

Section 9 9. Discrimination

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

- female employees;
- employees with a disability;
- employees from culturally and linguistically diverse (CALD) backgrounds;
- Indigenous Australians;
- young workers; and
- working families.

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

'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 (52%) were women, who are overrepresented among low paid employees.'¹⁹⁴

'Low pay is generally found in jobs of low social status and/or performed by workers with low labour market standing and bargaining power. Minimum wage reliant workers, include women, indigenous, migrant, young, non-unionised workers, and workers with a disability.'¹⁹⁵

'...low paid workers are more likely to be from vulnerable groups (for instance young workers, those with little working experience, casual, part-time and female and from a non-English speaking background). In addition, working patterns of the low paid indicated that they were more likely to work non-standard or irregular hours and that the irregular pattern of work directly affects their financial position.'¹⁹⁶

'...while people with disability represent a significant proportion of Australia's working age population, they participate in the workforce at lower rates, they are less likely to be employed when they do attempt to participate, and they will earn less if they do get a job.'¹⁹⁷

'Only 43% of people with disabilities are employed compared with 72% of the population of workforce age.'¹⁹⁸

'...the AFPC should consider the broad relationships between low paid employment, the barriers to participation in the workforce and the consequences of these especially in relation to the CALD community, given that they are over represented in the low paid sector of the Australian labour force, and also that they have the lowest participation rates.'¹⁹⁹

¹⁹⁴ ACOSS, *Submission to the Fair Pay Commission on minimum wages*, March 2008, p. 4.

¹⁹⁵ NSW Government, *Submission to the Australian Fair Pay Commission on behalf of the New South Wales Government*, 18 March 2008, p. 6, para. 13.

¹⁹⁶ Victorian Government, *The Victorian Government's submission to the: Australian Fair Pay Commission*, 14 March 2008, p. 39.

¹⁹⁷ HREOC, *Submission of the Human Rights and Equal Opportunity Commission to the Australian Fair Pay Commission for the 2008 Minimum Wage Review*, March 2008, p. 6, para. 20.

¹⁹⁸ ACOSS, 2008, p. 10.

¹⁹⁹ FECCA, *Submission of the Federation of Ethnic Communities' Council of Australia (FECCA) to the 2008 Minimum Wage Review*, March 14, 2008, p. 7, para. 21.

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'Women are disproportionately represented amongst the ranks of minimum wage workers.'²⁰⁰

'As a group lone parents constitute one of the most disadvantaged segments of the Australian labour market.'²⁰¹

'...those employees more likely to be associated with 'occasionally low paid and not always in work' in the HILDA survey were females (63.8 per cent compared with their average of 55.7 per cent), those born in other countries (23.0 per cent, average 20.3 per cent), lone parents (9.9 per cent, average 7.7 per cent) and those with children aged 0-4 years (24.2 per cent, average 19.5 per cent)...Those employees more likely to be 'persistently low paid' were people aged 21-30 or aged 45 and over, females and lone parents.'²⁰²

Submissions highlight the disproportionate reliance of vulnerable groups on the Australian Fair Pay Commission's (Commission) general Wage-Setting Decisions:

'Given that migrant workers are among the groups of people over represented in the low paid work category, they are greatly disadvantaged by lower wages.'²⁰³

'Women are far more reliant on pay scales than males. Given the significant numbers of female workers reliant on minimum wage adjustments, any adjustment will have a disproportionate effect upon women as a group.'²⁰⁴

Submissions also highlight the reluctance of employers to engage people from vulnerable groups and urge the Commission to conduct further research and provide education to employers about the capabilities of vulnerable groups:

'...many employers are reluctant to engage people with disabilities, mature age workers or Indigenous people regardless of their actual level of productivity...Better education of employers about the actual capabilities of groups they are currently reluctant to employ - especially people with disabilities, mature age workers and indigenous people - could also make a difference, especially as growth in the supply of labour falls in the coming years due to population ageing.'²⁰⁵

'To avoid the continued exclusion of the CALD communities from participating fully in economic and development activities, FECCA calls for the AFPC to investigate further the presence of indirect discrimination and its relationship to the low participation rates of the CALD communities.'²⁰⁶

Several submissions address a wide variety of factors affecting vulnerable employees, including economic and social issues which lie beyond the Commission's remit, such as:

- the level of educational attainment and skills of vulnerable groups of employees;
- matters which are properly within the scope of state or federal anti-discrimination legislation or other statutory bodies to redress; and
- general financial considerations, such as superannuation.

²⁰⁰ ACTU, *Australian Council of Trade Unions Submission to the Australian Fair Pay Commission*, March 2008, p. 30.

²⁰¹ The Smith Family, *A Submission by The Smith Family into the 2008 Minimum Wage Review*, 29 February 2008, p. 2.

²⁰² Australian Government, *Submission to the Australian Fair Pay Commission Minimum Wage Review 2008*, 14 March 2008, pp. 22-23, paras. 3.14-3.15.

²⁰³ FECCA, 2008, p. 6, para. 16.

²⁰⁴ Queensland Government, *Queensland Government Submission, Australian Fair Pay Commission, 2008 Wage Review*, 14 March 2008, p. 2, para. 11.

²⁰⁵ ACOSS, 2008, pp. 7 and 37.

²⁰⁶ FECCA, 2008, p. 7, para. 24.

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9.1. Pay equity

Submissions raise the issue of gender pay equity, focusing on the gap between male and female earnings.

'In 2006, women earned 84% of the average weekly earnings of male employees, compared with 87% in 2004. International research suggests that adequate minimum wages are a key factor in reducing the gender pay gap, since most women are usually located near the bottom of the wage distribution.'²⁰⁷

'...as at August 2007 the female to male ratios were 83.7 per cent for full-time Average Weekly Ordinary Time Earnings and 80.5 per cent for full-time Average Weekly Earnings.'²⁰⁸

'Australian women who work full-time still earn an average of 17% less than men who work full-time. According to figures from the Australian Bureau of Statistics' most recent *Average Weekly Earnings Survey*, in November 2007 women working full-time earned an average of about 84% of average full-time male earnings, or \$991 compared to \$1176.'²⁰⁹

'In May 2006 the average weekly total cash earnings for males was \$1020.30 and \$677.80 for female employees. A staggering \$342.50 per week or \$17,810 per year difference. Females earn nearly 35 per cent less than males. Females are more likely to be employed on a casual and part-time basis. Full-time female workers earn on average 10 per cent or in excess of \$100 per week less than male workers.'²¹⁰

'Women are concentrated in low-paid, low-skilled sectors of the labour market, often under part-time and casual working arrangements. Women are also disproportionately represented among minimum wage earners and those on awards, which make women's pay and conditions in employment more likely to be affected by Work Choices.'²¹¹

Several submissions highlight recent increases in the gap between male and female earnings.

'Earning 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.'²¹²

'The gender pay ratio in Australia widened across all industries by 2.1 per cent between May 2004 and May 2006 from 87.1 per cent to 85.0 per cent based on ordinary time average weekly earnings. If overtime is accounted for, the gender pay ratio across all industries in Australia increased by 1.9 per cent between May 2004 and May 2006 from 82 per cent to 80.1 per cent.'²¹³

A number of submissions argue that the Commission should more explicitly refer to pay equity when making its wage-setting decisions.

²⁰⁷ ACROSS, 2008, p. 18. ACROSS cite F Blau, 'Understanding international differences in the gender wage gap', *Journal of Labor Economics*, vol. 21, no. 1, 2003.

²⁰⁸ ACTU, 2008, p. 141, para. 13.4.

²⁰⁹ NSW Government, 2008, p. 31, para. 102.

²¹⁰ ACTU, 2008, p. 30, para. 3.6.

²¹¹ Women and Work Research Group, Faculty of Business & Economics, University of Sydney, 2008 Submission, *Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*, A report to the Office of Industrial Relations, June 2007, p. 8.

²¹² ACROSS, 2008, p. 4. ACROSS cite URCOT, *Pay equity – how to address the gender pay gap*, Industrial Relations Victoria; International Labor Organisation, 2005.

²¹³ Victorian Government, 2008, p. 56.

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'...it is incumbent upon the AFPC to explicitly give consideration to pay equity both in the determination of the FMW and other rates within its control!'²¹⁴

'...the needs of women working in low pay jobs (should) be explicitly considered in the deliberations of the Australian Fair Pay Commission.'²¹⁵

'The AFPC should place pay equity considerations at the forefront of deliberations.'²¹⁶

'...it is important for the AFPC to consider the principle of pay equity when setting wage rates, and take account of the impact of minimum wage increases on low paid women.'²¹⁷

9.2. Recent data on gender pay differentials

The then Commonwealth Conciliation and Arbitration Commission began implementing the principle of equal pay for equal work in its award decisions in 1969. Generally, Australian women still earn less than Australian men regardless of how rates of pay are measured at aggregate level. For example:

- in November 2007, the female to male earnings ratios were 84.3 per cent for full-time average weekly ordinary time earnings and 81.2 per cent for full-time average weekly earnings; and
- in May 2006, adult women in full-time non-managerial positions earned 88.4 per cent of male ordinary-time average weekly earnings and this gender pay gap had not narrowed over the previous ten years (Table 9.1).

Table 9.1: Average weekly earnings of adult full-time employees, by award reliance, managerial status and gender, 1996 and 2006

	Men		Women		Gender pay ratio	
	1996	2006	1996	2006	1996	2006
Pay set by award only		\$731.50		\$705.30		96.4%
Non-managerial employees						
Ordinary-time earnings	\$660.50	\$1035.90	\$591.00	\$915.30	89.5%	88.4%
Total weekly cash earnings	\$729.70	\$1116.50	\$605.70	\$933.60	83.0%	83.6%
Managerial employees						
Ordinary-time earnings	\$976.00	\$1522.40	\$728.00	\$1233.50	74.6%	81.0%
Total weekly cash earnings	\$979.90	\$1523.30	\$729.20	\$1233.50	74.4%	81.0%

Sources: ABS, Employee Earnings and Hours, Catalogue Number 6306.0; customised ABS data on managerial status.

Note: Due to tendency of managerial employees not to be paid overtime, the difference between the ordinary time earnings of managers and their total weekly earnings tends to be negligible and may be zero.

Since the standard Federal Minimum Wage and rates of pay in Australian Pay and Classification Scales (Pay Scales) are identical for men and women, differences in the average rates of pay of men and women in low paid employment, who are Pay Scale reliant, should be relatively small. The data presented in Table 9.1 indicate that this was the case for those employed under awards in May 2006.

²¹⁴ WiSER, Curtin Business School, Curtin University of Technology, *Submission to the Australian Fair Pay Commission*, March 2008, p. 22.

²¹⁵ Women and Work Research Group, 2007, p. 7.

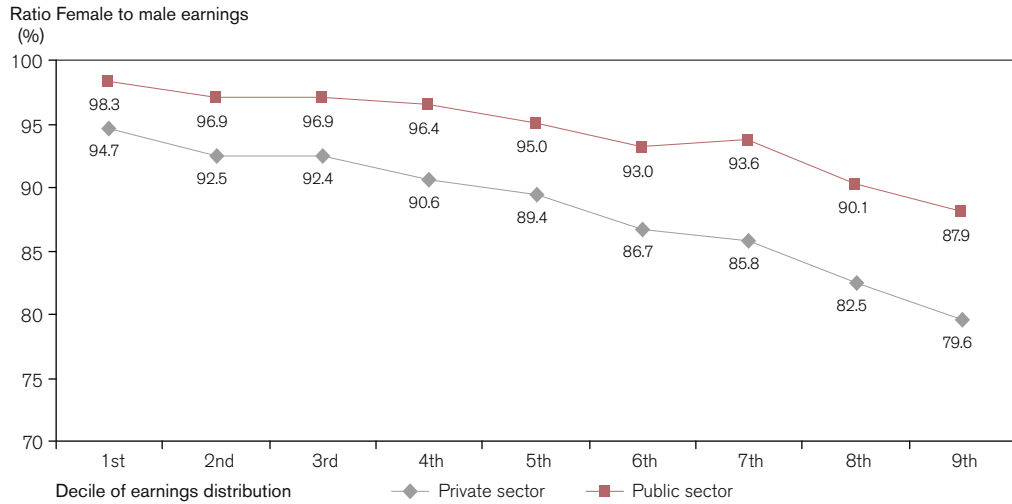
²¹⁶ ACTU, 2008, p. 140, para. 13.1.

²¹⁷ Western Australian Government, *Submission of the WA Government to the Australian Fair Pay Commission 2008 General Wage Review*, undated, p. 13.

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Figure 9.1 shows the analysis to the ordinary time earnings of full-time adult non-managerial employees and how the female to male earnings ratio varies across the earnings distribution and by employment sector.

Figure 9.1: Ratio of female to male ordinary-time earnings, by decile and employment sector, full-time adult non-managerial employees, May 2006



Source: ABS, *Employee Earnings and Hours*, Catalogue No. 6306.0, Customised data, May 2006

While these data show there is less of a gender pay gap among the lowest-paid Australians, the Commission believes that further research into gender pay differentials is warranted. This research, to be completed in the latter half of 2008, will focus particularly on gender pay differentials among people in low-paid employment and will seek to determine:

- trends in gender pay differentials over time; and
- variations in gender pay differentials across industries and occupations.

9.3. Anti-discrimination considerations

The Commission is required by 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.

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

The Commission will consider submissions which raise a specific instance where Pay Scales discriminate on the basis of gender. No submissions to the Commission's 2008 Minimum Wage Review raise a specific circumstance where a Pay Scale has included discriminatory elements.

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The Commission has applied the principle that men and women should receive equal remuneration for work of equal value in exercising its wage-setting powers.

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

In making its general Wage-Setting Decision 2008, the Commission had regard to the requirements of relevant federal anti-discrimination legislation including the *Racial Discrimination Act 1975*; the *Sex Discrimination Act 1984*; the *Disability Discrimination Act 1992*; the *Age Discrimination Act 2004* and the ratified Family Responsibilities Convention.

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.