



A•S•U

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Thursday, 18 March 2016

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By E-MAIL Economics.Sen@aph.gov.au

Dear Secretary,

Re: Inquiry into the economic security of women in retirement – Public Hearing Thursday, 18 February 2016

I refer to the Senate Standing Committee on Economics Public Hearing of 18 February, Submission No. 81 of the Australian Services Union (ASU) (<http://www.aph.gov.au/DocumentStore.ashx?id=cc8ec9ca-cd13-41fe-b4d5-b0e6ab6487f2&subId=407246>). The ASU would like to clarify and elaborate on our answer to a question put by the Chair in relation to the industrial relations regime and extent to which Commonwealth legislation currently provides for pay equity:

CHAIR: ... The one thing that we have not talked about a great deal here yet is the nature of the workplace relations regime and the extent to which it supports pay equity. I know that it is a very complex area of industrial law, but given the experiences that you have had, I wonder if you could lay out for the committee the way the law currently provides for pay equity and then perhaps we can come to any particular changes that you think ought to be made to make that process easier, given the experience the ASU has had?¹

As clarified by the Chair, the question is in relation to the procedural test under the *Fair Work Act 2009* (Cth) (the Act) and public policy: the legislation currently provides an adversarial system requiring a party or parties to make an application to the Fair Work Commission.

The ASU is well placed to critique the effectiveness of the current mechanisms to gain equal pay because we ran the only successful case federally under the Act for Social and Community Sector workers covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHCADS Award)². The ASU welcomed the final success of the case in 2012; however, the decision did not come without significant cost, effort and preparation (albeit the current Act was critical to the success of the case in the federal jurisdiction.)

First and foremost, the ASU believes it is important to maintain a legislative framework to ensure equal pay. However, it is perhaps more important that the legislative framework is accessible and not unnecessarily burdensome for applicant workers and unions. The ASU's Equal Pay Case established that the value that is placed on work is related to gender and the market, without regulation, is not a sufficient way to regulate work in caring and other female dominated sectors. Pay inequalities are imbedded in the way we think about work, efficiency and profit and are often dismissed and legitimised by referring to the market as justification.

The Act provides:

SECT 302 FWC may make an order requiring equal remuneration

Power to make an equal remuneration order

(1) FWC may make any order (an equal remuneration order) it considers appropriate to ensure that, for employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value.

¹ Commonwealth Senate Economics References Committee Inquiry, Public Hearing, [13:42] 18/02/2016 - Economic security for women in retirement, available online <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES:id=committees%2Fcommmsen%2Fb2d8b349-322f-431d-995d-6348d26e116c%2F0006:query=id%3A%22committees%2Fcommmsen%2Fb2d8b349-322f-431d-995d-6348d26e116c%2F0000%22>

² [2012] FWA FB 1000

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Meaning of equal remuneration for work of equal or comparable value

(2) Equal remuneration for work of equal or comparable value means equal remuneration for men and women workers for work of equal or comparable value.

Of the 17 or so cases run under predecessor legislation none had been successful.

The ASU believes there is a fundamental need for intervention into the market and this can be achieved by improving concepts such as equal pay for equal work or equal pay for comparative work. The ASU believes it is about finding the right mechanism to measure this concept because retreating to the market is no substitute for intervention to achieve equity. To understand how government can implement non-adversarial measures complementary to the current legislative framework, the ASU again relies on the findings of the "Making it Fair"³ report on Pay Equity and associated issues related to increasing female participation in the workforce. In their report, the Chair of the 2009 House of Representatives Standing Committee on Employment and Workplace Relations made a telling observation, with which we agree, when she said:

I am convinced that an alternative mechanism that allows for a non-adversarial consideration of the undervaluing of women's work and a comprehensive scheme to correct undervaluation across industries is more efficient and preferable.⁴

The recommendations of the Standing Committee are comprehensive and detailed. Some have been implemented while others have not. For example and in respect of the current legislation, the Fair Work Commission have established a Pay Equity Unit to undertake pay equity related research and provide information to inform matters relating to pay equity under the Act. In particular, annual minimum wage reviews; the four-yearly reviews of modern awards; and, equal remuneration cases⁵. However, the majority of the recommendations that were unanimously supported at the time still require action from government.

The recommendations of the Standing Committee are comprehensive and detailed. Some have been implemented while others have not. For example and in respect of the current legislation, the Fair Work Commission have established a Pay Equity Unit to undertake pay equity related research and provide information to inform matters relating to pay equity under the Act. In particular, annual minimum wage reviews; the four-yearly reviews of modern awards; and, equal remuneration cases⁶. However, the majority of the recommendations that were unanimously supported at the time still require action from government.

The ASU survey findings in respect of this Inquiry show us that the community expects government to act. In the ASU's view a combination of legislative change, approach change and commitment and targets to narrow the gap. Gender and equal pay are significant issues and to ignore them will only perpetuate the wage differentials highlighted to this inquiry.

If we can be of any further assistance to the committee the ASU would be happy to do so for this very important inquiry.

Yours faithfully

Linda White
NATIONAL SECRETARY

³ House of Representatives (2009) *Making it Fair*, Pay equity and associated issues related to increasing female participation in the Workforce, viewed 30 October 2015:
http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ewr/payequity/report.htm

⁴ *Ibid.* p. xv

⁵ <https://www.fwc.gov.au/creating-fair-workplaces/research/pay-equity-research>

⁶ <https://www.fwc.gov.au/creating-fair-workplaces/research/pay-equity-research>