaluing of the work
- c. the evidence of workers, managers and union officials suggests that the work, in the SACS industry, again in a general sense, is undervalued to some extent, and
- d. because caring work in this context has a female characterisation, to the extent that work in the industry is undervalued because it is caring work, the undervaluation is gender-based.⁶⁰

The Full Bench determined that there was no requirement for an explicit male comparator: an application can succeed if it is subject to gender-based undervaluation. In a four-to-one majority decision, Fair Work Australia awarded pay increases of between 19 per cent and 41 per cent and included a 4 per cent loading in recognition of the impediments to bargaining experienced in the sector.⁶¹

In 2015, the Full Bench of the Fair Work Commission (Commission) has made a preliminary decision on the legal and conceptual framework of Part 2–7 of the Fair Work Act. It departed from what was decided in the SACS Case and determined that the Act requires a comparator group of the opposite gender for an equal remuneration application to succeed, a decision that increases the evidentiary and financial burden associated with any attempt to use Part 2–7 as a mechanism for achieving paradigm change in wages in historically undervalued feminised industries.⁶² It also discounts the progressive and significant developments made in some state jurisdictions and in the SACS Case to recognise pay inequity stemming from systemic gender-based undervaluation of women's work.

d) The ineffectiveness of bargaining as a mechanism to align wages and status with contemporary values

Enterprise bargaining cannot remedy the gender pay disparity resulting from gender segregation and the historical undervaluation of care work. Research has shown that larger enterprises are more likely to have a collectively bargained agreement over an award.⁶³ The industries where women are highly concentrated are award-reliant, government funded with minimal access to over-award payments.⁶⁴ They are also often largely comprised of small enterprises with a small number of employees, like the ECEC sector. Australian ECEC relies on public subsidies, and has a significant proportion of single-service providers, making bargaining difficult, with research showing that larger enterprises are more likely to have a collectively bargained agreement over an award.⁶⁵

Moreover, there is evidence to suggest that women are more likely to seek flexible work arrangements than wage increases, which contributes to the unsuitability of bargaining as a mechanism for addressing historically undervalued work.⁶⁶ Healy, Kid and Richardson, when assessing average hourly ordinary-time earnings by gender and method of setting pay, found that female bargained wages were lower than

60 *Re Equal Remuneration Case* (2011) 28 IR 345 para 253.

61 *Re Equal Remuneration Case* (2012) 223 IR 410.

62 *Equal Remuneration Decision 2015* (2015) 256 IR 362 at para 290.

63 Rozenbes, D. and S. Farmakis-Gamboni (2015), p. 7.

64 *Making it Fair* (2009), p.9; Broadway, B. and R. Wilkins (2015), p.12.

65 Rozenbes, D. and S. Farmakis-Gamboni (2015), p. 7.

66 Smith, M. (2003) 'Accepting mediocrity as progress: gender pay equity and enterprise bargaining', *International Employment Relations Review*, 9:1, p. 100.

males.⁶⁷ They noted that, while enterprise bargaining benefited both genders with the absolute value of wages being higher, men received the greatest relative benefit.⁶⁸ This effect of the enterprise bargaining framework on women's wages was predicted early on by commentators such as Kelly in 1994:

Women workers who are employed in the service industries, where 'output' cannot be measured and where there is little scope for technological and organisational change which may increase labour productivity in manufacturing, are unlikely to benefit from enterprise bargaining.⁶⁹

C. Economic consequences of gender segregation for women, including the contribution of industrial and occupational gender segregation to the gender pay gap

a) The contribution of gender segregation to the gender pay gap

Women in Australia earn an estimated 16.2 per cent less than their male peers for full-time work and 27.5 per cent less in total once we account for the higher levels of part-time and casual work undertaken by women, less overtime, lower superannuation accrual, and reduced incidence of bonus payments and other discretionary payments.⁷⁰ KPMG estimates that occupational and industrial gender segregation is responsible for 30 per cent of the gender pay gap (GPG), and its role in perpetuating economic inequality between men and women is increasing.⁷¹ It is widely accepted that within the current paradigm the GDP will simply not close during the lives of women currently in the workforce. The World Economic Forum (WEF) projects it will be another 170 years before the Australian GPG is overcome at the current rate of convergence.⁷²

There is a high personal cost to working in a female-dominant industry. Women in industries that are almost entirely female-dominated have been found in some instances to earn 32 per cent less than women with identical characteristics working in almost entirely male-dominated industries.⁷³

Table 3: Average weekly total cash earnings, Industry, May 2016⁷⁴

Industry	Average weekly total cash earnings
Mining	\$2,494.40
Construction	\$1,515.20
Education and Training	\$1,229.30
Health Care and Social Assistance	\$1,185.30

67 Healy J., Kidd M. and S. Richardson (2008) 'Gender pay differentials in the low-paid labour market', 2008 *Minimum Wage Research Forum Proceedings*, Vol. 2, Research Report No. 4b/08, Report commissioned by the Australian Fair Pay Commission, October, p.242; see also Cooper, R. (2012) 'The Gender Gap in Union Leadership in Australia: A Qualitative Study', *The Journal of Industrial Relations*, 54:2, pp. 131-46.

68 Healy et al (2008), p. 242.

69 Kelly, R. (1994) 'Award restructuring and child care workers 1988-1992,' The University of Adelaide Centre for Labour Studies Research paper Series No. 2, June 1994, p. 18.

70 Workplace Gender Equality Agency (WGEA) and Bankwest and Curtin University (2016) *Gender Equity Insights 2016: Inside Australia's Gender Pay Gap*, Australian Government, p. 7.

71 KPMG (2016), p. 8.

72 WEF (2016) *The Global Gender Gap Report 2016*.

73 Pocock and Alexander (1999), p. 84.

74 ABS (2016b)

The high price of low wages in ECEC

Recent research shows that:

- 20 per cent of workforce intend to leave because survival on current wages is too hard, many cases point to extreme financial hardship.⁷⁵
- Many educators can only afford to stay in ECEC by being supported financially by their partner's wage.⁷⁶
- Lack of workforce retention constitutes a significant loss of skills to the sector at a time of growing demand for skilled and qualified educators.⁷⁷
- Low retention negatively impacts quality and the continuity of relationships between children and educators⁷⁸
- Long and sometimes unpaid hours in LDC are linked to stress and mental health effects⁷⁹
- Educators are negatively impacted by a public image that fails to acknowledge the professional and educational nature of the work, consequently devaluing those who choose to work in the sector⁸⁰

Evidence among United Voice's membership in ECEC indicates that the low wages in that sector can prevent educators (over half of whom are under thirty-five⁸¹) from obtaining a home loan or starting a family. Many of our members are only able to meet the cost of living by staying with their parents, by working second or even third jobs, or by relying on their partner's income.

The effect of lower wages in feminised industries and occupations has deep consequences on the organisation of family life in Australia. Women's overrepresentation in low-paid, part-time or casual work where income can be variable means that their careers continue to be subordinate to their male partners'. These lower wages, when weighed up against those of the male bread-winner, make the prioritisation of the man's career a pragmatic financial decision for families. Not only does this result in low income for women, it also increases government spending by necessitating higher social security payments during their working lives and into retirement.

75 Irvine, S., K. Thorpe, P. McDonald, J. Lunn and J. Sumsion (2016) *Money, Love and Identity: Initial findings from the National ECEC Workforce Study*. Summary report from the national ECEC Workforce Development Policy Workshop, Brisbane, Queensland: QUT.

76 Irvine et al (2016), p. 5.

77 Irvine et al (2016), p. 5

78 Whitebook, M., D. Phillips and C. Howes (2014) *Worthy Work, STILL Unliveable Wages: The Early Childhood Workforce 25 Years after the National Child Care Staffing Study*. Centre for the Study of Child Care Employment, University of California, Berkeley, p. 6.

79 Whitebook et al (2014); Corr, L., J. Dixon, L. Strazdins, M. Bittman, J. Burgess, C. Banwell, D. Venn, D. Woodman and G. Carey (2016) *Submission to Senate Education and Employment Committee – Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015*, National Centre Epidemiology and Population Health, Australian National University.

80 Irvine et al (2016), p. 5

81 ABS (2015) *ABS Labour Force Survey, annual average 2015*.

b) Gender segregation and retirement

High levels of gender segregation in Australian industries and occupations are continuing to negatively affect women's economic security throughout their lives, culminating in particularly impoverished economic circumstances for single women in retirement.⁸²

Women currently retire with close to half as much in their superannuation as men, with one in three women retiring with no super at all.⁸³ The fragmented pattern of paid work throughout women's lifecycle has a negative impact on their superannuation balance in retirement, culminating in vastly lower retirement savings than that required to live with comfort and dignity in retirement. KPMG has found that the proportion of the GPG attributable to years out of the workforce is 21 per cent.⁸⁴ This 'super gap' exposes women to the vulnerability of poverty in retirement, most notably for single elderly women who are at a greater risk of poverty and homelessness in retirement.⁸⁵ It also means that men are retiring with a much higher degree of retirement security.

Financial security in retirement is a major concern for many United Voice members. Our members in aged care, for example, a physically demanding occupation, are working well into their late sixties and seventies to deliver care to recipients barely older than themselves. An independent demographic survey of our members in 2012 found that 40 per cent said that they could not afford to retire before age seventy, and a further 7 per cent saying that they would 'never' be able to retire.

The superannuation system is not adequately accommodating women's different work in lower-paid occupations and industries nor their life patterns. Margaret Carey, an early childhood educator and United Voice member, related the life-cycle of economic inequality she has experienced while working in ECEC:

This position of being unable to afford the very thing you work to provide for others is the ironic situation of early childhood educators to this day – hardly surprising when the average wage of qualified educators is just \$614 per week. We can't afford childcare, we can't afford to buy a house, let alone negatively bloody gear our second one and we will never have enough superannuation to be able to retire. We are the working poor...⁸⁶

82 Senate Economics References Committee (2016) *'A husband is not a retirement plan' Achieving economic security for women in retirement*, The Commonwealth of Australia, April 2016, Canberra; United Voice (2015) *Submission to the Senate Standing Committee on Economics Inquiry into Economic Security for Women in Retirement*, 6 November 2015.

83 Hartnel, L. (2016) 'Superannuation: 1 in 3 women retire with nothing, Senate report finds', *ABC News*, 30 April 2016; Clare R. (2015) *Superannuation account balances by age and gender*, December 2015, ASFA Research and Resources Centre.

84 KPMG (2016)

85 Senate Economics References Committee (2016) *'A husband is not a retirement plan' Achieving economic security for women in retirement*, The Commonwealth of Australia, April 2016, Canberra, p.xi.

86 Carey, M. (2016) 'Childcare workers are underpaid because we're women. We are the working poor,' *The Guardian*, 22 November 2016.

D. Approaches to addressing gender segregation as it relates to economic inequality and the gender pay gap in comparable jurisdictions

a) Quotas and other incentives to increase men's presence in feminised industries and occupations

The WGEA has recently called for male recruitment targets in industries and occupations traditionally characterised as 'women's work.' Libby Lyons has encouraged more men to enter female-dominated occupations and has exhorted feminised industries and employers to facilitate this transition by taking inspiration from the mining and rail industries which set quotas for the recruitment and promotion of women.⁸⁷ While wages in primary education and nursing might be sufficient for such targeted recruitment to occur, the much lower wages that exist in the broader caring occupations such as those under United Voice's coverage pose a significantly higher barrier to more substantial levels of gender integration.⁸⁸

In response to low levels of men studying and working in ECEC, Norway experimented with setting targets and quotas for male employment in that sector. In the 1990s, it pursued a target of 20 per cent in kindergartens, which it enforced with quotas in the ECEC training colleges.⁸⁹ These quotas were accompanied by other initiatives including 'men-in-kindergarten' networks at a local level. The Norwegian government's policies designed to reduce gender segregation in ECEC were widely regarded as unsuccessful, with no reduction in segregation levels.⁹⁰

A renewed action plan was put in place by the government between 2004 and 2007 using similar methods to encourage the take up of the profession by greater numbers of men, which were similarly unsuccessful. The Norwegian government has since shifted its approach, and is now adopting a broader, more flexible approach to gender segregation. The Norwegian Minister of Education Bård Vegar Solhjell acknowledged the structural causes of segregation and repositioned gender equality at the forefront of the method and solution: 'It is not an objective as such to have equal numbers of men and women in all professions, but to break with the visible and invisible barriers that stop girls and boys from taking untraditional choices.'⁹¹

Other approaches taken in comparable jurisdictions to increase men's presence in ECEC include government-funded training for men (to the exclusion of women) through the Men in Childcare programme in the UK.⁹² Policy solutions of this kind, if they are not paired with a systematic change to levels of pay in caring industries, can only ever have a superficial effect.

87 Lyons, L. (2016) 'More men need to be recruited to female-dominated industries', *The Sydney Morning Herald*, 14 August 2016; Bitá, N. (2016) 'The Workforce Gender Equality Agency: More men to be recruited as teachers and nurses', *The Daily Telegraph*, 10 December 2016.

88 Reskin, B. (1988) 'Bringing the Men Back in: Sex Differentiation and the Devaluation of Women's Work', *Gender and Society*, 2:1, pp. 58-81.

89 European Commission's Expert Group of Gender and Employment (EGGE) (2009) *Gender segregation in the labour market: Root causes, implications and policy responses in the EU*, p. 83.

90 Solberg (2004)

91 Norway Ministry of Education and Research (2008), p. 3

92 Men in Childcare (n.d.) 'Children need men too!', *Men in Childcare*, accessible at: <http://www.meninchildcare.co.uk/>

b) 'Use it or lose it' parental leave for fathers

When unpaid caring duties in the home are more fairly shared between men and women, there is a positive impact on both horizontal and vertical segregation, as well as on segregation by employment status. The OECD has recommended that equal use by both sexes of parental leave provision be promoted in workplaces through implementing non-transferable parental leave entitlements for fathers that function on the 'use it or lose it basis'.⁹³ These measures are an attempt to counter the gender and cultural norms that mean mothers are more likely to use any leave entitlement, particularly where a mother's potential lower earnings is a financial incentive to take up parental leave entitlements. They support women's careers once they have children, as well as reducing discrimination against women of childbearing age at the hiring stage. If men and women are roughly equally likely to take leave, employers are less reluctant to hire women of childbearing age.⁹⁴

Some Nordic countries have introduced father-specific non-transferable entitlement to parental leave. Sweden, for example, offers ten weeks of paid paternity and paid father-specific parental leave at 80 per cent of their normal pay which cannot be transferred to the mother should the father decide not to use them.⁹⁵ In 2014, Swedish fathers took 25 per cent of the total parental leave.⁹⁶ Swedish fathers' use of parental leave has also been demonstrated to have a direct positive impact of their partners' earnings. With each month the father stayed on leave, his partner received 6.7% growth in earnings.⁹⁷

Norway similarly offers 10 weeks' father-specific paternity leave, paid at 100 per cent of gross earnings for the average earner⁹⁸ and Finland offers 3 weeks of father's only leave that can be taken at the same time as the mother while the remaining 6 weeks are unable to be taken while the mother is on parental leave.⁹⁹ Some countries, such as Austria and Germany, also offer 'bonus leave' – extra weeks of paid leave if the father uses up a certain period of sharable leave.¹⁰⁰

These 'use it or lose it' leave measures have successfully increased men's up-take of parental leave: Iceland and Sweden doubled the number of parental leave days taken by men and Korea saw a three-fold rise since it was introduced in 2007.¹⁰¹ Australia should consider the introduction of similar policies. By incentivising fathers to increase their share of care work in the home, father-specific parental leave supports women's careers by reducing their relative share of in-home care responsibilities.¹⁰²

93 OECD (2012) *Closing the gender gap: Act now*, p. 204.

94 OECD (2016a) *Parental leave: Where are the fathers? Men's uptake of parental leave is rising but still low*, Policy Brief, March 2016, pp. 1-2

95 OECD (2016b) OECD Family Database Social Policy Division, Directorate of Employment, Labour and Social Affairs, p. 6; Akerstrom, L. A (2016) '10 things that make Sweden family-friendly', *Sweden.SE*, 21 June 2016, accessible at: <https://sweden.se/society/10-things-that-make-sweden-family-friendly/>

96 S. H. (2014) 'Why Swedish men take so much paternity leave', *The Economist*, 23 July 2014.

97 Johansson, E.A. (2010) *The effect of own and spousal parental leave on earnings*, IFAU Working Paper 2010(4). IFAU – Institute for Labour Market Policy Evaluation, Swedish Ministry of Employment, Uppsala, Sweden.

98 OECD (2016b), p.20.

99 OECD (2016b), p.9.

100 OECD (2016b)

101 OECD (2016b)

102 OECD (2016a)

c) Use of industrial law to enable pay equity to be bargained: New Zealand

New Zealand is taking an innovative approach to pay equity following a lengthy case that won significant wage increases for aged care workers.¹⁰³ The NZ government will soon enact recommendations by a joint working group of representatives from employee organisations, employers and government that will allow parties to decide pay equity claims between themselves via bargaining with the ability to take the matter to mediation and the Employment Relations Authority for further facilitation and determination if required.¹⁰⁴

Their proposed comparators are broad and include a hierarchy of potential comparators drawn from businesses; similar businesses; the same industry or sector; male comparators performing the same or similar work; male comparators performing different work that involves either skill, responsibilities, conditions and/or degrees of effort which are the same or substantially similar and any other useful and relevant comparators.¹⁰⁵ Although the process begins with individual claims against an employer, it appears that collective claims may be able to be made. Regardless, New Zealand's primarily facilitative approach before arbitration is one to take note of, including their breadth of comparators.

E. Remedies appropriate for Australia

a) Measures to encourage women's participation in male-dominated occupations and industries

United Voice encourages measures designed to increase women's participation in male-dominated occupations and industries, and we offer our support on this subject to the ACTU's submission in that regard. There are structural and cultural barriers to retaining women in male-dominated workplaces - obstacles that threaten to render integration efforts ineffectual in the long term.

Indeed, sexual harassment, hostile attitudes of male colleagues, and the sexist exclusion of female employees from social networks have been raised by labour scholars as barriers to women moving into male-dominated industries.¹⁰⁶ Greater flexible work arrangements are needed before such a shift can occur (see below), and the frequently hostile environment of male-dominated workplaces needs to be appropriately acknowledged and addressed.

103 *Kristine Bartlett and Service & Food Workers Union v TerraNova Homes & Care Ltd* [2012] NZERA 743; [2012] NZERA Wellington 141; *Terranova Homes & Care Limited v Service and Food Workers Union Nga Ringa Tota Incorporated* [2014] NZCA 516.

104 Joint Working Group on Pay Equity Principles (2016) *Recommendations of the Joint Working Group on Pay Equity Principles*, 24 May 2016; New Zealand Government (2016) *Summary of Response to Joint Working Group on Pay Equity Principles*, 24 November 2016.

105 Joint Working Group on Pay Equity Principles (2016); New Zealand Government (2016).

106 Blum, L. (1991) *Between Feminism and Labor: The Significance of the Comparable Worth Movement*, Berkeley: University of California Press, p. 136; Australian Human Rights Commission (AHRC) (2013) *Women in male-dominated industries: A toolkit of strategies*.

b) Measures to professionalise and improve conditions in female-dominated occupations and industries

If the status quo is left undisturbed, it is likely that levels of gender segregation will increase. Despite the proportion of organisations with an overall gender equality policy going from 66.2 per cent in 2013-14 to 70.7 per cent in 2015-16, gender segregation levels have gone backwards.¹⁰⁷ Leaving the situation to improve by itself is not an option.

It is time for a systematic plan to handle one of the biggest challenges for Australia in the 21st century: a financially sustainable and high quality care workforce for young and old *that is premised on equality rather than gender discrimination*. Improving pay and conditions in feminised occupations and industries is the fundamental change that must occur in order for gender segregation levels to be meaningfully reduced. This fact has been acknowledged by Libby Lyons, director of the WGEA.¹⁰⁸ So too has the European Commission's Expert Group on Gender and Employment advised that higher pay is an 'effective incentive' to attract more men to female-dominated industries and occupations.¹⁰⁹

Highly feminised industries often involve forms of labour that are concerned with processes of social reproduction. Without them, no other kind of economic value would be possible. At the moment our economic system is exploiting the goodwill and labour of a section of the workforce by virtue of their gender. Our way of organising care work cannot rest upon outdated essentialist gender norms that posit love alone as an adequate reward for the work of care done outside the home. Nor should the unequal, gendered distribution of caring work done within the home continue to be normalised.

We support a model for care work in which the care of young children and the elderly is shared between high quality state-funded providers and both parents, in a dual-earner model that fosters gender equality in both paid and unpaid work.¹¹⁰

Publicly funded industries that broadly fit within the scope of human services (including ECEC, aged, health and disability care) require targeted government intervention in order to attain gender equality. Investment in these sectors of the economy is not only justified on gender equality grounds. It will bring wider economic benefit to the whole economy. Researchers from the UK-based Women's Budget Group (WBG) recently conducted an innovative study that links improvements to conditions in female-dominated industries to broader economic growth, which it did by modelling the impact of investing in the care economy in Australia, the UK, the US and Germany.¹¹¹ This research argues that investing 2 per cent of Australia's gross domestic product (GDP) in the care economy will grow job numbers (by 4 per cent) for men and women, reduce the gender employment gap, and reduce the GPG (by 2.6 per cent).¹¹² Investing in the care economy will also reduce gender segregation levels, growing the attractiveness of care jobs through better pay and conditions.

107 WGEA (2016b), p. 14.

108 Lyons, L. (2016)

109 EGGE (2009), p. 97.

110 The development of 'a high-quality triple-carer (shared between the state and both parents) and dual-earner model' has been proposed by the Women's Budget Group for the UK context. See De Henau (2016a) *Investing in the caring economy - the case of free universal childcare in the UK*, briefing paper for the Women's Budget Group, UK, p. 6.

111 De Henau, J. and D. Perrons (2016) *Investing in the Care economy to boost employment and gender equality*, briefing from the UK Women's Budget Group.

112 De Henau, J., Himmelweit, S. Łapniewska, Z. and D. Perrons (2016)

The WBG report, while lauding desegregation as a goal, reframes integration as a positive product of an investment in the care sector.¹¹³ Significantly, the research states that even if gender segregation persists, the GPG can still be narrowed by investing in the care economy:

Challenging gender segregation in every industry is an important contribution to promoting gender equality, and getting more men into caring occupations has been seen as desirable in itself. However, as our results show, if that gender difference persisted, investment in care would remain a highly effective way of narrowing the overall gender gap in employment.

But there are good reasons to think that if an investment of this magnitude was made, the female domination of the care sector might be reduced. The better wages and working conditions that would be necessary to achieve such an investment in care would be likely to attract more men into the industry, particularly if policies were in place to encourage and facilitate their entry. In this case investment in care would have a beneficial effect on a wider range of gender inequalities: it would reduce occupational segregation by gender and the gender pay gap; it would also still make the gender employment gap smaller...¹¹⁴

Specific modelling around higher levels of investment was also undertaken for the UK ECEC sector, which found that raising ECEC wages to the level of primary school teacher wages would actually reduce the GPG by 3 percentage points, which would be a watershed step towards gender pay equity.¹¹⁵ Broader benefits to investing in ECEC with, in particular, a focus on improving job quality for the predominantly female workforce, include higher employment levels, increased tax revenue and reduced social security spending.¹¹⁶

c) Measures to promote pay equity

(i) Introduce a medium-term target for the national minimum wage

In conducting and reviewing the national minimum wage (NMW) and minimum wages in modern awards each financial year, the Commission's Expert Panel is required to 'tak[e] into account' the principle of equal remuneration for work of equal or comparable value in setting and maintaining minimum wages.¹¹⁷ Since women are more likely to be low-paid (defined as less than two-thirds of the median weekly wage) and more award-reliant than men, raising the minimum wage can increase pay equity in the lower end of the wage distribution.¹¹⁸ Similar proposals have been made by the US government under former President Barack Obama.¹¹⁹

In recent years, the Expert Panel of the Commission has acknowledged this effect, noting that 'increasing minimum wages would only have a modest effect on addressing the gender pay gap.'¹²⁰ Commentators have pointed out that industrial parties and the Commission's Expert Panel in its decisions have paid little attention to the issue of equal remuneration in its annual wage reviews (AWR),¹²¹ with the Expert Panel

113 Ibid, p. 21.

114 Ibid

115 De Henau, J. (2016b) *Costing and funding free universal childcare of high quality*, Women's Budget Group, p. 4; De Henau, J. (2016c) 'Costing a feminist plan for a caring economy: The case of free universal childcare in the UK', in Bargawi, H., G. Cozzi and S. Himmelweit (eds) *Lives after Austerity: gendered impacts and sustainable alternatives for Europe*, London: Routledge.

116 De Henau, J. (2016b)

117 Fair Work Act, s. 284(1)(d).

118 Broadway, B. & R. Wilkins (2015), p. vi.

119 National Economic Council, the Council of Economic Advisers, the Domestic Policy Council, and the Department of Labor (US) (2014) *The Impact of Raising the Minimum Wage on Women*, Report for the White House, Washington, March 2014.
120 [2016] FWCFB 3500 at para 560; [2015] FWCFB 3500 at para 492; [2-14] FWCFB 3500 at para 489; [2013] FWCFB 4000 at para 484; [2012] FWAFFB 500 at para 231; [2011] FWCFB at para 296; [2010] FWCFB 400 at para 319.

121 Charlesworth, S. and F. Macdonald (2013) 'Equal Pay under the Fair Work Act 2009 (Cth): Mainstreamed or Marginalised?' *UNSW Law Journal*, 36:2, p. 582; Charlesworth, S and F. Macdonald (2015) 'Australia's gender pay equity legislation: how new, how different, what prospects?' *Cambridge Journal of Economics*, 39, p. 431.

concluding in a number of AWR decisions that there are other 'more effective'¹²² or 'more direct'¹²³ means under the Fair Work Act to address pay inequity.¹²⁴ However, the Expert Panel's conclusion in the 2015-16 AWR was more specific than in prior AWRs.¹²⁵

In this 2016-17 AWR, United Voice proposed that the Commission adopts a medium-term (4 year) target of 60 percent of median full-time wages by 2020 for the NMW as an additional tool to assist the Expert Panel in the performance of its annual obligations.¹²⁶ We argued that this will promote pay equity further by reflecting the needs of low paid workers since minimum wages have failed to keep pace with incomes in the economy more generally. The Commission received written submissions and held a preliminary hearing on our proposal in late 2016. We are waiting on a decision in respect of this. If it is decided that the statute does not support such an interpretation, we recommend that the *Fair Work Act* be amended to enable the expert panel to set such a target.

(ii) Amend the Fair Work Act to make it easier for the Commission to take an active role in addressing low pay in highly feminised industries

The modern awards objective requires the Commission to take into account, amongst other matters, the principle of equal remuneration in ensuring that the modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.¹²⁷ The modern awards objective applies to the functions and powers under Parts 2-3 and 2-6 of the Fair Work Act, including the 4 yearly review of modern awards and in varying, determining or revoking modern awards outside of the 4 yearly review in an application under ss.157 and 160.¹²⁸ The Commission was also required to 'promote the principle of equal remuneration for work of equal or comparable value'¹²⁹ in the award modernisation process which has also attracted criticism for how little the Commission considered the principle in reviewing and rationalising over 1500 awards into 122 modern awards.¹³⁰

In November 2009, the House of Representatives Standing Committee on Employment and Workplace Relation tabled its report on its inquiry into pay equity and associated issues related to increasing female participation in the workforce.¹³¹ The report made 63 recommendations for industrial relations legislation, anti-discrimination legislation, establishing a pay equity unit within (what was then) Fair Work Australia, a number of administrative approaches to pay equity, data collection and research, women's choices and cultural dimensions. The Senate Committee's report advised the following:¹³²

- section 302(2) of the Fair Work Act is 'supplemented with a signpost note confirming that the concept of equal remuneration includes the valuation of dissimilar work of equal or comparable value.'
- equal remuneration is made an explicit object of the Fair Work Act.
- the President announces an equal remuneration principle and how this principle will be applied in matters.
- that a discretionary fund is established for providing funding on application for equal remuneration cases.
- to amend work value reasons in ss.156(4) and 157 to include 'evidence that the work, skill and responsibility required or the conditions under which the work is done have been historically undervalued'.
- to elevate pay equity as a clear objective of modern awards.

122 *Annual Wage Review 2009-10* [2010] FWAFB 400 at para 319.

123 *Annual Wage Review 2014-15* [2015] FWCFB 3500 at para 492; *Annual Wage Review 2013-14* [2014] FWCFB 3500 at para 491; *Annual Wage Review 2012-13* [2014] FWCFB 400 at para 485.

124 *Annual Wage Review 2009-10* [2010] FWAFB 400 at para 319.

125 *Annual Wage Review 2015-16* [2015] FWCFB 355 at para 575.

126 United Voice Submission re proposal for a medium term target, *Annual Wage Review 2016-2017*, paragraph 4.

127 Fair Work Act, s.134(1)(e).

128 Fair Work Act, s.134(2).

129 Gillard, J. (2009) Request under section 576C(1) – *Award Modernisation, Consolidated Version*, 12 November 2009.

130 See, for example, Charlesworth, S and Macdonald, F. (2013), p. 583; Baird, M. and S. Williamson (2010) 'Women, Work and Industrial Relations in 2009', *Journal of Industrial Relations*, 52, p. 363.

131 *Making it Fair* (2009)

132 *Ibid*, pp xxiv – xxvii.

- modern awards must provide for equal remuneration for men and women workers for work of equal or comparable value.
- an agreement cannot be approved unless it is necessary to achieve or implements pay equity.
- These recommendations highlight that 'equal remuneration' under the Fair Work Act was bound to be a complicated concept for the industrial umpire. In particular, the recommendation to include specific reference to the valuing of skills in traditionally feminised jobs, strikingly predicted that the Fair Work Act was going to struggle dealing with pay disparity resulting from gender segregation in the workplace.

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None of these industrial relations legislative recommendations mentioned in the points above were implemented. 'Equal remuneration for work of equal or comparable value' has therefore remained a complicated industrial concept. It has resulted in protracted and costly litigation for the unions that are seeking to remedy pay inequity as a result of gender segregation under Part 2-7 and has raised questions whether the adversarial system is the best arena to remedy pay inequity.

Our application before the Commission highlights the difficulty, expense and effort in pursuing an equal remuneration case for a highly-feminised sector. It has been on foot since 2013 and we are currently waiting on a preliminary decision on our proposed course of action to deal with the appropriateness of our comparator first. Even the SACS Case ran over 18 months. We are hopeful our case will significantly progress this year. United Voice recommends reconsidering how 'equal remuneration' is dealt with under the Fair Work Act and that applicants receive funding to pursue equal remuneration orders.

d) Measures to normalise flexible work arrangements for both men and women

We also recommend improvements in the measures in the Fair Work Act that provide certain workers with a specific right to request flexible work arrangements as part of the National Employment Standards.¹³³ At present, employees with children who are under or of school age, are returning to work after the birth or adoption of a child or are a carer, may request to change their working arrangements in writing to their employer.¹³⁴ An employer is required to respond in writing granting or refusing this request and can refuse a request only on reasonable business grounds.¹³⁵

Only employees with more than a year of 'continuous service' immediately prior to making the request has the option to this right¹³⁶ or where employees have been a long term casual employee with a reasonable expectation of continuing their employment on a 'regular and systematic basis'.¹³⁷ Since women make up the majority of the casual workforce (54.7 per cent)¹³⁸ and experience a more broken tenure of employment, they may be unfairly precluded from accessing this right when in fact they are more likely to need it.

Research indicates that requests for flexible working arrangements were more likely to be made by women, part-time employees, employees aged between 25 and 44 and permanent employees (not

133 Fair Work Act, s.65

134 Fair Work Act, ss.65(1A)(a) and (b) and s.65(1B). Under s.65(1A), employees with a disability, is 55 years or older, is experiencing family violence or is providing care and support to someone experiencing family violence may also make such a request.

135 Fair Work Act, s.65(5)

136 Fair Work Act, s.65(2)(a)

137 Fair Work Act s.65(b)(i) and (ii)

138 ABS (2015) *Characteristics of Employment Australia, August 2014*, cat. no. 6333.0, cited in WGEA (2016d) *Gender workplace statistics at a glance*, August 2016, p. 1.

casual) or who speak a language other than English at home.¹³⁹ Research furthermore indicates that men with unpaid care responsibilities are failing to be granted flexible work arrangements by their employers, with a report by the Australian Human Rights Commission stating that men are twice as likely to have their requests rejected by the employer than women.¹⁴⁰

Secondly, there are no mechanisms to challenge or review an employer's refusal of a request or to have it appealed.¹⁴¹ This means that it is not directly enforceable, so it does little to shift employers to create family friendly workplace policies.¹⁴²

Ensuring the uptake of flexible work arrangements is an effective gender equality measure. There is an essential role to be played by employers in this area, according to this research: 'Employers should ensure that fathers, as well as mothers, access and use family-friendly workplace provisions. This is a critical public health intervention.'¹⁴³ It is not enough to simply rely on businesses and HR practices to advance family friendly policies, however. Research has shown that most workplaces replicate the minimum legislative requirements, proving that a voluntary regime can only take us so far.¹⁴⁴

We need flexible work arrangements to be seen as normal rather than exceptional. By extending the right to request under the Fair Work Act to make it a universal right available to all workers and including further examples under s.65 of changing work arrangements (such as flexibility of start and finish times, working more hours over less days or including working from home), will challenge the perception that women with caring responsibilities are not typical workers and will go a long way to make requesting for more flexible work arrangements normal rather than exceptional.

e) Measures to increase unpaid caring labour undertaken by men

Amanda Cooklin of the Judith Lumley Centre (for mother, infant and family health research) at La Trobe University has recommended 'giving working fathers some control over how and when they work, plus access to paid family-related leave so that work is more readily able to accommodate family needs.'¹⁴⁵ Cooklin insists on the need to accord 'special attention to supporting unskilled and casual workers, where the strains [on fathers' mental health and consequently their children's wellbeing] may be greatest.'¹⁴⁶

We need policy measures that encourage men to undertake an equal share of the unpaid care burden within their household. 'Use it or lose it' father-specific paid parental leave measures such as in Sweden, Norway and Finland (see above, section D) will go a long way to normalise sharing the caring burden and to counter the disincentive for men to take parental leave where their partner's pay is lower. Accompanying this policy measure with bonus weeks of paid leave to improve uptake will also support women's careers and their economic security. Instituting and normalising family-friendly working arrangements in all workplaces (particularly in male-dominated workplaces) will also contribute to ending gender inequality at home and at work.

139 O'Neill, B. (2015) *General Manager's report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave under s.653 of the Fair Work Act 2009 (Cth) 2012–2015*, November, p. vii.

140 AHRC (2014) *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*.

141 For example, under s. 44(2) of the Fair Work Act, there is no right to appeal of a contravention of the s.65(5).

142 Smith, B. (2011) 'What Kind of Equality Can We Expect from the *Fair Work Act?*', *Melbourne University Law Review* 35, p. 571.

143 Cooklin, A. (2017) 'Flexible, secure, autonomous work makes for a better father', *Child and Family Blog*, ; see also Cooklin, A., Dinh, L. Strazdins, E. Westrupp, L. Leach, J. Nicholson (2016) 'Change and stability in work-family conflict and mothers' and fathers' mental health: Longitudinal evidence from an Australian cohort', *Social Science & Medicine*, 155, pp. 24-34.

144 Heron, A., R. Cooper and G. Meagher (2017) 'Work and Care in Australia', in Baird, M., M. Ford and E. Hill (eds) *Women, Work and Care in the Asia-Pacific*, Abingdon, UK:Routledge; Burgess J., L. Henderson and G. Strachen (2007) 'Work and family balance through equal opportunity programs and agreement making in Australia', *Employee Relations*, 29:4, p. 428.

145 Cooklin, A. (2017)

146 Cooklin, A. (2017)

f) Measures to address women's economic inequality in retirement

A concerted effort is needed to implement long-term strategies to address the structural inequalities relating to women's inequality in retirement that is a product of their work in low-paid feminised industries and occupations. Solutions should focus on removing the systemic disadvantage to women within the current superannuation scheme, adequately rewarding care work and removing existing barriers to women's participation in the paid workforce. Revisiting and implementing the recommendations made in the report of the Senate Inquiry into women's economic security in retirement would be a logical place to begin.

United Voice recommends a phased increase to the superannuation guarantee to 12 per cent, boosting women's superannuation through a 2 per cent increase in mandatory employer contributions and including a mandatory superannuation contribution on the Commonwealth paid parental leave scheme.

