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A number of submissions address discrimination and pay equity issues in the Australian labour market. These submissions focus primarily on the following groups:

- women;
- employees with disability;
- Indigenous Australians;
- employees from culturally and linguistically diverse backgrounds;
- young workers; and
- single parents.

Submissions generally argue that vulnerable groups are overrepresented among low-paid employees:

'Low pay is generally found in jobs of low social status and/or performed by workers with low labour market standing and bargaining power. The types of workers who are more likely to rely on minimum wages include women, indigenous, migrant, young, non-unionised workers, and workers with a disability.'¹⁷⁶

'The incidence of low pay is relatively high among young people, women, low skilled workers in service industries, and in rural and regional areas. A majority of low paid employees (52%) are women, who are overrepresented among low paid employees. Most low paid employees fall within the bottom half (by disposable income) of households of workforce age.'¹⁷⁷

'Minimum award wages couple with the relatively high cost of living in the Northern Territory, especially within the remote regions, have been identified by the LHMU NT Branch as one of the key elements that contribute to supply deficiency in the Northern Territory. These two elements in particular negatively impact on Indigenous Territorians.'¹⁷⁸

'Research by the Melbourne Institute funded by the Commission examined the incidence of poverty and financial stress among low paid employees using a range of measures. This research found that when a 60% of median income poverty line was used, 15% of workers on wages around or below the Federal Minimum Wage lived in poor households, rising to 28% when the line was increased to 75% of median income. Low paid employees in poor households were more likely than other low paid employees to be younger, male, to have a disability or long term illness, to be engaged in manual occupations, and to live in single person or share households.'¹⁷⁹

'As a group lone parents constitute one of the most disadvantaged segments of the Australian labour market. While largely unheard and unseen from the perspective of mainstream services, lone parents have increasingly manifested themselves to The Smith Family among the 16,000 families with whom we work in our 95 communities nationwide.'¹⁸⁰

'The incidence of low pay is generally greater for young people and women, and for those with low educational qualifications.'¹⁸¹

¹⁷⁶ NSW Government, March 2009, p. 8, para. 16.

¹⁷⁷ ACOSS, March 2009, p. 5.

¹⁷⁸ LHMU NT Branch, *Fair Pay Submission 2009*, March 2009.

¹⁷⁹ ACOSS, March 2009, p. 6.

¹⁸⁰ The Smith Family, *A Submission by the Smith Family in response to the 2009 Australian Fair Pay Commission 'Minimum Wage Review'*, March 2009, p. 1.

¹⁸¹ WACOSS, March 2009, p. 2.

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Some submissions claim that pro rata wages for junior employees are discriminatory:

AYAC asserts that a wage system based on age rather than capacity is discriminatory and in breach of a number of International Human Rights Standards and Laws. In particular, AYAC would like to highlight to the Commission the following standards and laws:

- Article 23 of the Universal Declaration of Human Rights, declares that 'Everyone, without discrimination, has the right to equal pay for equal work.'
- Article 32 of the United Nations' Convention on the Rights of the Child (CROC), to which Australia is a signatory, protects young workers from economic exploitation and requires that States take legislative and administrative measures to ensure that this protection is implemented.
- The International Labour Organisation Minimum Age Recommendation, 1973 (No. 146) stipulates that special attention should be given to the provision of fair remuneration to young people, bearing in mind the principle of equal pay for equal work. (Part IV, paragraph 13(1)(a))¹⁸²

'It is YACVic's policy position that junior wages are discriminatory. YACVic understands that the Commission's focus in this review is on the level of the junior wage, rather than its inherent 'fairness' or in-principle 'rightness'. YACVic has a responsibility however, to highlight to the Commission our view that a system of wage rates based on age specifically are in breach of the Universal Declaration of Human Rights, to which Australia is a signatory. Article 23 of the Universal Declaration of Human Rights, declares that 'Everyone, without discrimination, has the right to equal pay for equal work.'¹⁸³

'We believe that it is not reasonable to subject Australia's youth to discrimination. Not only is our youth being discriminated against but also the older population as they are often passed over for the cheaper labour offered by junior employees.'¹⁸⁴

'While being a strong advocate for programs that are able to assist those without any experience to gain entry to the workforce, Melbourne Citymission also believes in the notion of 'equal pay for equal work'. Junior wages that are based solely on the basis of age do not take into consideration the diverse work, social, financial and familial experiences of young people.'¹⁸⁵

Several submissions address a wide variety of factors affecting vulnerable employees, including economic and social issues which are beyond the Commission's wage-setting parameters. These include:

- matters which are properly dealt with within the scope of state or federal anti-discrimination legislation or other statutory bodies;
- levels of education and skills attainment of vulnerable workers;
- Government funding for community services; and
- general financial considerations, such as access to credit in the face of an economic downturn.

¹⁸² AYAC, March 2009, p. 11.

¹⁸³ YACVic, March 2009, pp. 14–15.

¹⁸⁴ NSW Young Labor Action, 19 March 2009.

¹⁸⁵ Melbourne Citymission, *Submission to Australian Fair Pay Commission's 2009 Minimum Wage Review*, March 2009, p. 3.

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6.1. Pay equity

Several submissions discuss the issue of gender pay equity, focusing on the gap between male and female earnings:

'Earnings inequality between men and women, as measured by gender pay equity ratios, dramatically declined in the 1970s and continued to decline more slowly between 1981 and 2002, but has increased since 2004.'¹⁸⁶

'Australia's pay gap has persistently remained around 16% for over 20 years, and in WA the gap has actually widened in the same period to 27.4%.¹⁸⁷

'Because women comprise the majority (60.1 per cent) of workers who are dependent on minimum wages, upward adjustment of minimum wages will have an impact on male – female wage inequality.'¹⁸⁸

Several submissions also refer to recent research undertaken on behalf of the Commission into the role minimum wages play in relation to pay equity:

'...the recent AFPC-commissioned study on this subject found that minimum wage adjustments contributed significantly to the reductions in earnings inequality between men and women from 1995 to 2005.'¹⁸⁹

'While research suggests that pay inequity is generally less in low-paid industries as compared to the differences estimated for higher paying industries, it is important to note that *'much of the growth in women's employment has been in the four 'low pay' industries of principal interest to the Commission: retail, accommodation, property and health services.'* Further, research has demonstrated that *'female and male wages are more closely matched in sectors of the labour market where the AFPC has the greatest influence over how and where actual wages are set.'* This confirms that minimum wage setting plays a significant role in the reduction of the gender pay gap and suggests that the FMW is an important source of wage growth for many women.'¹⁹⁰

'The Commission's own requested research looking at gender pay differentials in low paid employment concludes that "minimum wages may have long-lasting effects on gender based pay equality in the Australian labour market" and that the data shows "minimum wage decisions play a dual role: increasing wage equity and encouraging labour force participation, particularly among low wage employees."¹⁹¹

¹⁸⁶ ACOSS, March 2009, p. 5.

¹⁸⁷ Unions WA, *Unions WA submission to Australian Fair Pay Commission 2009 Minimum Wage Review*, 20 March 2009, p. 4.

¹⁸⁸ ACTU, March 2009, p. 152, para. 14.3.

¹⁸⁹ ACOSS, March 2009, p. 5.

¹⁹⁰ Government of South Australia, March 2009, p. 26. The Government of South Australia cites J Healy, M Kidd and S Richardson, 'Gender pay differentials in the low-paid labour market' in Australian Fair Pay Commission, *2008 Minimum Wage Research Forum Proceedings, Volume 2*, Research Report No. 4b/08, report commissioned by AFPC, 2008, pp. 237–264.

¹⁹¹ Unions WA, March 2009, p. 3. Unions WA cites S Austen, T Jefferson, A Preston and R Seymour, *Gender Pay Differentials in Low-Paid Employment*, Research Report No. 3/09, Women in Social and Economic Research (WiSER), report commissioned by AFPC, 2008, p. 3.

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Some submissions highlighted the prevalence of women in Pay Scale reliant industries, in particular the community services sector:

'As the peak organisation in the non government community services sector, ACOSS has a special interest in employment issues in community services. The community sector's capacity to provide quality services depends on the availability of suitably skilled employees, many of whom rely on the Pay Scales for their wages. With approximately 12% of Pay Scale reliant employees working in health and community services, the industry ranks as the fourth largest employer of these workers...The vast majority of employees in the community services sector (82%) are women.'¹⁹²

'Research undertaken in 2008 by the WA Network of Alcohol and other Drug Agencies (WANADA), the WA Association of Mental Health (WAAMH), the Peak of Women's Health and the Women's Council for Domestic and Family Violence Services, for example, shows that 85% of employees in the drug and alcohol, domestic violence and women's health fields have post-school qualifications. Of these, only 4% earn more than the average weekly wage. This undervaluing of the sector is also a gender pay equity issue, since 81% of workers in this underpaid sector are female.'¹⁹³

6.2. Research on gender pay differentials

The National Institute of Labour Studies (NILS)¹⁹⁴ and Women in Social and Economic Research (WiSER)¹⁹⁵ undertook two separate research studies into gender pay differentials on behalf of the Commission, with a particular focus on those occupations and industries most affected by the Commission's Wage-Setting decisions.

While these reports differ in their data sources and methodologies, both confirm that gender pay differentials persist, even after controlling for a variety of employee characteristics.

The WiSER research finds, using data from the 2006 ABS Employee Earnings and Hours Survey, that women earn 90 per cent of the hourly ordinary-time earnings of men on average.¹⁹⁶ The NILS research distinguishes between different forms of employment, and shows that the gender gap in hourly ordinary-time earnings is 11 per cent for permanent and contract employees and 7.1 per cent for casual employees.¹⁹⁷

Both reports find that part of the difference in earnings between men and women can be explained by their different characteristics, such as differences in human capital (for example, education and labour market experience) and forms of employment. After accounting for such characteristics, Healy et al estimate the gender gap in hourly ordinary-time earnings at 11.7 per cent, while Austen et al estimate it at 8.5 per cent.¹⁹⁸

¹⁹² ACOSS, March 2009, p. 15.

¹⁹³ WACOSS, March 2009, p. 3.

¹⁹⁴ Healy et al, 2008, pp. 237–264.

¹⁹⁵ Austen et al, 2008.

¹⁹⁶ Austen et al, 2008, p. 19.

¹⁹⁷ Healy et al, 2008, p. 242.

¹⁹⁸ Healy et al, 2008, p. 261; and Austen et al, 2008, p. 37.

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The reports confirm that the pay gap between men and women is lowest for those employees most affected by the Commission's decisions. Healy et al report that, in 2006, there was little or no gender pay differential among employees paid only an award rate of pay. This research also finds that, for employees in industries with a relatively high reliance on Pay Scales, gender pay differentials are smaller in low-skilled occupations (more likely to be paid at award rates of pay) than in higher-skilled occupations.¹⁹⁹

Austen et al find low gender pay differentials between males and females in some industries and occupations in which low-paid workers are concentrated (for example, in the Accommodation and food services industry). However, they find considerable differences in the size and apparent determinants of gender pay differentials across industries and occupations.²⁰⁰

Both reports show that when industry controls are added to occupation controls, a larger proportion of the occupational gender pay gap is explained than with occupation controls only.²⁰¹

...even after controlling for the human capital that men and women bring to the labour market, industry structure remains a significant determinant of wages...This suggests that the industries in which women are employed tend to be lower paid.²⁰²

Finally, Austen et al estimate the effect of adjustments to the minimum wage between 1995–96 and 2005–06 on the gender pay differential. They find that, employing a relatively conservative assumption about the wage rises that would otherwise have applied²⁰³, the minimum wage adjustments over that period reduced the gender gap in hourly wages by approximately 1.2 percentage points.²⁰⁴

In summary, the reports find consistent evidence that the earnings of men and women are closer in value within those sectors of the labour market in which the Commission has the greatest influence on how wages are set. Nevertheless, both reports also conclude that a significant proportion of pay differentials between men and women in the industries and occupations in which low-paid employees are concentrated is not explained by their different characteristics.

¹⁹⁹ Healy et al, 2008, pp. 244–245.

²⁰⁰ Austen et al, 2008, pp. 39–44.

²⁰¹ Healy et al, 2008, pp. 239, 261; and Austen et al, 2008, p. 43.

²⁰² Healy et al, 2008, pp. 239–259.

²⁰³ The researchers assume that wage rises between 1995–96 and 2005–06 would have been limited to the amounts advocated by ACCI to the relevant wage inquiries. A more generous assumption (for example, that wages would have risen by as much as prices) would have delivered a different result.

²⁰⁴ Austen et al, 2008, p. 33.

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6.3. Anti-discrimination considerations

The Commission has taken account of the composition of the low-paid workforce in Australia and acknowledges that vulnerable groups are over-represented.

In making its decision, the Commission has taken into account the principles of federal anti-discrimination legislation embodied in the *Racial Discrimination Act 1975*; the *Sex Discrimination Act 1984*; the *Disability Discrimination Act 1992*; the *Age Discrimination Act 2004* and the principles embodied in the Family Responsibilities Convention, in particular those relating to:

- preventing discrimination against workers who have family responsibilities; and
- helping workers reconcile employment and family responsibilities.

The Commission has ensured that this decision does not contain any provisions that discriminate because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

The Commission is required under s.222 of the *Workplace Relations Act 1996* to apply the principle that men and women should receive equal remuneration for work of equal value. No submissions to the Commission's 2009 Minimum Wage Review raise a specific claim that a Pay Scale discriminates on the basis of gender.

The Commission's wage-setting powers are capable of affecting minimum wages only. It is beyond the scope of the Commission's wage-setting powers to consider equal remuneration beyond the level of minimum wages.