

Chapter 5

Approaches to addressing gender segregation and equal remuneration in comparable jurisdictions

Introduction

5.1 This chapter provides an overview of approaches to addressing gender segregation and equal remuneration in comparable international jurisdictions.

5.2 Submissions did not contain a great deal of evidence on this aspect of the terms of reference, and so this information draws on other research, including a major Australian report commissioned by the Fair Work Commission.

Gender stereotypes and career choices

Europe

5.3 The Nordic countries have well-established programs for desegregation, though the Australian Federation of Employers and Industries (AFEI) noted that, while Nordic countries occupy the top four positions overall in terms of opportunities for women, 43 per cent of all employed women still work in education and health and social activities.¹

Finland

5.4 Labour shortages in Finland's feminised occupations, for example, have motivated schools to shift away from 'technical' subjects.² It was reported that:

...the twin objectives (are) motivating children and young people to make choices atypical of their sex, and of training teachers and educational counsellors to advance gender equality via education.³

Austria

5.5 In Austria, the Ministry of Social Affairs sponsors 'Boys' Days' in which boys between the ages of 14 and 18 spend a day participating in work in schools and hospitals. The event aims to encourage boys to enter into social and educational professions, as only three in ten workers in this sector are men.⁴

1 Australian Federation of Employers and Industries, *Submission 27*, p. 2.

2 Francesca Bettio and Alina Veraschagina, *Gender Segregation in the Labour Market: Root Causes, Implications and Policy Responses in the EU*, European Commission, 2009, <http://ec.europa.eu/social/BlobServlet?docId=4028> (accessed 2 March 2017), p. 57.

3 Bettio and Veraschagina, *Gender Segregation in the Labour Market*, p. 56.

4 Council of Europe, 2015, cited in National Foundation for Australian Women (NFAW), *Submission 6*, [p. 15].

United Kingdom

5.6 A UK initiative, Inspiring the Future, has introduced a campaign called *Redraw the Balance* to change attitudes of young children through an interactive process, based on the knowledge that gender stereotypes are defined between 5 and 7 years of age.⁵

5.7 Since 2001, the Men in Childcare Scotland Group has successfully trained 1,200 men and increased men's employment in early childhood care and education by offering a one-year funded training course exclusively to men.⁶

New Zealand

5.8 Recent initiatives include investigating and addressing barriers for women within male-dominated industries, such as *Women in Trades* networks in Auckland, Wellington and Christchurch which are run by tradeswomen for tradeswomen to build support for women working in trades.⁷

United States

5.9 Australia's Reserve Bank Assistant Governor, Luci Ellis, noted that in the United States the evidence of raw bias in academic science is no longer present in most STEM fields, with male and female academics publishing the same number of papers on average.⁸

Women's employment

5.10 Various European and OECD countries are making legislative and regulatory responses to the issue of women's work. These are varied in execution while sharing an overarching objective of gender equity.

5.11 Women in Sweden are more likely than their Australian counterparts to work full-time and have uninterrupted careers. OECD figures from 2013 revealed that about 80 per cent of Swedish mothers work.

5.12 Sweden introduced paid parental leave (PPL) in 1974 and now 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.⁹

5 *Redraw the balance* (video), Inspiring the future, <http://www.inspiringthefuture.org/redraw-the-balance/>, 11 August 2016 (accessed 9 March 2017).

6 NFAW, *Submission 6*, [p. 15].

7 Ministry for Women, 'Occupational segregation', <http://women.govt.nz/work-skills/paid-and-unpaid-work/occupational-segregation> (accessed 14 March 2017).

8 SJ Ceci, DK Ginther, S Kahn and WM Williams, 'Women in Academic Science: A Changing Landscape', *Psychological Science in the Public Interest*, 2014, vol. 15, no. 3, pp 75–131.

9 EA Johansson, *The effect of own and spousal parental leave on earnings*, IFAU working paper, 2010(4), Institute for Labour Market Policy Evaluation, Swedish Ministry of Employment, Sweden, cited in United Voice, *Submission 19*, p. 17.

5.13 In 2014, Swedish fathers took 25 per cent of the total parental leave and research suggests this has had a positive impact on their partners' earnings. Additionally, according to Swedish sources, these three months 'give men a stronger bond with their child, make them more likely to do their share of housework, and mean they have a better understanding of what childcare involves'.¹⁰

5.14 The OECD reported in 2016 that Norway offers 10 weeks' father-specific paternity leave at 100 per cent of gross earnings, similar to Sweden.¹¹

5.15 Finland offers three weeks of fathers-only leave, to be taken at the same time as the mother. The remaining six weeks are unable to be taken while the mother is on parental leave.¹²

5.16 In 2012, Canada had six per cent more women in the full-time workforce than in Australia. The Grattan Institute analysed Canadian reforms introduced from about 1997 to lower effective tax rates and improve accessibility and quality of child care, showing that they led to a rapid increase in the number of women in paid work:

It is most plausible that household choices are influenced by the cumulative effects on net take-home income of income tax, foregone welfare benefits, child care costs, and child care benefits. Take-home income, net of these effects, amounts to the financial incentive to work relative to staying at home.¹³

5.17 Since 2007, Germany has moved away from a leave policy that supports mothers wishing to remain home for three years after the birth of a child. Parental leave has now been reduced to 12 months, increasing to 14 months if both parents take at least two months of PPL. The proportion of fathers taking leave increased from three per cent in 2006 to 28 per cent in 2012, with 83 per cent of these using their individual two-month entitlement.¹⁴

Equal remuneration in international jurisdictions

5.18 The 2013 report *Equal Remuneration under the Fair Work Act 2009*, prepared for the Pay Equity Unit of the Fair Work Commission, undertook research focusing on

10 See Richard Orange, 'Paid parental leave: How Swedish mums and dads do it', *Sydney Morning Herald*, 20 March 2014, <http://www.smh.com.au/national/paid-parental-leave-how-swedish-mums-and-dads-do-it-20140319-352gj.html> (accessed 9 March 2017).

11 OECD, Family Database, Social Policy Division, Directorate of Employment, Labour and Social Affairs, p. 6, cited in United Voice, *Submission 19*, p. 17.

12 Bettio and Veraschchagina, *Gender Segregation in the Labour Market*, p. 57.

13 The Grattan Institute, *Game-Changers – Economic reform priorities for Australia 2013*, p. 45.

14 NFAW, *Submission 6*, [p. 17].

countries which have legislative approaches and practices which have 'elements comparable to the situation in Australia'.¹⁵

5.19 The report defined the optimal role of government in achieving pay equity:

The government's responsibility is to ensure that legislation properly reflects and supports the requirements for pay equity and to also have a national policy of proactive promotion of pay equity including goals and targets.

It should also ensure that there are government institutional supports such as equal pay commissions, labour commissions or human rights commissions which have staff dedicated to assist the process of proactive measures to attain pay equity, as well as to assist in the process of resolving pay inequity claims.

The government also has a special responsibility by reason of itself being an employer and it should ensure that there are proper mechanisms for addressing pay inequity within the public sector.¹⁶

5.20 It also detailed the responsibilities for employers and workers' organisations:

There are also responsibilities for employers' and workers' organisations which are crucial to achieving pay equity at the national level.

This is usually achieved through social dialogue, not only between the social partners (for example for the purposes of collective bargaining), but also with the government through tripartite dialogue.

Further, employers are under an obligation at law to ensure equal remuneration for work of equal value and are also prohibited from discriminating against women in relation to conditions of work which would include remuneration.¹⁷

5.21 The reports' analysis of the EU noted that:

Equal pay for equal work has been one of the most basic principles of the European Union (EU) since its foundation.

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.¹⁸

15 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, pp 20–21 and 28, <https://www.fwc.gov.au/documents/documents/payequity/er-report-6-dec-2013.pdf> (accessed 11 May 2017). See especially Appendix C of the report, 'Equal remuneration in other jurisdictions'. The countries chosen were: Belgium; Canada; Ireland; Finland; the Netherlands; New Zealand; Norway; Sweden; the UK; and the US.

16 Paragraph breaks inserted by report editors for clarity. Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 29.

17 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 29.

18 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 176.

5.22 The 2013 report 'Tackling the Gender Pay Gap in the European Union' noted that:

Finding a solution to the gender pay gap is mainly in the hands of national governments and the social partners...Public opinion in the EU Member States also has an important role to play. National governments and the social partners have adopted a wide range of measures to close the gender pay gap.¹⁹

5.23 The report goes on to describe the initiatives that have worked in EU member nations. These include strategies on gender equality and equal pay, reports and audits at company level, specific legislation, the role of collective agreements, making pay systems transparent and job classification methods that are free of gender bias.

Belgium

5.24 The relevant legislation is 'aimed at combating discrimination between women and men'. It deals with 'equal pay' but it does not explicitly mention 'work of the same value'.²⁰ However, relevant Belgian case law:

...reveals that the principle of application to work of the same value is not disputed. It applies to all work situations in the private sector, and in those sections of the public sector which fall within the federal jurisdiction.²¹

Republic of Ireland

5.25 The Equality Authority is responsible for research and the promotion of equality:

Complaints can be made directly to the Equality Tribunal. However, a claim on the basis of gender, which includes a claim for equal pay, can be dealt with by either the Circuit Court or the Labour Court without first claiming to the Equality Tribunal. The Tribunal can order arrears of pay up to a maximum of three years.²²

Finland

5.26 Equal pay for men and women is enshrined in the Constitution of Finland:

...equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment.²³

5.27 However, the labour market in Finland is highly segregated and the gender pay gap is above the OECD average. Finnish studies have shown that:

19 Layton et al, *Equal remuneration under the Fair Work Act 2009*, pp 182–183.

20 As required by Article 157(1) of the *Treaty on the Functioning of the European Union*.

21 Layton et al, *Equal remuneration under the Fair Work Act 2009*, pp 183–184.

22 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 189.

23 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 190.

...gender segregation of the labour market is a major cause of pay differentials, but there is disagreement about whether pay differentials are discriminatory.²⁴

Norway

5.28 The relevant legislation 'promotes gender equality and prohibits gender discrimination'²⁵ and states that:

...an employer has a positive obligation to promote gender equality. As such, employers in the public and private sectors must make active, targeted and systematic efforts to promote gender equality in their enterprises...²⁶

Sweden

5.29 In Sweden:

An individual employee (or various employees) must be identified as potentially discriminated against, which requires a relevant comparator of the opposite sex. Such a comparator must be found at the same employer, otherwise there is no comparable situation.²⁷

5.30 Sweden also has a 'quick and easy' method for determining the demands and degree of difficulty associated with particular jobs, which helps to:

...ascertain whether differentials in men's and women's wages are due to sex discrimination'.²⁸

United Kingdom

5.31 As discussed in Chapter 2, public reporting of individual employer gender pay gaps (GPGs) has been introduced in the UK, requiring employers to include an explanation of why a pay gap exists and their plans to overcome this.²⁹

5.32 Additionally, the relevant equal remuneration legislation:

...gives women and men the right to equal pay for equal work...[including] that work is 'equal' if it is 'like work', 'work rated as equivalent' or 'work of equal value'.³⁰

5.33 The Equality and Human Rights Commission also has powers to:

...carry out enquiries, for example into the extent and causes of pay gaps in particular sectors, and also to conduct investigations of an employer it suspects of having unlawfully discriminatory pay practices.

24 Layton et al, *Equal remuneration under the Fair Work Act 2009*, pp 191–192.

25 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 201.

26 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 202.

27 Layton et al, *Equal remuneration under the Fair Work Act 2009*, pp. 205–206.

28 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 207.

29 W+FPR, *Submission 33*, p. 23.

30 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 206.

Canada

5.34 Like Australia, Canada has 'a combination of human rights legislation which prohibits discrimination on the grounds of gender, as well as labour laws which deal with the issue of gender pay equity'.

5.35 An independent agency has statutory responsibility for the relevant legislation that provides for:

...the gender composition of an occupational group is a relevant consideration in determining the complaint of a member of that group.³¹

5.36 However, some criticisms have been made of the limited effectiveness (of the process) in achieving the stated objective.³²

New Zealand

5.37 The relevant legislation provides for:

...criteria to be applied in determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration of male and female employees for any work or class of work payable under any instrument. The provision distinguishes between work which is not 'exclusively or predominantly performed by female employees' and that which is.³³

5.38 In addition:

...there is increasing proactive encouragement through the Department of Labour and the Ministry of Women to promote self-assessment models in the private sector, which are not mandatory.³⁴

5.39 As noted in Chapter 4, in 2016 following concerted community pressure arising from an equal remuneration case for women residential aged care workers, the New Zealand government entered into tri-partite discussions with New Zealand unions and business that has resulted in an agreed set of pay equity principles and mechanism for progressing equal remuneration matters in female-dominated occupations or industries across the New Zealand economy.³⁵

5.40 Ms Helen Gibbons, Assistant National Secretary, United Voice, commented on the New Zealand care workers case:

...the New Zealand government has done something about [it] and has negotiated an outcome that will actually see some movement in the equal pay gap for care workers in New Zealand. This [issue] is certainly

31 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 211.

32 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 212.

33 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 220.

34 Layton et al, *Equal remuneration under the Fair Work Act 2009*, p. 222.

35 Joint Working Group on Pay Equity Principles—Recommendations, 7 June 2016, <http://www.ssc.govt.nz/pay-equity-working-group> (accessed 31 March 2017). See also VTHC, *Submission 13*, p. 17.

something that exists elsewhere in the world; we are not an orphan in this problem. However, the gender pay gap here is really significant and certainly our gender segregation is enormous and not improving.³⁶

36 Ms Helen Gibbons, Assistant National Secretary, United Voice, *Proof Hansard*, 26 April 2017, p. 15.