

Chapter 4

Economic consequences of gender segregation for women

Introduction

4.1 Gender segregation is not a harmless feature of the Australian workplace. It assigns women to lower take home pay, worse job conditions and less economic security.

4.2 Industries and occupations with higher levels of male employees have higher levels of pay. The data shows that, as the ratio of male to female employees in an industry increases, so too does the average wage. KPMG found that, for every 10 per cent increase in the ratio of men to women in an industry, the average wage increases by 1.9 per cent. For every 10 per cent increase in this ratio in an occupation, the average wage increases by 0.8 per cent.¹

4.3 Taken together, industrial and occupational segregation are the second most significant contributing factors to the gender pay gap in Australia, after sex discrimination.²

4.4 This chapter examines how and why pay differs across male and female occupations and industries.

Male industries are better paid than female industries

4.5 As explored in Chapters 2 and 3, social norms and caring responsibilities force women towards flexible and part time roles that are found in a limited number of occupations and industries. The problem is that these occupations and industries are, on the whole, far less well remunerated than industries that have predominately male workers.

4.6 A woman working in a female-dominated industry would, on average, earn almost \$40,000 (at total remuneration) less than the average full-time total remuneration of a man in a male-dominated industry.

4.7 Historically, female-dominated industries and jobs have attracted lower wages than male-dominated industries and jobs. According to Workplace Gender Equality Agency (WGEA) data, employees in female-dominated organisations still have lower salaries on average, both for base salary and total remuneration, when compared to male-dominated and mixed organisations. In addition, female-dominated industries

1 KPMG, *She's Price(d)less, The Economics of the Gender Pay Gap*, Update report prepared for Diversity Council Australia (DCA) and WGEA, October 2016, p. 11; DCA, *Submission 18.1*.

2 KPMG, *She's Price(d)less*, p. 8, cited in WGEA, *Submission 22*, p. 3.

pay the lowest proportion of superannuation, bonuses and other discretionary pay when compared to other industries.³

4.8 The economic consequence of undervaluation of feminised work is that women continue to dominate the lower end of the earnings spectrum in most occupations, so that they are not only segregated into a limited range of occupations, but they remain vertically segregated within a limited range of low grades with less training possibilities and little career path progression.⁴

4.9 Pay inequality translates into economic inequality for women in a range of ways, including:

- contributing to lifelong lower earnings and consequently limiting the accumulation of super funds and other forms of wealth;
- increasing the likelihood of women living in poverty, including living in poverty in retirement.⁵

4.10 This section explores some of the factors contributing to the pay disparity between male and female economic activity, including the historic underpayment of caring professions and traditionally female industries, and the undervaluing of feminised work.

Historic underpayment of caring

4.11 The undervaluation of work undertaken by women is a major contribution to the gender pay gap and structural inequalities in the labour market.⁶

4.12 The Australian Council of Trade Unions (ACTU), noted:

Highly feminised industries and occupations attract significantly lower wages, because of the low value that has historically been attributed to women's work. This is a great and continuing injustice. Policy and law reform initiatives over the last 20 years have clearly failed to make a substantial difference.⁷

4.13 The problem is particularly acute in occupations involving caring, such as child care, in-home disability, aged care and education, where the nature of the work

3 The 'gender super gap' is currently around 47 per cent (compared to the gender pay gap at 19.3 per cent). By 2030 the retirement income gap is expected to be 39 per cent. WGEA, *Submission 22*, p. 3; WGEA, *Different Genders, Different Lives: Perspective Paper*, 2014, p. 6, https://www.wgea.gov.au/sites/default/files/PP_different_genders_different_lives.pdf (accessed 23 February 2017).

4 John Burgess, Glenda Strachan, G and Martin J Watts, 'Labour Market Deregulation and Gender Equality in the Australian Workforce: Complementary or Incompatible?', *The Economic and Labour Relations Review*, vol. 11, 2000, p. 204.

5 WGEA, *Submission 22*, p. 3.

6 Unions WA, *Submission 23*, p. 3.

7 Ms Erin McCoy, Industrial Officer, Women, Work and Family, ACTU, *Proof Hansard*, 10 April 2017, p. 1.

demands 'emotional labour'.⁸ Whilst these are essential skills for workers in the 'care economy', they are under-valued in the labour market.

4.14 Research shows that industrial and occupational gender segregation is reinforced by societal norms about appropriate roles for men and women.⁹ As Bankwest Curtin Economics Centre (BCEC) explained:

Unequal pay outcomes between women and men are a stark indicator of the different ways women and men engage with the workforce—and how they are valued for it. Gender segregation and lower pay in female-dominated organisations continue to drive poorer remuneration outcomes for women.¹⁰

4.15 Much of the growth in female workforce participation between 1998 and 2006 has been in four 'low pay' industries: retail, accommodation, property and health services.¹¹ United Voice noted that:

While the formal apparatus for pay discrimination has been dismantled, the assumptions that underpin it persist today—in particular, the idea that caring work is low skill and the idea that it is acceptable to be paid at a low level when the work is performed outside the home because it is work that is emotionally rewarding. This is the idea that women in these roles work for the love of it—and we know that love does not pay the bills or the mortgage.¹²

4.16 UnionsWA argued that government funding models contributed to undervaluation of work in the female-dominated social, community and disability services industry, and that changes in the value of work in female-dominated industries have not been recognised in award rates.¹³

8 The concept of 'emotional labour', established by American sociologist Arlie Hochschild, refers to the process by which workers are expected to manage their feelings as part of the paid work role. See for example, 'The sociology of emotional labour, *Annual Review of Sociology*, vol. 35, 2009, pp. 147–65, <http://www.annualreviews.org/doi/abs/10.1146/annurev-soc-070308-115944> (accessed 12 May 2017).

9 NFAW, *Submission 6*, p. 2; Alfred Michael Dockery and Sandra Buchler, BCEC, *Occupational segregation and women's job satisfaction*, Working paper series 15/10, December 2015, p. 1, <http://business.curtin.edu.au/wp-content/uploads/sites/5/2016/08/bcec-working-paper-1510.pdf> (accessed 24 February 2017).

10 BCEC, *Submission 39*, p. 3.

11 Robyn Layton, Meg Smith and Andrew Stewart, *Equal Remuneration under the Fair Work Act 2009: A Report for the Pay Equity Unit of the Fair Work Commission*, 2013, <https://www.fwc.gov.au/documents/documents/payequity/er-report-6-dec-2013.pdf> (accessed 23 February 2017), p. 92.

12 Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 11.

13 Unions WA, *Submission 23*, p. 3.

Industries and jobs become undervalued when they become female

4.17 It is not just the case that women are entering professions that historically have been feminised and undervalued. There is some evidence that professions become less valued and less well paid when the ratio of women rises.

4.18 The higher the percentage of women in an industry, the lower its perceived prestige. As KPMG noted, '[e]ven where men's low-wage jobs demand far less in terms of skill, education and certifications than women's low-wage jobs, the male-dominated ones usually command higher hourly pay.'¹⁴

4.19 Research indicates that the higher the percentage of women in an industry the lower its perceived 'prestige', resulting in lower pay:

A study [by the sociologists Asaf Levanon, Paula England, and Paul Allison], which examined census data from 1950 to 2000, found that, when women enter an occupation in large numbers, that job begins to pay less, even after controlling for a range of factors like skill, race and geography. Their analysis found evidence of 'devaluation'—that a higher proportion of women in an occupation leads to lower pay because of the discounting of work performed by women.¹⁵

Box 4.1

Evidently, being a woman means I am paid less than a male. My work garners less respect than men's work, and I am penalised for working in unpaid roles. What I have experienced throughout my life is the pretence that women are respected, and it is extremely disingenuous. The low wages in the early childhood sector mean none of us can retire until we limp into pension age. The work done by educators is physically and intellectually demanding. Expecting women to work in such roles until they reach the pension age of 67 is not only unrealistic; it is harsh. The reward we receive for taking on caring roles, and any other work seen as 'female', is a lifetime of poverty.

Source: Ms Margaret Carey, Member, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

4.20 Work + Family Policy Roundtable (W+FPR) explained how occupational segregation and undervaluation of work in feminised occupations are inter-related:

Segregation reduces the likelihood that gendered assumptions and practices will be challenged [including] treating women's skills as 'natural' and relying on notions of a woman's essential nature as a carer.

Segregation increases the chances that women will work in part-time jobs that are undervalued because they fail to comply with a male norm of full-time work.

Segregation makes male comparators less available for the evaluation of women's work, increasing the likelihood of misrecognition (and subsequently undervaluation) of women's skills.¹⁶

14 KPMG, *She's Price(d)less*, p. 6; DCA, *Submission 18.1*.

15 DCA, *Submission 18*, p. 6.

16 W+FPR, *Submission 33*, p. 13.

4.21 BCEC found that companies classified as female-dominated recorded the highest gender pay gap among full-time managers (23 per cent). For part-time managers the pay gap increased to 35 per cent.

This suggests that men working in management roles in heavily female-dominated organisations are more highly valued and more likely to be fast tracked to senior positions and receive greater pay.¹⁷

Recognising the Specific Challenge of Feminised Work

4.22 United Voice drew attention to a recent landmark decision in New Zealand to set national minimum wage rates for carers in aged care, residential disability care and some home based care workers.¹⁸

4.23 The Australian Services Union (ASU) recommended the establishment of an industry certification and accreditation body, comprising representatives of employers, employees, educators and clients, to set minimum professional standards to properly recognise the skills and experiences of workers in social, community and disability services and ensure quality service provision.¹⁹

4.24 The ACTU argued that the intractable gender pay gap affecting women in feminised industries demands a new approach by policymakers:

At the heart of the pay gap is the failure to truly value traditional women's work—paid or unpaid. The lack of recognition for 'feminine' work and the impact of pervasive sexist norms in the workplace is not effectively addressed by relying on employers to voluntarily and consistently promote diversity, despite the very strong business case for doing so.²⁰

4.25 Several submissions made specific recommendations in relation to the gender pay gap in female-dominated industries, including:

- recognising accredited training and skills development in feminised industries;

Box 4.2

I have been in the industry for nearly 15 years and I have a bachelor of early childhood education, which is a four-year degree. Over the past few years, I have grappled with the idea: do I stay in child care or do I become skilled in another area and move in a different direction in my career? The main reason I have grappled with this idea is that the wages I receive are simply too low to continue to support my family in a way that provides us with a good quality of life. I am the only income earner in my family, and I support four children and my husband.

Source: Ms Jade Child, Member, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

17 BCEC, *Submission 39*, p. 22.

18 Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 12. See Joint Working Group on Pay Equity Principles—Recommendations, 7 June 2016, <http://www.ssc.govt.nz/pay-equity-working-group> (accessed 31 March 2017).

19 ASU, *Submission 25*, pp. 9–10.

20 ACTU, *Submission 38*, p. 7.

- no longer implementing 'wages policies' which restrict the scope of their predominantly female workforces to freely collectively bargain in accordance with International Labour Organisation principles;
- setting targets for pay equity outcomes that are reportable to parliament; and
- requiring government agencies, companies and NGOs with which state governments have procurement and tender arrangements and service delivery contracts to formulate pay equity plans (PEPs) to address areas where they fail to comply with equity principles.²¹

Gender segregation and the pay gap in Australia

4.26 The pay disparity between male and female industries and occupations is a major contributor to the gender pay gap in Australia.

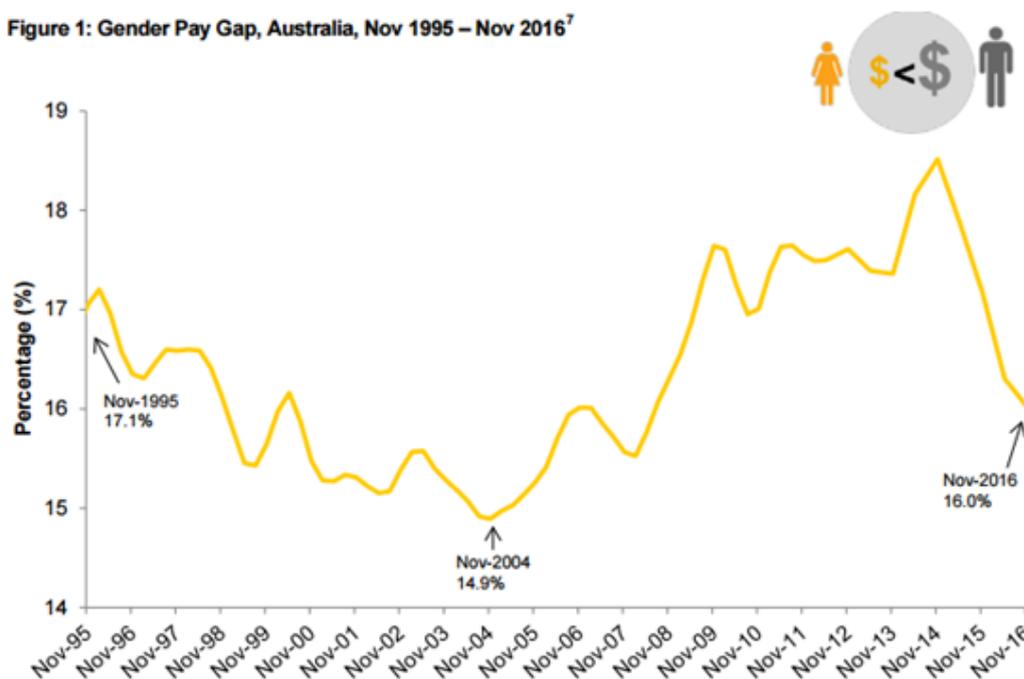
4.27 As Figure 4.1 shows, the gender pay gap has fluctuated between 14 per cent and 19 per cent over the past 20 years. As at November 2016, the gender pay gap was 16.2 per cent, down from 18.6 per cent in 2014.²²

21 See for example, W+FPR, *Submission 33*, pp. 16–23; United Voice, *Submission 19*, p. 5; SDA, *Submission 20*, p. 6, pp. 26–27; UnionsWA, *Submission 23*, p. 4.

22 KPMG, *She's Price(d)less, The Economics of the Gender Pay Gap*, October 2016, p. 1, in DCA, *Submission 18.1*. Analysis based on gender pay gap data published by the ABS. The gap between female and male earnings in 2016 was \$311 in the private sector and \$209.80 in the public sector.

Figure 4.1—Gender pay gap for full time total remuneration, 1995 to 2016

Figure 1: Gender Pay Gap, Australia, Nov 1995 – Nov 2016⁷



Source: ABS, Average Weekly Earnings. Australia. May 2016 (Cat. No. 6302.0), cited in KPMG, *She's Price(d)less: The Economics of the Gender Pay Gap*, October 2016, in DCA, *Submission 18.1*, p. 32.

4.28 Industrial and occupational segregation continue to be among the most significant contributing factors to the gender pay gap, together accounting for 30 per cent of the gender pay gap, or \$0.69 per hour. (see Table 4.1 below).²³

4.29 The gender pay gap varies across Australia, and UnionsWA pointed out that Western Australia has consistently recorded the largest gender pay gap of all states and territories, with full-time male workers earning 23.9 per cent more than female workers, compared to 16 per cent nationally.²⁴

4.30 The gender pay gap begins as soon as men and women begin their careers. As noted in Chapter 3, women are outnumbering men graduating from higher education. However, according to the 2016 Graduate Outcomes Survey (GOS), the median starting salary of females and males were \$56,400 and \$60,000 respectively.²⁵

23 KPMG, *She's Price(d)less*, p. 3 in DCA, *Submission 18.1*. KPMG's analysis drew on data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey, ABS Labour Force Survey and WGEA 2016 Gender Pay Gap Statistics.

24 UnionsWA, *Submission 23*, p. 1.

25 Department of Education and Training, *Submission 21*, p. 3.

Although there are inequities for both genders, it is fair to say that women face greater long-term disadvantage than men as a result of the structures and processes that frame work and family life in our society.²⁶

Table 4.1—Breakdown of the pay gap by contributing factor, 2007 and 2014

Factor	2009 Report (2007 data)		2016 Report (2014 data)	
	% of effect	Absolute equivalent	% of effect	Absolute equivalent
Sex discrimination	35%	\$0.45	38%	\$0.88
Years not working	9%	\$0.12	21%	\$0.48
Industry segregation index	10%	\$0.13	19%	\$0.45
Occupational segregation	18%	\$0.23	11%	\$0.24
Age (experience, proxied by age, years)	8%	\$0.10	6%	\$0.14
Share in part time employment	14%	\$0.18	4%	\$0.08
Tenure with current employer (years)	3%	\$0.04	1%	\$0.03
Share working in government or	3%	\$0.04	0.4%	\$0.01
Total	\$1.29 (\$1.70 in 2016 dollars)		\$2.32 (\$2.41 in 2016 dollars)	

Source: *The Household, Income and Labour Dynamics in Australia (HILDA) Survey*, Wave 14 (analysis by KPMG).²⁷

4.31 The gender pay gap is more acute in non-salary remuneration. Performance pay and other additional remuneration in male-dominated industries contribute to higher gender pay gaps in total remuneration.²⁸

4.32 There have been a number of inquiries and research reports dealing with the economic effects of gender inequality in Australia. The 2009 House of Representatives *Making it Fair* inquiry, for example, examined women's participation

26 WGEA, *Different Genders, Different Lives: Perspective Paper*, https://www.wgea.gov.au/sites/default/files/PP_different_genders_different_lives.pdf (accessed 9 March 2017).

27 KPMG, *She's Price(d)less*, p. 12, Table 4-2; DCA, *Submission 18.1*.

28 Australian Human Rights Commission, *Submission 35*, p. 6; WGEA, *Gender Segregation in Australia's Workforce*, August 2016, p. 2, https://www.wgea.gov.au/sites/default/files/20160801_Industry_occupational_segregation_fact_sheet.pdf, (accessed 15 December 2016).

in paid work, and made 63 recommendations on a wide range of issues, including some of interest to this committee.²⁹

4.33 The 2016 Senate inquiry into economic security for women in retirement found that men's superannuation balances at retirement are on average twice as large as women's, and that Australia's retirement income system does not adequately accommodate the difference between how women and men experience work over their lifetimes:

This is a problem born of many interrelated factors. At its heart, however, is the fact that women and men experience work very differently. Women are more likely to work in lower paid roles and lower paid fields, are more likely to work part-time or casually, and are more likely to take breaks from paid employment to provide unpaid care for others. Over their lifetimes, as a consequence, they will earn significantly less than men.³⁰

4.34 The committee's 2016 recommendations included a review of the *Fair Work Act 2009* to determine the effectiveness of the equal remuneration orders in addressing gender pay equity, as well as ensuring improvements to the Commonwealth Paid Parental Leave Scheme (PPL).³¹

4.35 These inquiries have examined particular aspects of women's workforce participation and the gender pay gap, which are interrelated with industrial and occupational gender segregation. They have also canvassed a range of measures to address the economic consequences for Australian women.

4.36 However, despite such inquiries and recommendations, gender segregation and the gender pay gap continue to be defining features of the Australian labour market. This persistence highlights the resilience of gender-biased assumptions that underpin patterns of occupational segregation, assessments of work value, and career progression opportunities.³²

4.37 Australia's gender pay gap shows some similarities with the United States. The International Labour Organisation (ILO) noted that in the United States:

29 House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay Equity and Associated Issues related to Increasing Female Participation in the Workforce*, Canberra, November 2009, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ewr/payequity/report.htm (accessed 22 March 2017).

30 Senate Economics References Committee, *'A husband is not a retirement plan': Achieving Economic Security for Women in Retirement*, April 2016, p. xi, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report (accessed 1 March 2017). The Australian Government has not yet provided a response to this report.

31 Senate Economics References Committee, *'A husband is not a retirement plan'*, Recommendation 1.

32 Gillian Whitehouse, 'A cross-national comparison of gender gaps', in David Peetz and Georgina Murray, eds, *Women, Labor Segmentation and Regulation: Varieties of Gender Gaps*, Palgrave Macmillan, New York, 2017, p. 106.

...there is a wage penalty for both women and men, who work in female-dominated occupations. For instance, a highly skilled female worker would earn \$24.04 per hour in a female-dominated job, compared to \$36.06 per hour in a male-dominated job. In other words, if she worked 40 hours per week, she would earn \$25,000 more per year in a male-dominated job.

Similarly, a woman in a low-skilled job would earn \$5,990 more per year in a male-dominated job than in a female-dominated job³³

4.38 The Office for Women, Department of the Prime Minister and Cabinet (PM&C) gave evidence that there is currently no specific national target for reducing the gender pay gap in Australia.

Case study: The impact of gender segregation on pay and penalty rates

4.39 The Fair Work Commission's decision in February 2017 to reduce Sunday and public holiday penalty rates in awards covering the retail and fast food industries was considered by the committee.³⁴

4.40 According to the Shop, Distributive and Allied Employees' Association (SDA), for the majority of women in these industries, working on Sundays is not a preference but a necessity, given that they are not able to work Monday to Friday because of family responsibilities and child care availability, and that Sunday penalty rates are the only means they have to a receiving a decent wage.³⁵

4.41 The SDA noted the disproportionate and negative impact that this decision will have on women in these female-dominated industries, and pointed to the inadequacy of the Fair Work Act in providing a positive duty on the Commission to improve the economic outcome for women in the consideration of the annual minimum wage review, modern awards and enterprise agreements.³⁶

Gender pay gap in the STEM sector

4.42 As an industry that promises to provide much of the growth of work in Australia's future economy, the STEM sector deserves a closer look. The view is not pretty. The ABS noted in 2014 that men account for 81 per cent of Australians with higher level STEM qualifications.³⁷ The gender pay gap in STEM professions widens as responsibility level increases.³⁸

33 ILO, *Women at Work: Trends 2016*, ILO, Geneva, 2016, p. 49.

34 Fair Work Commission, *Summary of Decision, [2017] FWCFB 1001*, 23 February 2017, <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2017fwcfb1001-summary.pdf> (accessed 1 May 2017).

35 SDA, *Submission 20.1*, [p. 1].

36 SDA, *Submission 20.1*, [p. 1]; Ms Katie Biddlestone, National Women's Officer, SDA, *Proof Hansard*, 10 April 2017, p. 34.

37 ABS, *Submission 4*, p. 5.

38 Professionals Australia, *Submission 1*, p. 9.

4.43 Professionals Australia (PA), in their report, *Gender pay gap in Engineering and Science*, noted that the low participation rates of women in STEM fields is reflected in management and income:

Only 12% of women in STEM fall into the top income bracket (above \$104,000), while 32% of males are employed in this bracket.³⁹

4.44 The gender pay gap in the Professional, Scientific and Technical Services industry in 2015 was 22.2 per cent compared with 17.3 per cent for all occupations.⁴⁰ Women engineers, for example, receive 24 per cent lower than their male counterparts in the median total salary package. The gap is minimal at entry level but increases beyond four years' experience, suggesting that women are experiencing barriers to career progression.⁴¹

Equal remuneration and the Fair Work Commission

4.45 The effects of gender segregation on pay and conditions express themselves in systemic ways across industries. In other words, they could be seen as industrial problems capable of being addressed through the industrial relations system.

4.46 Numerous submitters provided analysis and suggestions regarding the role of the Fair Work Commission in providing for equal remuneration across male and female jobs and industries.⁴²

The equal pay case

4.47 In 2012 the Fair Work Commission handed down its decision on equal pay under the Fair Work Act. It found that undervaluation existed in the female-dominated social, community and disability services industry throughout Australia, that government funding models contributed to the undervaluation of this work, and that changes in the valuing of work had not been recognised in award rates.⁴³

4.48 The decision saw many in the highly feminised and low-paid social and community services workforce awarded significant pay increases, and the outcome was widely welcomed as a win for the cause of equal pay for women and a sign that Australia finally had an effective regulatory framework in place to secure pay equity.⁴⁴

39 PA, *Submission 1*, pp. 9–12.

40 ABS, *Average Weekly Earnings, Australia*, May 2015, cat. No. 6302.0.

41 ABS, *Submission 4*, p. 5; PA, *Submission 1*, pp. 9–12.

42 See for example, Ms Katie Biddlestone, National Women's Officer, SDA, *Proof Hansard*, 10 April 2017, p. 34; Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

43 Fair Work Australia, *Equal Remuneration Case*, [2011] FWAFB 2700, Melbourne, 16 May 2011, <https://www.fwc.gov.au/documents/sites/remuneration/decisions/2011fwafb2700.htm> (accessed 31 March 2017).

44 Fiona MacDonald and Sara Charlesworth, 'Equal Pay under the *Fair Work Act 2009 (Cth)*: Mainstreamed or Marginalised?', *UNSW Law Journal*, vol. 21, 2013, <http://www.austlii.edu.au/au/journals/UNSWLawJl/2013/21.html> (accessed 28 April 2017).

4.49 The ASU acknowledged that the case was significant in narrowing the pay gap in the social and community services sector, although it noted that the sector is still subject to job insecurity and low wages and that, if not addressed, these issues may contribute to a widening of the gender pay gap.⁴⁵

Evaluating existing arrangements

4.50 Equal remuneration is one factor of many which can be taken into account by the Fair Work Commission when determining an award under the Fair Work Act. However, several submissions and witnesses raised the question of whether the Fair Work Act provides sufficient obligation on the Fair Work Commission to properly consider gender pay equity.⁴⁶

4.51 W+FPR noted an inconsistency in comparative assessments of masculinised and feminised work, and questioned whether the policy and institutional apparatus supports the equal remuneration objective, including the capacity for the Fair Work Commission to hear applications that address gender-based undervaluation.⁴⁷

4.52 The Fair Work Commission's Pay Equity Unit was established in March 2013, following the 2009 House of Representatives *Making it Fair* inquiry, to provide the Commission with specialist pay equity research under the Fair Work Act.⁴⁸ The Unit undertook research and published reports in relation to equal remuneration data and equal remuneration orders, United Voice gave evidence that the Fair Work Commission received specific funding for the unit which has now ceased.⁴⁹

4.53 Several witnesses and submissions asserted that the adversarial nature of the process for applicants seeking an equal remuneration order under the Fair Work Act is time consuming, costly and slow, and that only one case has been successfully completed before the Commission since 2013.⁵⁰

4.54 United Voice has seen little or no progress in the four years that its equal remuneration application for the female-dominated early childhood education sector has been before the FWC. The Commission found in late 2015 that such applications

45 Ms Linda White, Assistant National Secretary, ASU, *Proof Hansard*, 10 April 2017, p. 36.

46 See for example, Ms Katie Biddlestone, National Women's Officer, SDA, *Proof Hansard*, 10 April 2017, p. 34; Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

47 Associate Professor Meg Smith, Member, W+FPR, *Proof Hansard*, 26 April 2017, pp. 1–2.

48 Fair Work Commission, Pay equity research, <https://www.fwc.gov.au/resources/research/pay-equity-research> (accessed 2 May 2017).

49 United Voice, Response to Questions Taken on Notice, 2 May 2017; Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 16.

50 See for example, Ms Erin McCoy, Industrial Officer, Women, Work and Family, ACTU, *Proof Hansard*, 10 April 2017, p. 1; ASU, *Submission 25*, pp. 15–16; Ms Linda White, Assistant National Secretary, ASU, *Proof Hansard*, 10 April 2017, p. 39. The case, relating to Social and Community Sector workers, was the first major test of the equal remuneration order provisions of the Fair Work Act.

require a male comparator, and the complexity of this finding has added to the delay and cost of pursuing such cases. United Voice observed:

We need something that is less technical and can capture the reasons why there are differences in pay for women's work rather than requiring a male comparator. We have put, and continue to put, significant financial resources into addressing the pay inequity for educators, and we propose that a fund is established to pursue cases such as ours and to assist the parties in seeking a remedy.⁵¹

4.55 The National Foundation for Australian Women (NFAW) also noted that the existing legislation needs to be properly enforced:

It is not a coincidence that the deterioration in our position on the global gender gap index coincides with the deregulation of wage fixation and the growing holes in the safety net for part-time and casual employees. Instead of the gender gap being reduced by further deregulation, as for example the Australian Industry Group argues as a minimum, we believe we need a proper enforcement of the regulations that remain.⁵²

Potential reforms of the system

4.56 Various submissions argued that remuneration equity is a national problem and that the current provisions in the Act are unlikely to be effective in addressing the gender pay gap.⁵³

4.57 Some witnesses expressed support for a broad rather than narrow test for assessing equal remuneration, and drew attention to reforms in Queensland and NSW that might be usefully applied to the federal framework.⁵⁴

4.58 New South Wales and Queensland, in recasting their approach to equal remuneration, have given explicit focus to gender-based undervaluation, rather than discrimination, as a means of assessing whether the equal remuneration objective had been met. They have also adopted equal remuneration principles (ERPs) to support pay equity outcomes.⁵⁵

4.59 Applying similar ERPs to the work of the Commission would entail consideration of gender-based undervaluation, which would circumvent the

51 Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

52 Ms Frances Davies, NFAW, *Proof Hansard*, 10 April 2017, p. 10.

53 See for example, ASU, *Submission 20*, pp. 41–43; NFAW, *Submission 6*, [p.5]; AMWU, *Submission 37*, p. 23; Ms Katie Biddlestone, SDA, *Proof Hansard*, 10 April 2017, p. 34; Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

54 Professor Lisa Heap, Lead Organiser, VTHC, *Proof Hansard*, 10 April 2017, p. 5.

55 W+FPR, *Submission 33*, p. 17; Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 50.

requirement, established in the 2015 decision by the Commission, for a binary male comparator in equal remuneration matters.⁵⁶

4.60 Research published by the FWC in 2013 noted:

One of the strengths of the concept of gender-based undervaluation is that it goes to the heart of addressing the institutional and cultural determinants of why women have generally been under-remunerated for their work.⁵⁷

4.61 Amongst other things, the Queensland ERP provides a methodology for the Commission's approach to gender-based undervaluation, identifying factors relevant to the assessment that include:

- whether the work has been characterised as 'female';
- whether the skills of female workers have been undervalued;
- whether there has been undervaluation due to women being over-represented in lower-paid areas of an industry or occupation (occupational segregation or segmentation);
- whether features of the industry or occupation (for example, occupational segregation, overrepresentation of women in part-time or casual work, low rates of unionisation and a lack of ability for workers to bargain with their employer) have influenced the value of the work; and
- whether sufficient weight has been placed on the typical work, skills and responsibilities exercised by women, working conditions and other relevant work features.⁵⁸

4.62 Research published by Fair Work Australia in 2011 noted that the Queensland ERP:

...specifically states that it is not necessary to establish that female workers have been discriminated against to establish undervaluation of work... Nor does the principle require comparisons of any particular industry or occupation with any other ... although it allows comparisons to be used for guidance in ascertaining appropriate remuneration...⁵⁹

4.63 A number of witnesses also submitted that pay equity claims should not have to choose between being treated as either an equal remuneration matter or a work value matter. It was argued that the Commission should allow for a dual track approach. The Victorian Trades Hall Council (VTHC) stated:

Under (Queensland's) legislation you can run an equal remuneration matter and a work value matter at the same time, because the idea that there is a scientific approach where we can factor in one amount of pay differentials

56 W+FPR, *Submission 33*, p. 20.

57 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 110.

58 Fair Work Australia, *Review of equal remuneration principles*, Research Report 5/2011, pp. 34– 5.

59 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 164.

associated with gender related issues and another amount associated with something else is ludicrous...

...whereas under the Fair Work Act, in contrast, you are completely separated: you have to choose whether you take an equal remuneration matter or a work value type matter....our system has been very bad at handling equal remuneration matters, because it has been in a work value headspace where it has valued men's work and articulated that particularly in comparing everything to the metal trade standard and the skills associated with that.⁶⁰

4.64 The VTHC also noted that, in adopting the Queensland model, there would need to be a designated area established within the Commission with the appropriate expertise in evaluating women's skills in order to establish the equal remuneration principles.⁶¹

4.65 Several submissions and witnesses proposed other specific reforms to the Fair Work Act in order to address the undervaluation of women's work, including:

- amending Section 3 to make 'equal remuneration' for men and women employees for work of equal or comparable value' an explicit object of the Act and a positive duty when making or varying an award;
- requiring the Fair Work Commission to conduct a review of modern awards explicitly for the purpose of remedying any demonstrated gender-based undervaluation; and
- amending section 302 to recognise gender-based undervaluation of work in line with the 2015 Equal Remuneration Case, making it easier for parties to apply for orders to amend modern awards and enterprise agreements.⁶²

60 Professor Lisa Heap, Lead Organiser, VTHC, *Proof Hansard*, 10 April 2017, p. 5.

61 *Proof Hansard*, 10 April 2017, p. 5.

62 ASU, *Submission 20*, pp. 41–43; NFAW, *Submission 6*, [p.5]; AMWU, *Submission 37*, p. 23; Ms Katie Biddlestone, National Women's Officer, SDA, *Proof Hansard*, 10 April 2017, p. 34; Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 12.

