

Submission to the Fair Work Act Review

Introduction

Economic Security for Women (eS4W) is one of six National Women's Alliances funded by the Australian Government through the Office for Women, Department of Housing, Families, Community Services and Indigenous Affairs. eS4W believes that economic wellbeing and financial security are essential ingredients to achieving equity for all women. The ability to achieve positive economic outcomes impacts on all aspects of women's lives including their family, education, health, employment, retirement, housing and personal safety and can enable women to make informed choices.

Executive Summary

In 2008 the then Minister for Employment and Workplace Relations, the Hon Julia Gillard MP indicated the policy intention of the Government's Fair Work legislation was to create a new fair and balanced national workplace relations system.

We believe that the policy intention was not to create this new workplace system just for men and we need to ensure the workplace relations system is not blind to the impact of gender on women's participation in the workforce.

This post implementation review of the Fair Work Act 2009 (FWA) provides an opportunity to explore this situation.

Gender disaggregated data

It is the intention of this submission to make sure that the Minister, the Hon Bill Shorten MP and the all male Review Panel are aware that the evidence provided in the Background Paper does not use the data disaggregated by gender that is available and that this makes it difficult for any firm assumptions to be made about the extent to which the Fair Work Act is operating as intended, including the differential impact of the Act on women (See attachment 1).

We also argue that the operation of the Act could be improved consistent with the objects of the legislation by overcoming the lack of current data necessary to make many assumptions about or to undertake future monitoring of any such impacts on Women.

Finally, in some cases the data used is not sufficiently detailed e.g. unemployment rate.

Work and family balance

Of particular concern is the lack of data on which to base any assumptions about female employees responsible for the care of young children using the right to request provisions under the National Employment Standards to negotiate flexible working arrangements or request additional unpaid parental leave in order to care for children.

Australian Bureau of Statistics (ABS) indicators are not available for the two years after the commencement of the Act, to determine whether enterprise agreements have helped employees to better balance work and family responsibilities.

ABS Gender Indicators for employees who used working arrangements to provide care to someone in the last week are available only for 2007. Then, only 16.4% of women and 13.2% of men did so. This is good baseline data. The Stressed for time indicator (ABS Gender Indicators) found more women than men always/often felt rushed or pressed for time (42.4% compared to 34.9%), although a higher proportion of men than women felt work and family responsibilities were rarely or never in balance (16.3% compared with 14.6%).

Equal remuneration

There continues to be a gender based pay equity gap. (See Attachment 2 for more details).

General protections

eS4W would like to see Section 351 of the FWA that proscribes discrimination 'because of the person's race, sex, etc. be moved from the Division headed 'Other protections' and placed in a Division dealing solely with discrimination. We are also concerned that the current situation regarding the provision of the Fair Work Information Statement by employers to employees is too loose in that they are encouraged to provide a copy 'as soon as practical'.

The implementation rate of workplaces providing facilities to enable lactating workers to express breast-milk or to breastfeed their child is appalling low. Only one state in Australia, Queensland has legislated that its public service workforce are entitled to lactation breaks and dedicated facilities in their workplaces to support breastfeeding.

Conclusions

- 1 For the Fair Work Act Review to consider and compare the attached data with the relevant data presented in the Background Paper to better understand any differential impacts on Australian women.
- 2 For the Australian Government to direct and resource Australian Bureau of Statistics and Department of Education, Employment and Workplace Relations (DEEWR) to regularly collect and publish timely data disaggregated by gender.

- 3 That the Provision of the Fair Work Information Statement containing details of the 10 minimum National standards of employment is attached to an employee's letter of employment and/or contract.
- 4 That legislation is introduced that entitles women in the workforce to lactation breaks and dedicated facilities in their workplaces to support breastfeeding.
- 5 We also suggest that the right for workplace flexibility be made at anytime rather than the current 12 month qualifying period in which employees can request it from their employer.

Attachment 1:

Lack of data disaggregated by gender in Background Paper Economic growth, productivity, economic prosperity and economic indicators.

Employment and participation

The Labour Force Statistics used in the Background paper are inadequate. Firstly, they fail to capture the difference in unemployment rates for men and women. More importantly, the labour force underutilisation rate demonstrates a larger gender gap. Secondly the participation rate is also different. Thirdly, men and women have different rates of full time, part time and casual employment. Most of this information below is from ABS Gender Indicator Series Jan 2012.

Underutilised Labour

Table 1: Labour Force Statistics (4125.0 ABS Gender Indicators, Australia, 2012)

Statistic	Period	Men	Women
Unemployment rate	2010-11	4.0%	4.4%
Underemployment rate	2010-11	4.2%	8.0%
Labour Force Underutilisation Rate	2010-11	8.2%	12.5%

Firstly, the unemployment rate does not reflect the full extent of labour underutilisation. Other measures include the underemployment rate and the labour force underutilisation rate.

Underemployed workers are defined as:

- persons employed part-time who want to work more hours and are available to do so, and
- persons employed full-time who worked part-time hours in the reference week for economic reasons.

The labour force underutilisation rate is the sum of the unemployed and underemployed, expressed as a proportion of the labour force.

The labour of women is more likely to be underutilised than men. This is the proportion of people whose aspirations for work are not being fully met.

In 2010-11, the underutilisation rates for mothers (whose youngest child was under 15 years) were nearly three times those of their male counterparts (14.5% for women with children under 6 years and 15.6% for those with children aged 6-14 years). Underemployment was the main contributor to the underutilisation of mothers (ABS Gender Indicators: Labour Force).

Labour force participation

The participation rate is also different when disaggregated along gender lines.

	Period	Men	Women
Labour Force participation (20-74 years)	2010-11	79.7%	65.3%

While the participation rate is higher for men than women, the rate for men has remained steady between 2001-02 and 2010-11, while it has increased 5 percentage points for women during this period. Much of the increase in the participation of women is associated with part-time work (see below).

Most of the increase in the participation rate has been in the older age groups. Since 2001-02 the labour force participation rate for women aged 65-74 years has more than doubled from 6 % to 13%.

The labour force participation rate for women tends to dip slightly during the peak childbearing years between the ages of 25 and 44 years. Delayed childbearing and an increased propensity for women to combine paid work and family has seen this dip become later and less pronounced than in the past.

The participation rate is lower for women with dependent children than for their male counterparts as they are most likely to be the ones to shift into the role of primary carer of children.

Employment conditions

Statistic	Period	Men	Women
Full time	2010-11	41.3%	37.2%
Part time	2010-11	13.5%	43.2%

In 2010-11, 43% of employed women aged 20-74 years worked part time compared with 14% of employed men in the same age group. The increased in participation of women in employment is strongly associated with an increase in part time work, however the proportion of women in part time work has not increased as much over the period 2001-02 to 2010-11 (from 42.4% to 43.2%) as it has for men (11.1% to 13.5%).

The increased availability of part time work has expanded opportunities to engage in both paid work and family responsibilities, to participate in education or to make the transition to retirement. However, part-time employment levels among fathers have been particularly low.

Casual employment

A higher proportion of employed women were also working without paid leave entitlements compared to employed men.

Statistic	Period	Men	Women
Proportion of people employed without paid leave entitlements (Casual)	Nov 2010	17.1%	23.5%

There has been an increase in forms of employment other than full time permanent ongoing wage or salary jobs, with regular hours and paid leave. While many casual employees value the flexibility of arrangements that enable them to engage in both paid work with family and/or other activities, others may find themselves in less than favourable employment arrangements.

This data is from the Forms of Employment Survey that collects information about the employment arrangement of employees. It excludes owner managers of incorporated enterprises.

Productivity

The measure for Trend Labour Productivity given in the Background Paper (p9) provided by DEEWR needs to be explored further. As currently presented it fails to recognise the major contributions that women make to national productivity. The measure presented by DEEWR uses ABS Australian National Accounts: National Income, Expenditure and Product, (Cat. No. 5206.0) in which the market sector consists of all employing industries **except** Public Administration and Safety; Education and Training; and Health Care and Social Assistance. However, in 2010, the largest proportion of the employed population aged 20-74 years (12%) worked in the Health Care and Social Assistance industry. This industry also employed the largest proportion of the female workforce (21%). Of those employed in this industry 79% were women. Of those people employed in Education and Training industry, 70 % were women. The total value of wages and salaries earned by paid care workers in 2009-10 totalled \$112.4 billion which was 8.8% of total Australian Gross Domestic Product (GDP).

The majority of paid care work is located in these industries and women make up the majority of workers in these industries. Caring work is labour intensive requiring face to face contact and person specific knowledge. Care is a relational activity and this prevents it from being subject to the usual economies of scale when supplied in a market (Adams 2010), that is it is difficult to increase productivity without reducing quality of care.

Enterprise agreements

Have enterprise agreements helped employees to better balance work and family responsibilities?

The report by DEEWR, "Trends in Federal Enterprise Bargaining" does not contain data disaggregated by gender. This makes it difficult to gauge to what extent women are covered by enterprise agreements and if they are improving the balance between work and family. However, the numbers of employees covered by enterprise agreements is increasing and there have been increases in coverage in both the Education and Training and Health and Community Services sectors, both of which employ significant numbers of women.

The most recent report on Agreement Making Under the Workplace Relations Act 1996 that includes the effects of bargaining on the employment (including wages and conditions of employment) of women only covers the period 2007-09, prior to the commencement of the Fair Work Act. These reports fulfilled the requirements of the Workplace Relations Act 1996 (WR Act) to review and report on developments in Australia every few years, in bargaining for the making of agreements.

As the provisions that require this report only relate to workplace agreements made under the WR Act, this report does not cover enterprise agreements made under the Fair Work Act 2009 (FW Act). Section 653 of the FW Act requires that the next report covering enterprise agreements is to be made on the three year period from 1 July 2009. This may not be available until 2013.

Attachment 2

Equal remuneration

Have FWA's powers in relation to equal remuneration helped to ensure equal remuneration between men and women workers for work of equal or comparable value?

In 2011 on average the median starting salary for recent female graduates, aged less than 25 years and in their first full-time employment, continued to be less than that for male graduates. However, female graduates had a higher median starting salary than males in seven fields (Bryant and Carroll 2011). ABS Gender Indicators on earnings are only available from 2006-2010, outside of the period of this review. However they also demonstrate this gender pay equity gap.

Statistic	Period	Mean	Median
Non-managerial adult hourly ordinary time cash earnings 21 years and over	May 2010		
Men		\$32.30	\$26.70
Women		\$28.70	\$24.70
Adult weekly total cash earnings 21 years and over	May 2010		
Men		\$1, 246.00	\$1,058.00
Women		\$863.20	\$ 774.00

Non-managerial adult hourly ordinary time cash earnings is a widely used measure of earnings as it is unaffected by fluctuations in the hours worked or overtime performed. On average, male employees work more hours and overtime hours per week than do female employees.

Compared to the mean, the difference between male and female median non-managerial adult hourly ordinary time cash earnings was lower.

- In May 2010, the median adult hourly ordinary time cash earnings for females was 93% (\$24.70) of the median adult hourly ordinary time cash earnings for males (\$26.70).
- The mean adult hourly ordinary time cash earnings for females was 89% of their male counterparts (\$28.70 and \$32.30 respectively).

For males and females, the fact that the median non-managerial adult hourly ordinary time cash earnings were lower than respective mean earnings indicates that a greater proportion of males and females receive earnings below the average earnings. The smaller male/ female gap in median earnings compared to mean earnings also suggest that a relatively greater proportion of men than women have earnings below the mean for their gender.

Across industries, earnings vary for both men and women. In May 2010, earnings were highest for those employed in the Mining industry; however women only represented 14% of this industry's workforce.

One reason often given for the persistence of the difference in male and female earnings in Australia is that work performed within female-dominated occupations is undervalued relative to the same work performed within male-dominated occupations.

References

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Bryant G & Carroll D 2011 Graduate Salaries 2010: A report on the salaries of new Australian graduates in their first full time employment. Graduate Careers Australia Ltd. Melbourne.