



**HUMAN RIGHTS AND EQUAL OPPORTUNITY
COMMISSION**

SUBMISSION TO THE

AUSTRALIAN FAIR PAY COMMISSION

**FOR CONSIDERATION IN DETERMINING THE
FIRST NATIONAL WAGE DECISION**

July 2006

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INTRODUCTION

1. The Human Rights and Equal Opportunity Commission (HREOC) is Australia's national human rights institution.¹
2. HREOC makes this submission to the Australian Fair Pay Commission ("AFPC") for consideration in determining the first national wage decision under the *Workplace Relations Act 1996* (Cth) ("WRA").
3. In general terms, HREOC welcomes the introduction of a statutory Federal Minimum Wage (FMW). HREOC is hopeful that the FMW will, for the first time, provide a wage safety net to those employees currently working in award-free areas and will decrease under-payment by making it easier for employers to comply with minimum pay rates across the board.
4. However, HREOC notes its general concern about the potential effects of minimum wage determinations on substantive workplace equality for low-waged workers. Evidence clearly demonstrates a number of groups of workers are overrepresented among the low paid – these are women, Indigenous employees, young people, people with disability, migrant workers, those employed in small business and non-unionised employees.² These workers will be further disadvantaged should increases in the FMW lag significantly behind wage growth.
5. This submission focuses on two particular areas relevant to the AFPC's present task:
 - Part A examines issues regarding workplace equality for people with disability including issues concerning the setting of a Special Federal Minimum Wage; and
 - Part B focuses on pay equity between men and women and emphasises its importance in ensuring substantive gender equality.

HREOC's EXPERTISE REGARDING WORKPLACE EQUALITY

6. Over the last 21 years, HREOC has taken a leading role in matters concerning workplace equality and economic opportunity for groups that have been disadvantaged in Australian society.
7. In 2005, HREOC conducted a National Inquiry into Employment and Disability ("the WORKability Inquiry"). The final report, *WORKability II: Solutions – People with Disability in the Open Workplace*, was tabled in Federal Parliament on 14 February

¹ HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) ("HREOC Act"). Sections 11 and 31 of the HREOC Act set out HREOC's functions relating to human rights and equal opportunity in employment respectively. HREOC also has functions under the Commonwealth *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*.

² Peter Brosnan *Can Australia Afford Low Pay?* University of Sydney 2005.

2006.³ During the WORKability Inquiry, the barriers and needs of people with disability and their actual or potential employers were the focus of much discussion.⁴

8. HREOC's work in the area of gender equality has included intervention in a number of test cases and national wage cases in the Australian Industrial Relations Commission ("AIRC"), representation on the AIRC central working party for the pilot award review process in 1995 and subsequent intervention in proceedings to adopt the award review principles, and interventions in key pay equity cases at the federal and State level.⁵
9. As the federal complaint handling body in respect of complaints of unlawful discrimination under the Commonwealth *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*, HREOC has also developed significant expertise in relation to complaints of discrimination in the workplace.

OVERVIEW OF HREOC'S SUBMISSION REGARDING PEOPLE WITH DISABILITY

10. HREOC does not support the creation of a lower separate Special Federal Minimum Wage ("Special FMW") for people with disability. Past training, qualifications, skills and experience should determine wages, as occurs for people without disability in the Australian workforce.
11. Lower minimum wages for people with disability will further disadvantage a group of Australians that are already among the lowest paid in the country.
12. If there are productivity related issues concerning the employment of a person with disability, then a system already exists (the Supported Wage System) to determine a productivity-related wage which comes with eligibility criteria, guidelines, an assessment methodology and independent assessors.
13. HREOC believes that attempts to increase the employment and participation rate of people with disability through the setting of lower minimum wages fails to acknowledge the additional costs of participation experienced by many employees with disability (for example, transport, personal care, increased technical and medical expenses etc).
14. In summary, HREOC recommends that:
 - The term "employee with a disability" should be used with caution by the AFPC. When used in discussions concerning the FMW and Special FMW it should be made clear that it applies only to a limited class of persons with disability.

³ A copy of the report is available at http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm. See in particular pp 66-68 and Chapters 6 and 7. The Inquiry also published an interim report – *WORKability I: Barriers*. A copy of this report is also available at http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm.

⁴ A comprehensive overview of HREOC's work in the field of disability rights can be found via HREOC's website: http://www.humanrights.gov.au/disability_rights/index.html.

⁵ A comprehensive overview of HREOC's work in the field of sex discrimination and gender equality can be found via HREOC's website: http://www.humanrights.gov.au/sex_discrimination/index.html.

- The term “disability wages” should not be used.
- The Special FMW for employees with disability should be set at the same amount as the FMW in order to guarantee that employees with disability are not discriminated against on the basis of their disability. People with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications.
- The AFPC should research the economic costs for people with different disabilities to enter and remain in the open workplace. This research should be overseen by a reference group which includes peak disability groups and employers. HREOC would welcome the opportunity to be involved in this process.

OVERVIEW OF HREOC’S SUBMISSION REGARDING WOMEN AND PAY EQUITY

15. HREOC argues that the pay equity and anti-discrimination considerations of which the AFPC is required to take account are central to the effective implementation of its wage setting parameters.
16. HREOC encourages the AFPC to focus on addressing the pay equity gap between men and women in Australia, and the potential for direct and indirect sex discrimination in wage setting. This part of the submission focuses principally on the issue of equal remuneration for work of equal value and highlights those areas in which the AFPC should take particular action to ensure the gap between men’s and women’s earnings in Australia does not grow.
17. In summary, HREOC recommends that the AFPC:
 - Establish a specialist unit to undertake on-going research and monitoring in relation to the pay gap between men and women in Australia and the role of the FMW.
 - Undertake a series of investigations focused on undervaluation and comparative worth in female dominated occupations and industries particularly focusing on recognising ‘soft’ skills involved in caring work, knowledge work and communication, employee qualifications and on-the-job training as well as changing job demands and increased technology.
 - Consult broadly and thoroughly within the community before wage determinations are made – processes implemented by the AFPC should ensure a rigorous testing of the available evidence.
 - Ensure that the FMW is set at a level relative to average weekly earnings for all employees and relative to men’s earnings, so that it is likely to reduce rather than increase gender pay inequity.

- Set minimum wage rates on a regular, preferably annual, basis to ensure that the value of the FMW does not deteriorate over time.
- Ensure that Australian Pay and Classification Scales contain detailed descriptors covering the full range of skills and employee attributes which can provide clear, skill based career paths for employees, particularly in female dominated industries and occupations.
- Ensure that the FMW is available to all groups of women employees including young women, women with disability and women working in more marginal areas of the labour market such as outworkers.
- Oversee rigorous enforcement of the FMW for all groups of employees including those mentioned above.
- Ensure that the value of loadings paid to casual workers, particularly those in female dominated industries and occupations, are not reduced, either in the initial wage determination or over time.

PART A: PEOPLE WITH DISABILITY

18. This part examines issues regarding workplace equality for people with disability including issues concerning the setting of a Special Federal Minimum Wage.
19. HREOC also provides in this part information on the following issues, as requested by the AFPC:
 - the capacity for people with disability to enter and remain in employment
 - employment and competitiveness of people with disability
 - providing a safety net for people with disability
 - providing minimum wages for people with disability to ensure these employees are competitive in the labour market.
20. HREOC further provides information as requested by Professor Ian Harper, Chair, and Jennifer Taylor, Director, of the AFPC at the conclusion of a meeting with Graeme Innes, Commissioner Responsible for Disability Discrimination. Specifically, information was requested about:
 - the impact of participation on employees with disability and their employers
 - incentives and disincentives for people with disability to participate in employment
 - incentives and disincentives for employers to hire people with disability.
21. HREOC also identifies gaps in knowledge and suggests priorities for research for the AFPC.

1 What does the WRA say about people with disability and the minimum wage?

22. For people with disability, the WRA provides for:⁶
 - a. A Federal Minimum Wage for people with disability who work more than 15 hours per week
 - b. A Special FMW for people who qualify for the Disability Support Pension (DSP) and work less than 15 hours per week or participate in the Supported Wage System
 - c. A Special FMW for people who are permanently blind, regardless of the number of hours of work per week or level of productivity
 - d. Continuation of the Supported Wage System for people with significant disability which impacts on their productivity in the workplace.
23. It would appear from sections 182 and 197 of the WRA that if a Special FMW is not set, there may be no guaranteed minimum wage for employees who qualify for the DSP, including all employees who are permanently blind.⁷

⁶ Sections 182, 184, 194, 197.

⁷ Unless the AFPC has determined an APCS under section 220 of the WRA.

24. Section 182 of the WRA guarantees basic rates of pay. In particular, Section 182 (3) guarantees a standard FMW and states:

If:

- (a) the employment of an employee is not covered by an APCS⁸; and
- (b) the employee is not a junior employee, an employee with a disability, or an employee to whom a training arrangement applies;

the employee must be paid a basic periodic rate of pay for each of the employee's guaranteed hours (pro-rated for part hours) that is at least equal to the standard FMW (the *guaranteed basic periodic rate of pay*).

25. A Section 182 (4) guarantees a special FMW and states:

If:

- (a) the employment of an employee is not covered by an APCS; and
- (b) the employee is a junior employee, an employee with a disability, or an employee to whom a training arrangement applies; and
- (c) there is a special FMW for the employee;

the employee must be paid a basic periodic rate of pay for each of the employee's guaranteed hours (pro-rated for part hours) that is at least equal to that special FMW (the *guaranteed basic periodic rate of pay*).

26. Section 197 states that the AFPC may determine a special FMW for “all employees with a disability, or a class of employees with a disability”.

27. It is important to note that the Act defines “an employee with a disability” narrowly⁹ to be a person who qualifies for the DSP. This includes:

- a. People with disability who are unable to work at least 15 hours per week on wages that are at or above the relevant minimum wage
- b. People with disability who are participating in the Supported Wage System
- c. People who are permanently blind.

28. It can be seen from the criteria that eligibility for the DSP is not necessarily reflective of a worker’s productivity. In particular, people who are unable to work more than 15 hours per week may be otherwise fully productive during those hours. Similarly, people who are permanently blind may also be fully productive, and able to work full-time.

29. Section 184 allows for the continued operation of the Supported Wage System. The Supported Wage System allows employers to pay employees at lower than award wages, according to their productivity. The Supported Wage System is discussed in more detail in Section 1.2.

⁸ Australian Pay and Classification Scale.

⁹ Section 178 of the WRA provides the following definition: *employee with a disability* means an employee who is qualified for a disability support pension as set out in section 94 or 95 of the *Social Security Act 1991*, or who would be so qualified but for paragraph 94(1)(e) or 95(1)(c) of that Act.

1.1 Problems with terminology

30. The WRA, when discussing guarantees of basic rates of pay, provides for an exemption if an employee is “an employee with a disability”. This term gives the impression that it applies to ALL employees with disability. However, it does not. The WRA defines “an employee with a disability” narrowly (see Paragraph 27 above), to apply only to people who qualify for the DSP. Only a small number of people with disability qualify for a DSP. The terminology in this regard is misleading.
31. The use of the terminology contained in the WRA in the context of discussing or determining a Special FMW that is set will, in HREOC’s view, entrench negative employer attitudes and reinforce myths and stereotypes about people with disability, including that:
 - Separate and different treatment is needed for people with disability
 - People with disability are to be equated with junior or trainee employees
 - People with disability who are as productive as people without disability deserve a lower rate of pay irrespective of experience, skills and qualifications.
32. Further, introduction and use of the term “disability wages” by DEWR on the WorkChoices website further reinforces the confusion and negative stereotyping.¹⁰
33. **HREOC recommends** that:
 - The term “employee with a disability” should be used with caution by the AFPC. When used in discussions concerning the FMW and Special FMW it should be made clear that it applies only to a limited class of persons with disability.
 - The term “disability wages” should not be used.

1.2 Is there a need for a Special FMW for people with disability?

34. HREOC submits that there is no need for a Special FMW for people with disability. The Supported Wage System is the appropriate way to deal with wages and productivity issues related to disability.
35. Where a person’s disability does not impact upon their productivity in the workplace, there is no justification for any departure from the standard FMW. People with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications like all other workers.
36. However, working within the regime of the Act, HREOC believes that the appropriate course for the AFPC is to set a Special FMW equal to the FMW. This approach is necessary to protect workers with disabilities from discrimination who may otherwise not be covered by the FMW.

¹⁰ See for example Fact Sheet 16 “WorkChoices and disability wages” on the WorkChoices website available at https://www.workchoices.gov.au/NR/rdonlyres/B32C8647-4AFF-49CC-91B5-1A5B5E7B52F9/0/special_groups_disability_wage.pdf

37. Currently, when there is an issue of productivity related to an employee's disability in the open workplace, the matter is dealt with by the Supported Wage System. HREOC's WORKability Inquiry received a number of submissions which indicated broad support for that system.
38. The Supported Wage System:
- is a national system with uniform eligibility criteria, written guidelines, a standardised wage assessment methodology and utilises independent assessors
 - uses the relevant minimum wage to determine the appropriate wage rate which is reflective of productivity. For example, if a person involved in Supported Wage System is assessed as having a productivity level of 70 per cent compared to co-workers performing the same duties, the worker and the employer can agree to ongoing employment at a pay rate of 70 per cent of the normal rate
 - was developed in conjunction with the disability sector, the Australian Chamber of Commerce and Industry, and the Australian Council of Trade Unions. The Supported Wage System gives effect to the principles of the DDA and the protections it provides to people with significant disability who are unable to reach a level of productivity which would attract a full wage.¹¹
39. Only a very small percentage of workers with disability in the Australian workforce require the Supported Wage System to access work. People with intellectual disability are the main users of the system.
40. In the period 2003-2004, 3 425 people with disability required the Supported Wage System to work.¹² Since July 1994, nearly 10,000 individuals have gained employment and been paid productivity-based wages using the Supported Wage System.
41. The most recent Budget included an additional \$2.9 million over 4 years for the Supported Wage System which will allow an estimated 1,400 additional workers with disability to access independent wage assessments. The additional funding will enhance and improve this scheme.
42. HREOC asks:
- As the Supported Wage System exists and comes with its own regime, why is there a need to have a Special FMW?
 - Who will monitor the application of the Special FMW?
 - Who will the Special FMW apply to? If it is people with intellectual disability, they, along with other people with disability with productivity issues are already covered by the Supported Wage System. If it is other people who, by nature of their disability are unable to work 15 hours or more per week, then why should they have a lower FMW?

¹¹ For further information see http://www.facs.gov.au/disability/ood/sws/chap_four.htm

¹² FaCS Annual Report 2003-2004. Available at http://www.facs.gov.au/annualreport/2004/volume02/part01/outcome03/output_group03.2.htm

1.3 A Special FMW may particularly disadvantage people who are permanently blind

43. The setting of a Special FMW for “all employees with a disability” that is lower than the FMW may have a particularly negative impact upon people who are permanently blind. The term “employee with a disability” captures all people who are permanently blind, irrespective of capacity or productivity. This is because all people who are permanently blind automatically qualify for the DSP.¹³
44. HREOC believes that there is no justification for setting a separate minimum wage which will apply to all people who are permanently blind, unrelated to their productivity which, may be 100%, or their work capacity, which may be full-time.
45. In the event that a Special FMW is set, care must be taken to ensure that it does not apply in a blanket fashion so as to include all people who are permanently blind.

1.4 A Special FMW and the Disability Discrimination Act

46. HREOC believes that that the setting of a Special FMW that is lower than the FMW is contrary to the principles embodied in the *Disability Discrimination Act 1992* (the DDA).¹⁴
47. Setting a Special FMW that is lower than the FMW will entrench discrimination into the wages system. People with disability should be remunerated on the basis of their skills, education, training and experience, like other workers: not by reference to broad categories of “disability”.
48. The purpose of the DDA is to ensure equality of opportunity and treatment and eliminate, *as far as possible*, discrimination against persons on the ground of disability in the area of work, amongst other situations: see s 3 of the DDA.
49. The AFPC is required, by section 22 of the WRA, to take account of these principles in determining a Special FMW.
50. As argued above, HREOC submits that the appropriate way to take into account disability that impacts upon productivity is through the Supported Wage System.

1.5 Will a separate Special FMW encourage employers to hire more people with disability?

51. HREOC believes that the setting of a Special FMW will not address the barriers currently identified by employers (see Section 3.1).

¹³ Note, however, that such eligibility is limited by other criteria unrelated to disability such as Australian permanent residency: see s 95 of the Social Security Act.

¹⁴ Section 11 of the HREOC Act.

52. Joe Graffam suggests that wage subsidies have little impact on employer decisions to hire a person with disability:

Research on financial incentives to the employer has found that subsidies have little impact on an employer's decision to employ a person with a disability. Factors such as ability to perform the job and a low risk of absenteeism are more powerful determinants for employers than financial incentives.¹⁵

53. Furthermore, the setting of a Special FMW may introduce an additional element of complexity into personnel and wages systems. Even if the wage is lower, given the number of hours worked (less than 15 hours per week), additional complexity may be enough to deter a potential employer.
54. HREOC believes that a Special FMW will not act as an incentive to employers to hire more people with disability.

1.6 What should the AFPC do?

55. HREOC believes the AFPC should set the Special FMW at the same amount as the FMW in order to guarantee that employees with disability are not discriminated against on the basis of their disability.
56. People with disability are entitled to the same minimum wage as people without disability and to receive a wage commensurate with their skills, experience, training and qualifications like all other workers.
57. HREOC is concerned that according to the wording of sections 182 and 197 of the Act, if a Special FMW is not set, there will be no guaranteed minimum wage for employees who qualify for the DSP, including employees who are permanently blind.
58. **HREOC recommends** that the Special FMW for employees with disability should be set at the same amount as the FMW in order to guarantee that employees with disability are not discriminated against on the basis of their disability.

2 People with disability in employment

59. HREOC provides the following information as requested by the AFPC on broader issues concerning employment and workplace issues for people with disability and their employers.

2.1 Who are the potential employees with disability?

¹⁵ J Graffam, K Smith, A Shinkfield, U Polzin, '(2002). Employer benefits and costs of employing a person with a disability. *Journal of Vocational Rehabilitation* 17, 251, p257.

60. Almost 20 % of Australians have a disability (3.96 million).¹⁶ Approximately 0.25% (over 50, 000) Australians are permanently blind.¹⁷
61. People with disability represent 16.6% of Australia's working age population.¹⁸
62. There is always uncertainty about who makes up the group called 'people with disability'. In particular, it seems that many assume that this group primarily comprises people with severe mobility, sensory or intellectual disabilities. From the employer perspective, there can be the corresponding assumption that all 'people with disability' require substantial workplace adjustments and have high ongoing needs.
63. It is important to understand that, more likely than not, those workplace adjustments will be relatively minor.
64. Further, it is important to clarify that workplace adjustments are not just about creating the appropriate conditions for new employees who have a disability. Rather, those adjustments are more likely to be required in order to retain existing employees. This is because the vast majority of people with disability of working age (15-64 years old) are likely to acquire a disability at a time when they already have a job.
65. Australian Bureau of Statistics figures indicate that 40 per cent of people with disability of working age attribute their disability to an accident, injury, work related or life event. Twenty per cent of people with disability say that their disability was present at birth or due to illness, disease or hereditary factors. Twenty one per cent attribute their disability to 'just came on or due to old age'. Three per cent say their disability is due to allergy, smoking or side-effects of medication or medical procedures. And 16 per cent attribute their disability to other causes.¹⁹
66. Fourteen percent of people with disability aged between 15 and 64 identified the main cause of their disability to be from working conditions, work or overwork.

2.2 What are the participation and unemployment rates of people with disability?

67. 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.²⁰

¹⁶ Australian Bureau of Statistics *Disability, Ageing and Carers Australia* (catalogue Number 4430.0) 2003.

¹⁷ Eye Research Australia (2004). Clear Insight: The economic impact and cost of vision loss in Australia. Available at http://www.visioncrc.org/pdf/latest_news/Clear%20Insight_full%20report.pdf

¹⁸ Australian Bureau of Statistics *Disability, Ageing and Carers Australia* (catalogue Number 4430.0) 2003.

¹⁹ Australian Bureau of Statistics *Disability, Ageing and Carers Australia* (catalogue Number 4430.0, 2003) (Information mainly taken from Table 8 *Persons aged 15-64, Living in households, Disability status by labour status* and Table 12 *Persons with a disability, cause of main health condition by main health condition*) Some of the figures in Table 12 were adjusted by the ABS to reflect people with disability aged 15-64 so that comparisons between tables 8 and 12 could be made)

²⁰ See Appendix A: Issues paper 1. Employment and Disability – the Statistics

68. Since 1993, the labour force participation rate of people with disability has fallen, while the participation rate for people without disability has risen.
69. In 2003, 53.2 per cent of people with disability participated in the labour force as compared to 80.6 per cent of those without a disability. For people with a psychiatric disability the workplace participation rate is even lower.²¹
70. Among people in the labour force - that is, working or looking for work - the unemployment rate for people with disability in 2003 was 8.65 compared to 5% for people without disability.
71. For people with vision impairment, employment rates are lower and unemployment rates higher compared to the total population. A recent report by Eye Research Australia estimated that for people aged 40 to 64 years with vision impairment the employment rate was 34.5% and the unemployment rate 6.4%, compared to 68.8% and 3.8% respectively for all 40-64 year olds in Australia.²²
72. Women with disability are less likely to be in the workforce than men with disability.²³ Further, for men with disability, the decrease in full time employment accounts for most of the decrease in labour force participation. For women, disability has negative affects on both full time and part-time employment.²⁴
73. According to the latest Australian Government Disability Services Census 45,717 people with disability accessed open employment services in the 2003-2004 financial year.²⁵ Forty percent of these clients were working or had been employed in this period:
- Of the 18,378 employed consumers of open services, 32.6% were employed on a permanent part-time basis, 25.9% on a permanent full-time basis, and 24.6% on a permanent casual basis. The remaining 16.9% employed open service consumers worked as either temporary employees or seasonal workers.²⁶
74. HREOC notes that that there are many people with disability who do not need to utilise employment services to enter or remain in open employment.
75. In examining the role of non-traditional work²⁷ as a stepping stone to stable employment in the Australian labour market and whether the Welfare-to-Work legislation is likely to promote durable employment, the Productivity Commission found that:²⁸

²¹ See Appendix A: Issues paper 1. Employment and Disability – the Statistics

²² Eye Research Australia (2004). Clear Insight: The economic impact and cost of vision loss in Australia. Available at http://www.visioncrc.org/pdf/latest_news/Clear%20Insight_full%20report.pdf

²³ See Appendix A: Issues paper 1. Employment and Disability – the Statistics

²⁴ Wilkins R (2004) The effects of disability on labour force status in Australia. *The Australian Economic Review*, 37 (4), 359-382.

²⁵

[http://www.facs.gov.au/internet/facsinternet.nsf/via/disability_census_reports/\\$file/disability_services_census_2004.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/disability_census_reports/$file/disability_services_census_2004.pdf)

²⁶ p 31, Table 11A

²⁷ Non-traditional work is defined as any form of paid work which differs from the notional benchmark of continuing employment in some-one else's business.

²⁸ Productivity Commission (2006). *The role of non-traditional work in the Australian labour market*. Available at <http://www.pc.gov.au/research/crp/nontraditionalwork/index.html>

... people with disabilities who are in casual employment are 30 per cent more likely than the average person to exit the labour force within one year (table 6.1).

76. In particular, the Productivity Commission found that having a disability increased the risk of churning between casual employment and not working.²⁹
77. Australia has the seventh lowest employment rate for people with disability in the Organisation for Economic Cooperation and Development (OECD). In 2003, nearly two thirds of the OECD countries measured had better employment rates than Australia for people with disability.³⁰

2.3 What type of work are people with disability engaged in?

78. A recent analysis of people with disability by the Australian Institute of Health and Welfare found that people with disability who are employed work in a similar array of industries and occupations as people without disability:

They were as likely to be ‘managers and administrators’ or professionals (8.4% and 18.4%) as others (8.1% and 19.2%) but slightly more likely to be ‘intermediate production and transport workers’ or labourers (10.6% and 10.9%) than others (7.7% and 7.9%) (ABS 2004a:27). They were more likely to be employed in government (including administration and defence), education, and health and community services (a total of 25.2%) than others (21.8%).³¹

2.4 How much do people with disability earn when they are employed?

79. When employed, people with disability earn lower wages, on average, than workers without disability. Having a disability reduced the average gross weekly wages of females by \$110 (24 per cent) and males by \$105 (17 per cent) in 1998, compared with people without disabilities.³²
80. The overall levels of income earned by people with disability are also lower than those without disability. In 2003, the median gross personal income per week of people of working age with disability was \$255, compared to \$501 for those without disability.³³
81. Recent OECD research found that Australia has the lowest average personal income for people with disability, at 44 per cent of the income of people without disability.³⁴
82. Income varies according to the type of disability. For example, the income of people with sensory and mobility disabilities is higher than that of people with psychiatric disabilities.³⁵

²⁹ Productivity Commission (2006). *The role of non-traditional work in the Australian labour market*. Chapter 6. Available at <http://www.pc.gov.au/research/crp/nontraditionalwork/index.html>

³⁰ OECD, *Employment Outlook: Towards more and better jobs*, 2003, p141.

³¹ Australian Institute of Health and Welfare (2006) *Disability and Disability Services*. AIHW cat. no. DIS43. Canberra: AIHW, page 54. Available at: <http://www.aihw.gov.au/publications/dis/ddsa/ddsa.pdf>

³² See Appendix A: Issues paper 1. Employment and Disability – the Statistics

³³ See Appendix A: Issues paper 1. Employment and Disability – the Statistics

³⁴ OECD, *Transforming Disability into Ability, Policies to Promote Work and Income Security for Disabled People*, 2003, p29.

83. According to the latest Australian Government Disability Services Census, paid employment was the main source of income for only 18.6% of total users of employment services.³⁶ Interestingly, the total number of people who identified paid employment as their main source of income actually declined over the period 2002-2004 while the total number using disability services rose from 64,639 to 68,873.
84. Additionally, only 14% of people with disability who utilised government-funded employment services to enter or remain in open employment during 2003-2004 earned more than \$500 a week; the current minimum wage is \$484.50 per week.
85. Specifically, for the 18,421 people with disability in the open workplace who utilised government-funded employment services between 2003-2004:
- 16% were earning less than \$100 per week
 - 23% were earning between \$101 and \$200
 - 19% were earning between \$201 and \$300
 - 13% were earning between \$301 and \$400
 - 15% were earning between \$401 and \$500
 - 14% were earning above \$500.³⁷
86. The Australian Government Disability Services Census 2004 indicates that 34% of people with disability in the open workplace were working 15 hours or less a week. This group of employees with disability are a potential subgroup of the people that may be affected by a Special FMW. In this group:
- 35.5% were earning less than \$100 per week
 - 48% were earning between \$101 and \$200
 - 12% were earning between \$201 and \$300
 - 2% were earning between \$301 and \$400
 - 2% were earning between \$401 and \$500
 - 0.5% were earning above \$500.
87. HREOC notes that despite working 15 hours or less a week, there is group of people with disability who utilise government-funded employment services that earn more than \$500 per week. Not only is this above the minimum weekly wage, this would translate to a minimum rate of at least \$33 per hour. Additionally, at least 60% of this group were earning more than the current minimum hourly rate of \$12.75 per hour.³⁸
88. In a recent examination of Welfare-to-Work reforms and equality of opportunity in Australia, Fred Argy said:

³⁵ See Appendix A: Issues paper 1. Employment and Disability – the Statistics

³⁶ Department of Family and Community Services (2005). Australian Government Disability Services Census 2004. Page 28. Available at [http://www.facs.gov.au/internet/facsinternet.nsf/via/disability_census_reports/\\$file/disability_services_census_2004.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/disability_census_reports/$file/disability_services_census_2004.pdf)

³⁷ Table 12A

³⁸ Table 12A

The Government has said that the minimum wage will not fall in nominal terms but it can and will decline *relative to median earnings* So *over time*, differentials in pay and employment conditions will widen and the ranks of the working poor will be swelled.³⁹

89. HREOC believes this data indicates that:

- People with disability earn lower wages than people without disability
- The vast majority of people with disability in the open workforce do not earn the current weekly minimum wage
- Many people with disability who are unable to work more than fifteen hours a week are very experienced employees with much to contribute to the Australian workforce
- Inability of people with disability to work more than fifteen hours is not necessarily related to junior or trainee status or lower rate of productivity
- Setting of a lower minimum wage that is related to disability status alone, and not to qualifications or experience, will be discriminatory.
- Setting of a lower minimum wage that is related to disability status alone, and not qualifications or experience, will result in even lower earnings.

2.5 What are the barriers to people with disability entering and remaining in the open workplace?

90. While most people with disability who can work, want to work,⁴⁰ many have concerns about the costs and risks of entering the open workplace.
91. Many submissions to the WORKability Inquiry suggest the biggest fear for people with disability is the financial costs associated with participation.⁴¹
92. Other risks include disclosure of disability and the risk of failure or repeated rejection which may have a significant impact on self-confidence and motivation.⁴²
93. An academic at the University of Newcastle, Jack Frisch, describes the costs as follows:

The four most critical factors which interact with the cost of workforce participation are the income tax scales, the Disability Support Pension taper rate, the rate at which subsidy is withdrawn from the provision of equipment and the additional cost of negotiating a reliable

³⁹ Argy F (2006). *Equality of opportunity in Australia: Myth and reality*. The Australia Institute. Discussion Paper 85, April 2006 at page 22. Available at:

http://www.tai.org.au/WhatsNew_Files/WhatsNew/DP85%20Sum.pdf

⁴⁰ See Chapter 3 *WORKability I: Barriers*. See also Argy F (2006). *Equality of opportunity in Australia: Myth and reality*. The Australia Institute. Discussion Paper 85, April 2006. Available at:

http://www.tai.org.au/WhatsNew_Files/WhatsNew/DP85%20Sum.pdf

⁴¹ See Section 3.2 *WORKability I: Barriers*.

⁴² For further information, see Chapter 3 “Information needs, costs and risks for people with disability” in *WORKability I: Barriers*.

and continuous journey to and at work (including the additional cost of transport and the additional cost of personal care).⁴³

2.6 Will people with disability have to pay to work?

94. HREOC does not know the answer to this question, nor does the Government. HREOC believes the AFPC should conduct research in this area to determine the answer to this important question.
95. People with disability face significant costs in negotiating their daily lives, which are not faced by people without disabilities. These are often described as the non-discretionary costs of disability and include items such as transport, equipment and personal assistance.
96. For people with disability considering entering or re-entering the workforce there may be a number of financial considerations to take into account including:
 - additional transport costs, especially for people with physical access needs;
 - additional equipment costs for people needing aids and adaptations;
 - additional personal care needs;
 - the impact of increased income on concessions and entitlements; and
 - the effective marginal tax rate on earnings.⁴⁴
97. The interaction of all these factors can be very complicated in determining whether a person, or groups of people with specific disabilities, will in fact be able to afford to work.
98. HREOC notes that people assessed as working less than 15 hours per week will be entitled to the DSP and its associated concessions. People assessed as working 15 hours or more, will be entitled to the Newstart Allowance and some concessions for a limited period of time once they move into employment.
99. Many of the reforms announced in the 2006 Budget also seek to address some of these cost-related issues. For example, HREOC notes the recently announced increases in funding and eligibility for the Workplace Modifications Scheme.
100. However, no research has been conducted to determine the exact costs for people with disability nor has the government given any guarantees to ensure that people with disability will not be financially worse off if they enter the workforce.
101. At a recent Senate Employment, Workplace Relations and Education Legislation Committee (Budget Estimates for 2006-2007) public hearing, the following discussion

⁴³ Jack Frisch, 'The Workforce Participation of People with a Disability: Infrastructure, Governance and the Cost of Employment', 2004 National Conference on Unemployment, University of Newcastle, December 2004, pp15-16.

⁴⁴ For more detailed information see Chapter 3 of the *WORKability I: Barriers*.

took place. The discussion indicates that there is no guarantee that people with disability will not be worse off from working:

Senator WONG—To clarify: as a result of the Prime Minister’s statement, there is a guarantee that parents will not go backwards from working; correct?

Mr Sandison—Correct.

Senator WONG—There is no such guarantee for a person with a disability?

Mr Sandison—No, that has been the evidence.

Senator WONG—So isn’t what you are saying that a person with a disability could end up paying to work and having less money from work than from welfare?

Mr Carters—That guarantee has not been given by the government but, because of the circumstances under which people are expected to take the job, we would not see that happening in reality.⁴⁵

.....

Senator WONG—But I am asking you: have you modelled how many people with a disability might be worse off working?

Mr Sandison—No, we have not.

Senator WONG—You have not looked at that?

Mr Sandison—No, we have set the policy rules in place according to the government decisions.

Senator Abetz—I am not sure that we accept people are going backwards.

Senator WONG—I am sorry; I thought the department indicated quite clearly that there was no guarantee that people would not, when it comes to people with a disability.

Senator Abetz—No.⁴⁶

102. At the same public hearing, the following statement was made about the absence of research and data with regard to costs for people with disability:

Senator WONG— ... Mr Sandison, the consultations with people with a disability, about which you were giving evidence, on things like personal care and other issues: have you modelled or looked at estimates of costs associated with that and the number of people that might experience such costs?

Mr Sandison—No, not specific costs, Senator.⁴⁷

103. There has been much anecdotal discussion about the costs of participation for people with different disabilities and the inadequacy of income support, concessions and subsidies to cover those costs.

104. HREOC believes that research into the economic cost of participation for people with different disabilities to enter and remain in the open workplace would be invaluable to the AFPC in setting the minimum wage.

105. A submission from the City of Melbourne Disability Advisory Committee to the Employment and Disability Inquiry suggested that:

The economic benefits of equity of employment opportunity for people with disabilities MUST balance any research undertaken that will outline probable costs.⁴⁸

⁴⁵ Senate Employment, Workplace Relations, and Education Legislation Committee, Monday, 29 May 2006, page EWRE 17.

⁴⁶ page EWRE 19

⁴⁷ page EWRE 18

⁴⁸ Submission 160. City of Melbourne Disability Advisory Committee. Submission to National Inquiry in to Employment and Disability http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm

106. **HREOC recommends** that the Australian Fair Pay Commission research the economic costs for people with different disabilities to enter and remain in the open workplace. This research should be overseen by a reference group which includes peak disability groups and employers. HREOC would welcome the opportunity to be involved in this process.

2.7 What will act as an incentive to encourage more people with disability to participate in employment?

107. HREOC believes that the following initiatives will encourage people with disability to enter the workplace:

- A guarantee that people with disability will not be worse off financially by entering the workforce
- Increased support in the workplace to improve retention and eliminate “churning” between jobs, casual employment and not working
- Stigma reduction campaigns to decrease discrimination in the workplace, improve workplace relations and increase the rate of career progression for people with disability.

3 Employers

3.1 What are the disincentives for employers in hiring people with disability?

108. Wage costs were not identified as a major barrier for employers in the National Inquiry into Employment and Disability last year.

109. Rather, fears of other costs related to employment were identified as one of the main barriers, although they are often not as large as one might think. These included costs associated with workplace modifications and insurance.⁴⁹ The submissions also suggested promotion of the existence of those schemes.

110. As noted above, recent improvements and increased funding to the Workplace Modifications Scheme will address many of the employer concerns identified in the WORKability Inquiry.

111. The other main barrier is the holding of negative attitudes and beliefs in myths and stereotypes of people with disability.

112. Overall, barriers for employers were summarised as follows in the interim report.

113. At least part of the reluctance to treat people with disability as a valuable addition to the labour pool lies in an intangible ‘fear factor’. Much of this fear stems from an absence of

⁴⁹ For further information see Chapter 2 “Information needs, cost and risks for employers” in *WORKability 1: Barriers*.

clear information about the real costs and risks associated with having employees with disability.

114. The submissions also note employer concerns about risks involved in hiring people with disability. It appears that some employers may be apprehensive about the possible impact of an employee with disability on the morale of other staff and customers. There seems to be an assumption that there will be a negative experience when in fact the research suggests the opposite.

115. The low numbers of submissions from employers also suggests that there should be greater efforts to engage employers in the discussion about employment of people with disability.

3.2 What are the incentives for employers to hire people with disability?

116. A general review of the written submissions and information gathered in the consultations raised these themes in particular:

- Employers need help to remove the fear factor and see the business benefits of hiring people with disability.
- Employers need to have information that makes it easy to hire and retain people with disability
- Employers need to know that it is not going to cost too much to hire and retain people with disability
- Employers need to know that it is not too risky to hire and retain people with disability
- Small business may have additional needs when hiring people with disability
- Public sector employers need to show leadership in hiring people with disability.

117. The starting point is a discussion about the benefits of hiring people with disability.⁵⁰ These discussions should emphasise that, like any other group of people, the skill set of people with disability covers the full spectrum.⁵¹ Additionally, that considering people with disability potential employees is that it adds to the pool of people who may be suited to a particular job.⁵² This is especially important given the current concern about a shortage of skilled labour in Australia.

118. It would also be helpful if more information about the following matters relating to the financial impact of hiring people with disability was made available to employers:

⁵⁰ For further information, please see section 2.3 of *WORKability I: Barriers*.

⁵¹ Submission 36, ACTCOSS. Submission to National Inquiry in to Employment and Disability http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm

⁵² Submission 86, Ai Group, pp3-4; Submission 95, Westpac, p2; Submission 73, Regional Disability Liaison Officer and Disability Co-ordination Officer, pp25-26; Submissions to National Inquiry in to Employment and Disability http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm

- a. government assistance to cover costs associated with the employment through the Workplace Modifications Scheme
 - b. availability of the Supported Wage System
 - c. and increased training and support provided by Disability Employment Network providers.
119. The forthcoming launch of the JobAccess website and advice service will assist many employers in this regard.
120. The recently announced “Unpaid work experience” or work trial scheme will also give employers an opportunity to test a working relationship with people with disability without taking on great cost or risk.
121. Also, when there is good matching between a person’s abilities and the job that needs to get done, when the workplace is adaptable to the varying needs of all employees, and when there is an easy place to find out how to deal with different situations many of the additional fears, risks and costs disappear.

4 HREOC’s recommendations

122. In order to ensure that people with disability wanting to enter and remain in the open workplace are not discriminated against, HREOC recommends that the Australian Fair Pay Commission adopt the recommendations outlined below.
123. **HREOC recommends** that the term “employee with a disability” should be used with caution by the AFPC. When used in discussions concerning the FMW and Special FMW it should be made clear that it applies only to a limited class of persons with disability.
124. **HREOC recommends** that the term “disability wages” should not be used.
125. **HREOC recommends** that the Special FMW for employees with disability should be set at the same amount as the FMW in order to guarantee that employees with disability are not discriminated against on the basis of their disability. People with disability are entitled to receive a wage commensurate with their experience, skills, training and qualifications like all other workers.
126. **HREOC recommends** that the Australian Fair Pay Commission research the economic costs for people with different disabilities to enter and remain in the open workplace. This research should be overseen by a reference group which includes peak disability groups and employers. HREOC would welcome the opportunity to be involved in this process.

PART B: WOMEN AND PAY EQUITY

127. HREOC considers that workplace relations raise important human rights issues and that equality in employment and of economic outcomes are critical elements to achieving substantive equality between men and women.
128. HREOC has previously outlined key concerns about wage setting and the AFPC in its Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's *Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005*.⁵³
129. HREOC encourages the AFPC to focus on addressing the pay equity gap between men and women in Australia, and the potential for direct and indirect sex discrimination in wage setting. This part of the submission focuses principally on the issue of equal remuneration for work of equal value and highlights those areas in which the AFPC should take particular action to ensure the gap between men's and women's earnings in Australia does not grow.

5 Australia's international obligations

130. One of the principal objects of the WRA is to assist "... in giving effect to Australia's international obligations in relation to labour standards".⁵⁴
131. International Labour Organization (ILO) Convention concerning Discrimination in respect of Employment and Occupation (ILO 111), which is scheduled to the *Human Rights and Equal Opportunity Commission Act 1986*, requires parties, including Australia, to eliminate discrimination in employment on a range of grounds. Discrimination is defined as:
- [a]ny distinction, exclusion or preference made [on the basis of any such ground] which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁵⁵
132. Australia is obliged under the ILO Equal Remuneration Convention (ILO 100) to "...ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value".⁵⁶
133. The United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is scheduled to the *Sex Discrimination Act 1984*. It requires parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women:

⁵³ HREOC's submission is available at www.aph.gov.au/Senate/committee/eet_ctte/wr_workchoices05/submissions/sub164.pdf

⁵⁴ Section 3(n) *Workplace Relations Act 1996*.

⁵⁵ Article 1.3 of ILO 111.

⁵⁶ Article 2(1) of ILO 100.

- the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining;
- the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.⁵⁷

6 Wage setting parameters, discrimination and the pay equity gap

134. Addressing pay inequity and workplace discrimination should be central priorities for the AFPC in working within its wage setting parameters and in seeking to promote the economic prosperity of the Australian people.

135. The AFPC’s wage setting parameters are contained in section 23 of the WRA. That section provides that “[t]he objective of the AFPC in performing its wage-setting function is to promote the economic prosperity of the people of Australia...” having regard to a number of considerations.⁵⁸

136. Australia’s continued economic prosperity depends in part on securing a suitably sized and skilled labour force into the future.⁵⁹ With an ageing workforce, it is important to ensure that women are not deterred from workforce participation by barriers such as pay inequity, discrimination and the difficulties of managing paid work and family responsibilities. Ensuring that these barriers to women’s workforce participation are removed will assist in securing Australia’s economic future.

137. The AFPC should take account of the overall pay equity gap and ensure that the overall gap between men and women’s incomes in Australia does not widen. Removing barriers to women’s workforce participation depends in part on ensuring that the FMW keeps pace with wage growth across the economy.

138. In addition to the intrinsic relevance of discrimination and pay equity issues to the wage setting parameters, the AFPC is required to address discrimination and pay inequity in its wage setting by reason of section 222 of the WRA. That section provides that:

“...in exercising any of its powers under this Division, the AFPC is to:

- (a) apply the principle that men and women should receive equal remuneration for work of equal value; and
- (b) have regard to the need to provide pro-rata disability pay methods for employees with disabilities; and

⁵⁷ Article 11 of CEDAW.

⁵⁸ These are:

- (a) the capacity for the unemployed and low paid to obtain and remain in employment;
- (b) employment and competitiveness across the economy;
- (c) providing a safety net for the low paid;
- (d) providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

⁵⁹ See *Striking the Balance: Women, men, work and family* Discussion paper HREOC Sydney 2005. See also Peter Costello “Launch Of the 2006 Census Of Population And Housing” National Press Club Canberra 24 July 2006.

- (c) take account of the principles embodied in the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* relating to discrimination in relation to employment; and
- (d) take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:
 - (i) preventing discrimination against workers who have family responsibilities; or
 - (ii) helping workers to reconcile their employment and family responsibilities; and
- (e) ensure that its decisions do not contain 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.”⁶⁰

139. These requirements are very broad and impose a significant responsibility on the AFPC in its wage setting functions.

140. Discrimination is not defined in the WRA, but, whether the definitions within federal anti-discrimination legislation or ILO 111 are used, discrimination is no doubt to be broadly construed.

141. It is also clear that Parliament intended that the responsibility of the AFPC in relation to this section be significant. For example, while the Australian Industrial Relations Commission, in performing its functions, is required to take account of the principle of pay equity,⁶¹ the AFPC is actually required to apply the principle.⁶²

142. Given the priority accorded to matters of pay equity and discrimination in the legislation, HREOC argues that the AFPC should devote considerable time and resources to establishing processes to secure pay equity and address discrimination.

143. The balance of this submission deals with pay equity matters, given the central role of the AFPC in pay equity.

7 What is Equal Remuneration (Pay Equity)?

144. Gender pay equity or equal remuneration is simply the idea that men and women should receive the same pay, benefits and conditions for work of equal or comparable value.

145. While this concept appears to be a simple one, it does involve a variety of differences of opinion about what measures should be used. The extent of the gender wage gap depends not only on what measure is taken of wages but will also vary according to the method of

⁶⁰ The wage setting parameters of section 23 are effectively imported into Division 2 of Part 7 of the Act, by section 176 of the WRA.

⁶¹ Section 104 WRA.

⁶² Section 222(a).

wage determination (award or agreements), points in the wage structure,⁶³ and whether the ratio includes wages data for different types of employees – full time, part time, casual, permanent.

146. Hourly rates ratios often exclude managerial employees (for example those using the ABS Employees Hours and Earnings Survey) because of the difficulty of obtaining hours at work data for managerial employees. The wage gap is significantly larger by around 10 percentage points when managerial employees are taken into account, clearly reflecting the poor representation of women in management.
147. A figure for the pay gap derived through an annual measure of income will be larger than for monthly earnings which again will be larger than weekly or hourly earnings because men spend more hours in paid work than women.⁶⁴
148. The most generally accepted pay equity ratios in Australia use statistics from the Australian Bureau of Statistics quarterly survey of average weekly earnings.⁶⁵ In February 2006 women's pay equity ratio compared to men's was:
 - 84.4 per cent for full time adult ordinary time earnings;
 - 80.8 per cent for full time adult total earnings; and
 - 66.3 per cent for all employees total earnings.
149. There are a number of factors that contribute to continuing pay inequities. The major contributing factors are discussed in the appendix.

8 Why is Pay Equity important?

150. As noted above, pay equity is important for ensuring Australia's future labour supply. Improved gender pay equity is also fundamental to substantive gender equality, both for individuals and for society as a whole. Addressing gender pay inequity is likely to increase women's labour market attachment; it certainly improves women's financial independence and enhances their life choices.
151. One of the areas in which pay equity has significant effects is in relation to the arrangements that families make for care of children and other family members needing assistance. While many younger Australian couples aspire to a more equal sharing of work and family roles, and according to a number of studies see themselves as moving away from traditional male breadwinner/female carer roles, simple economics mean that it is still overwhelmingly the lower paid woman in a couple who reduces her commitment to the paid workforce when the couple are struggling to balance paid work and family responsibilities.
152. The workplace participation rates of Australian women, and mothers in particular, are low by international standards. Australia's female participation rate of 56.6 per cent⁶⁶ is

⁶³ See discussion of movements of gender pay gaps along the wage distribution in Hiau Joo Kee *Glass Ceiling or Sticky Floor? Exploring the Australian Gender Pay Gap Using Quantile Regression and Counterfactual Decomposition Methods* Discussion Paper No. 487 ANU Centre for Economic Policy Research March 2005.

⁶⁴ UK Low Pay Commission *National Minimum Wage: Report 2005* Cm 6475 Department of Trade and Industry London p102

⁶⁵ ABS *Average Weekly Earnings* Cat No. 6302.0 May 2006 p 4.

only moderate by the Organisation for Economic Co-operation and Development (OECD) standards and is particularly low among mothers and women over the age of fifty five.⁶⁷ In 2000, of Australian women with two or more children, only 43.2 per cent were in the workforce, compared with 81.8 per cent in Sweden, 64.7 per cent in the United States and 62.3 per cent in the United Kingdom.⁶⁸ Only Ireland, Italy and Spain have similarly low rates of participation for women with two or more children, at 40.8, 42.4 and 43.3 per cent respectively.⁶⁹

153. Pay equity is also crucial for enabling women to have security of retirement income, an issue which is of increasing importance with Australia's booming aged population and increasing reliance on self funded retirement. Both women's income levels and decisions made by mothers and other female carers to decrease or cease participation in the labour market have enormous effects on the amount of superannuation women can accumulate.

154. The absence of financial independence in retirement or old age means poverty for many women. Currently women are two and a half times as likely to live in poverty in old age as men.⁷⁰ As retirees in the future come to depend increasingly on retirement benefits received as a result of work related contributions over a long period, the disparity between men's and women's outcomes in old age is expected to worsen. The widening gap in retirement incomes is the result of the gap in women's contributions to superannuation during their years spent caring for family,⁷¹ because they live longer than men on the retirement savings that they do have and because of the gender pay gap during women's working lives.

9 Pay equity and the minimum wage

155. A recent international study by the European Union (EU) Expert Group on Gender and Employment found that:

“[t]he effectiveness of minimum wage protection systems is critically important for gender pay equality as women are more likely than men:

- To be concentrated in jobs affected by minimum wage regulation;

⁶⁶ABS *Australian Labour Market Statistics* 2005 Cat No 6105.0, p 37; labour force status trend data. See also pp 13-15 for employment rates and Organisation for Economic Co-operation and Development *Employment Outlook 2004* OECD Paris 2004, p 296 for an internationally comparable statistic on employment rates for women.

⁶⁷ Iain Campbell and Sarah Charlesworth *Key Work and Family Trends in Australia* Centre for Applied Social Research RMIT Melbourne 2004, p A2-11.

⁶⁸ *ibid*, p A2-12.

⁶⁹ *ibid*, p A2-12.

⁷⁰ In 2000 there were 106 000 single women over 65 living in poverty compared to 40 000 men in the same age group: Senate Community Affairs References Committee *A Hand Up Not a Hand Out: Renewing the fight against poverty* Report on poverty and financial hardship Canberra 2004, p 211. The current average superannuation balance of women at \$43 300 is just over half the average balance of men at \$78 700: Ross Clare “Why Can't a Woman be More Like a Man: Gender differences in retirement savings” Paper presented at the *Association of Superannuation Funds of Australia National Conference and Super Expo* Adelaide 10-12 November 2004, p 4.

⁷¹ Ross Clare “Why Can't a Woman be More Like a Man: Gender differences in retirement savings” paper presented at the *Association of Superannuation Funds of Australia National Conference and Super Expo* Adelaide 10-12 November 2004, p 4.

- To be in jobs or sectors where there is limited scope for collective bargaining, thereby increasing the importance of labour market regulations;
- To be more concentrated in jobs that may be excluded from minimum wage regulations either formally or in practice. The coverage and enforcement of minimum wage regulation thus takes on particular importance for gender quality.

...The share of women who are paid at or close to the minimum wage exceeds that for men in all cases with ratios of 2 to 1 or greater in most cases.”⁷²

156. The situation is much the same in Australia. Minimum wage award reliant employees in Australia are more likely to be women than men.⁷³
157. This means that the actions of the AFPC affect men and women differently, and will certainly directly affect more women than men. HREOC urges the AFPC to ensure that differential gender effects of its work do not further disadvantage women.

10 Pay equity in Australia

158. The current provisions of the WRA in relation to equal remuneration are limited both by their terms and their interpretation. Currently a key feature of the Australian Industrial Relations Commission’s (AIRC) interpretation of the provisions is the imposition of a threshold test of discrimination. There is a lack of clarity as to the meaning to be afforded to the term “discrimination” in this context. A finding of discrimination requires that an applicant would need to establish a discriminatory cause for any earnings disparity that is the subject of an equal remuneration claim. This overlooks the fact that much of the pay gap results from systemic and often historical biases rather than specific sex based discrimination.
159. On a procedural level, also, this approach is problematic because it suggests gender pay inequity can only be proved by comparing a female dominated job with a male dominated job. Such comparator methodology has been historically difficult to prove and fails to incorporate the latest understandings of undervaluation.
160. State industrial tribunals have had most success in assessing the historical undervaluation of women's skills and determining the work value of occupations traditionally carried out by women employees. From 1998, a number of States have undertaken inquiries into pay equity for women and equal remuneration principles have now been adopted in New South Wales, Queensland and Tasmania. Inquiries have recently been carried out in both Victoria and Western Australia with recommendations for achieving pay equity focused on actions which could be taken in State jurisdictions.
161. Recent changes to workplace relations in Australia mean that the AFPC is the only body with direct responsibility for pay.

⁷² Jill Rubery, Damian Grimshaw and Hugo Figueiredo (on behalf of the EU Expert Group on Gender and Employment) *The Gender Pay Gap and Gender Mainstreaming Pay Policy in EU Member States* European Commission Equal Opportunities Unit November 2002

⁷³ ACTU and ACOSS submissions to the *Safety Net Review of Wages* 7 June 2005 AIRC Decision [PR002005] at [23] and [335]

162. These developments make it critical that the AFPC consider equal remuneration when setting wages and that it implement strategies to ensure equal remuneration.

11 Role of the AFPC in relation to pay equity

163. In the current workplace relations environment, the AFPC is the key agency with responsibility for pay equity. While both HREOC and the AIRC have some oversight role, it is the AFPC that can directly influence the relativities between the wages of men and women in Australia and narrow the pay equity gap.

164. HREOC supports a significant and active role for the AFPC in addressing discrimination and pay inequities. However, HREOC is concerned that the WRA is silent about *how* the AFPC is to take these matters into consideration. There is a risk that complex issues such as indirect discrimination and pay inequity will go unaddressed.

165. The potential exists for indirect discrimination to permeate the setting of minimum wages if, for example, the parameters contain unstated bias about the value of certain skills or attributes. There is a risk that complex issues such as pay inequity will go unaddressed unless the AFPC develops a mechanism to address it.

166. HREOC urges the AFPC to ensure that progress towards pay equity is closely monitored, that consultations are thorough and that detailed research, including work value tests, is undertaken prior to each determination being made.

12 Opportunities for the AFPC

167. A recent working paper for the ILO points out that “minimum wages provide a very simple start in the process of establishing comparable wages across dissimilar and often sex segregated workplaces, provided the wage is set at a level above that prevailing in female dominated segments.”⁷⁴

168. The AFPC is not in a position to address pay inequities in Australia on its own. Clearly, many of the factors contributing to pay inequities are well beyond the scope of the AFPC’s role.

169. However it is important to consider the context of gender pay inequity in Australia if the AFPC is to be able to “...apply the principle that men and women should receive equal remuneration for work of equal value...” The annexure to this submission provides an overview of the causes of pay inequities in Australia.

170. Certainly, also, there are important opportunities for the AFPC to address discrimination and pay inequities.

⁷⁴ Jill Rubery *Pay equity, minimum wage and equality at work: theoretical framework and empirical evidence* International Labour Office November 2003 p22

13 HREOC's recommendations

171. HREOC recommends that the AFPC:

- (i) establish a specialist unit to undertake on-going research and monitoring in relation to the pay gap between men and women in Australia and the role of the FMW;
- (ii) undertake a series of investigations focused on undervaluation and comparative worth in female dominated occupations and industries particularly focusing on recognising 'soft' skills involved in caring work, knowledge work and communication, employee qualifications and on-the-job training as well as changing job demands and increased technology;
- (iii) consult broadly and thoroughly within the community before wage determinations are made – processes implemented by the AFPC should ensure a rigorous testing of the available evidence;
- (iv) ensure that the FMW is set at a level relative to average weekly earnings for all employees and relative to men's earnings, so that it is likely to reduce rather than increase gender pay inequity;
- (v) set minimum wage rates on a regular, preferably annual, basis to ensure that the value of the FMW does not deteriorate over time;
- (vi) ensure that Australian Pay and Classification Scales contain detailed descriptors covering the full range of skills and employee attributes which can provide clear, skill based career paths for employees, particularly in female dominated industries and occupations;
- (vii) ensure that the FMW is available to all groups of women employees including young women, women with disability and women working in more marginal areas of the labour market such as outworkers;
- (viii) oversee rigorous enforcement of the FMW for all groups of employees including those mentioned above;
- (ix) ensure that the value of loadings paid to casual workers, particularly those in female dominated industries and occupations, are not reduced, either in the initial wage determination or over time.

APPENDICES

Appendix A - Issues Paper 1: Employment and Disability – The Statistics

What does the data say about the impact of disability on equality of opportunity in employment for people with disabilities?

This Issues Paper sets out the context for the National Inquiry into Employment and Disability. It includes some of the recently available statistics regarding the employment of people with disabilities in Australia.

Most of the statistics in this paper are drawn from Australian Bureau of Statistics (ABS) data from 2003.⁷⁵ The ABS definition of disability includes anyone who has experienced a 'limitation, restriction or impairment, which has lasted, or is likely to last, for at least six months and restricts everyday activities'.

Another purpose of this Issues Paper is to seek feedback about

- what other relevant data is available, and
- what other data should be collected to better assess the successes and failures of measures designed to improve the opportunities for people with disabilities in the open workplace.

1. How many people with disabilities live in Australia?

Almost 20 per cent of Australians have a disability (3.96 million people). This proportion is increasing, particularly as the population ages.⁷⁶ 19.8 per cent of all males and 20.1 per cent of all females report having a disability.⁷⁷

Of those people with a disability, 86 per cent experience limitations in core activities (such as self care, mobility or communication), or restrictions in schooling or employment.⁷⁸ 6.3 per cent of people in Australia have a profound or severe core-activity limitation.⁷⁹

Most people with a disability have physical conditions (83.9%). 11.3 per cent of people with disabilities have mental and behavioural disorders and 4.8 per cent have intellectual and developmental disorders.

People with mental or behavioural conditions are more likely to have profound or severe limitation to their core activities than those with a physical condition (46% compared to 29%). Over half (56%) of those with psychoses or mood affective disorders, such as dementia and depression, have profound or severe limitations to their core activities.⁸⁰

⁷⁵ Australian Bureau of Statistics, *Disability, Ageing and Carers: Summary of Findings*, 2003, 4430.0.

⁷⁶ ABS, 2003, pp3-4. Another 20 per cent of Australians (4.15 million) have a long-term health condition that does not restrict their everyday activities.

⁷⁷ ABS, 2003, p3.

⁷⁸ ABS, 2003, p4

⁷⁹ ABS, 2003, p3.

⁸⁰ ABS, 2003, p6.

2. What are the participation and unemployment rates for people with disabilities?

Fewer people with disabilities participate in the workforce than those without disabilities. More people with disabilities are unemployed than those without disabilities.

In 2003, 53.2 per cent of people with disabilities participated in the labour force as compared to 80.6 per cent of those without a disability. Since 1993, the labour force participation rate of people with disabilities has fallen, while the rate for people without disabilities has risen.⁸¹

Table 1: Labour force participation and unemployment rates of people with and without disabilities

	People with disabilities			People without disabilities		
	1993	1998	2003	1993	1998	2003
Labour force participation rate	54.9%	53.2%	53.2%	76.9%	80.1%	80.6%
Unemployment rate	17.8%	11.5%	8.6%	12.0%	7.8%	5.0%

Source: ABS, 2003, p26; Productivity Commission, Volume 2: Appendices, pA.2. Persons aged 15-64 years living in households.

The result of a lower labour force participation rate, when combined with a higher unemployment rate, is that people with disabilities are less likely to be employed than others. In 1993 a person with a disability was 23 per cent less likely than a person without a disability to be in employment, and in 1998 they were 26 per cent less likely to be employed.⁸²

The severity of the disability that a person has, affects both the level of labour force participation and the unemployment rate.

Table 2: Labour force participation and unemployment rates of people with disabilities, by type of restriction

Restriction	Labour force participation rate			Unemployment rate		
	1993	1998	2003	1993	1998	2003
Core activity restriction						
Profound	19.9%	18.9%	15.2%	20.9%	7.4%	13.9%
Severe	39.9%	40.2%	35.8%	22.2%	11.6%	9.5%
Moderate	42.9%	46.3%	47.9%	18.0%	13.1%	7.6%
Mild	51.3%	56.5%	50.6%	18.5%	9.3%	7.7%
Schooling or employment restriction	56.2%	46.4%	44.9%	27.6%	12.9%	11.5%
All persons with restrictions	46.5%	49.3%	47.7%	21.0%	11.7%	9.9%

Source: ABS, 2003, p26; Productivity Commission, Volume 2: Appendices, pA.6. Persons aged 15-64 years living in households.

Participation in the workforce also varies according to the nature of the disability. The workplace participation rate for people with a psychiatric disability receiving disability support payments is only 29%.⁸³

⁸¹ Labour force participation refers to people who are in work or actively looking for work.

⁸² Productivity Commission, *Review of the Disability Discrimination Act 1992, Volume 2: Appendices*, pA.4.

⁸³ Mental Health Council of Australia, *Investing in Australia's future: the personal, social and economic benefits of good mental health*, September 2004, p6.

Women with disabilities are less likely to be in the workforce than men with disabilities. In addition, the unemployment rate of women with disabilities has increased in the last five years while that for women without disabilities has decreased significantly.

Table 3: Labour force participation and unemployment rates of males and females with and without disabilities, 1998 and 2003

	Labour force participation		Unemployment rates	
	1998	2003	1998	2003
Females				
With a disability	45.5%	46.9%	8.6%	8.3%
Without a disability	71.0%	72.2%	8.0%	5.3%
Males				
With a disability	60.3%	59.3%	13.5%	8.8%
Without a disability	89.2%	88.9%	7.7%	4.8%

Source: ABS, 2003, p26; ABS, 1998, p35. Persons aged 15-64 years living in households.

In 2003 people with disabilities were more likely to work part-time (37%) than those who did not have a disability (29%).⁸⁴

3. How much do people with a disability earn when they are employed?

When employed, people with disabilities earn lower wages, on average, than workers without disabilities. Having a disability reduced the average gross weekly wages of females by \$110 (24 per cent) and males by \$105 (17 per cent) in 1998, compared with people without disabilities.⁸⁵

The overall levels of income earned by people with disabilities are also lower than those without disabilities. In 2003, the median gross personal income per week of people of working age with a disability was \$255, compared to \$501 for those without a disability.⁸⁶

Income varies according to the type of disability. For example, the income of people with sensory and mobility disabilities is higher than that of people with psychiatric disabilities.⁸⁷

4. How does Australia compare to the rest of the world?

Australia has the seventh lowest employment rate for people with disabilities in the Organisation for Economic Cooperation and Development (OECD). In 2003, nearly two thirds of the OECD countries measured had better employment rates than Australia for people with disabilities.⁸⁸

Recent OECD research found that Australia has the lowest average personal income for people with disabilities, at 44 per cent of the income of people without a disability.⁸⁹

⁸⁴ ABS, 2003, p5.

⁸⁵ Productivity Commission, Volume 2: Appendices, pA.12.

⁸⁶ ABS 2003, p3. Persons aged 15-64 years living in households

⁸⁷ Productivity Commission, Volume 2: Appendices, pA.10.

⁸⁸ OECD, *Employment Outlook: Towards more and better jobs*, 2003, p141.

⁸⁹ OECD, *Transforming Disability into Ability, Policies to Promote Work and Income Security for Disabled People*, 2003, p29.

5. Where are people with disabilities employed?

In 2003, people with disabilities were employed in the following occupations and industries.

Table 4: Occupation type of people with disabilities

Occupation	People with a disability	People without a disability
Managers and administrators	8.4%	8.1%
Professionals	18.4%	19.2%
Associate professionals	9.6%	13.4%
Tradespersons and related workers	11.9%	12.8%
Advanced clerical and service workers	4.4%	4.0%
Intermediate clerical, sales and service workers	16.3%	17.1%
Intermediate production and transport workers	10.6%	7.7%
Elementary clerical, sales and service workers	9.5%	9.8%
Labourers and related workers	10.9%	7.9%
Total	100%	100%
Industry	People with a disability	People without a disability
Agriculture, forestry and fishing	5.3%	3.6%
Mining	1.4%	0.9%
Manufacturing	11.4%	11.3%
Electricity, gas and water supply	0.6%	0.8%
Construction	9.0%	8.4%
Wholesale trade	4.2%	4.7%
Retail trade	12.0%	14.6%
Accommodation, cafes and restaurants	3.8%	5.3%
Transport and storage	5.1%	4.1%
Communication services	1.4%	1.9%
Finance and insurance	2.3%	3.9%
Property and business services	10.4%	12.1%
Government, administration and defence	5.8%	5.1%
Education	8.7%	7.1%
Health and community services	10.7%	9.6%
Cultural and recreational services	2.3%	2.4%
Personal and other services	5.3%	4.0%
Total	99.7%	99.8%

Source: ABS, 2003, p27. Persons aged 15-64 years, living in households. This table represents the percentage of the total number of people with a disability who hold positions in each category, compared to the percentage of the total number of people without a disability who hold positions in each category.

6. How many people with disabilities are employed by government?

The number of people with disabilities employed by the Commonwealth government has declined significantly over the last ten years.

In 2003-2004, people with disabilities made up 3.8 per cent of ongoing Australian Public Service (APS) employees, down from 5.8 per cent ten years ago. The Australian Public Service Commission (APSC) suggests that the decline in absolute numbers may be partly explained by a decline in lower level positions where people with a disability have historically made up a greater percentage of employees. However, the APSC notes that there has been a decline in the numbers of employees with a disability in all classifications.⁹⁰

Some State governments have higher rates of employment of people with a disability than the Commonwealth. For example, people with disabilities make up an estimated 6 per cent of the NSW public sector. Employees who had a disability that required an adjustment at work made up an estimated 1.7 per cent of the public sector workforce in NSW in 2002.⁹¹

7. Your feedback

- (a) What other statistics should be collected to better identify the issues affecting people with disabilities and employment?
- (b) What other relevant data are you aware of?

8. How do you make a submission?

Further information about the Inquiry can be found at:

www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm

Submissions are due by **15 April 2005**.

You can email your submission to: employmentinquiry@humanrights.gov.au.

Submissions may also be sent in hard copy, audiotape or videotape, to:

Employment Inquiry
Disability Rights Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney NSW 2001

Questions can be directed to:

Kate Temby
Policy Officer
Disability Rights Unit
Phone: 02 9284 9767

⁹⁰ Australian Public Service Commission, *State of the Service Report 2003-04*.

⁹¹ Director of Equal Opportunity in Public Employment, <http://www.eeo.nsw.gov.au/aboutus/ar2003.htm>.

Appendix B - - Reasons for the Persistence of Pay Inequity

History of Australian wage fixation and key pay equity developments

1. The significance of the Harvester Case⁹² in establishing wage fixing principles in Australia based around the male breadwinner model can not be underestimated. This decision not only established normative assumptions about the needs of women employees, but meant that the value of women's work, and its appropriate remuneration has been considered in relation to the needs and skills of male workers. The first consideration of female wages in Australia was undertaken in 1912,⁹³ with the basic female wage set at 54 per cent of the male wage in 1919 by Justice Higgins.⁹⁴
2. Although Australian has historically had small gender wage gap by international standards, the most significant reductions in that gap occurred as a result of the 1969 and 1972 *Equal Pay Cases* in the (then) Australian Conciliation and Arbitration Commission.⁹⁵
3. The gender wage gap in Australia initially narrowed by about 17 per cent between 1969 and 1976⁹⁶ but has only narrowed slightly over the past two decades, from 82.3 cents in the male dollar in 1983 to 84.4 cents in the male dollar in 2006, despite the broadening of the range of work done by women.⁹⁷
4. In a recent conference paper⁹⁸ Commissioner Whelan highlighted some of the important milestones in respect of Australia's industrial responses to the issue of equal remuneration for men and women. Following the 1972 *Equal Pay Case* decision, most award variations were made by consent,⁹⁹ and involved very little examination of the value of the work being performed by women. In some cases this resulted in little more than the transfer of all female workers to the lowest-paid classifications in the male scale.¹⁰⁰
5. During the 1970s and early 1980s, despite the failed attempt to introduce the concept of 'comparable worth' into Australian industrial jurisprudence¹⁰¹ gains were made for women, particularly in professional occupations through the use of the Federal

⁹² Ex parte H V Mackay (*Harvester Case*) (1907) 2 CAR 1.

⁹³ Rural Workers' Union and United Labourers Union v Mildura Branch of the Australian Dried Fruits Association (*Fruitpickers Case*) 1912 6 CAR 61.

⁹⁴ Federated Clothing Trades v J A Archer (*Clothing Trades Case*) (1919) 13 CAR 647.

⁹⁵ *Equal Pay Case* (1969) 127 CAR 655 and *Equal Pay Case* (1972) 147 CAR 172.

⁹⁶ Bob Gregory and V Ho *Equal Pay and Comparable Worth: What can the US Learn from the Australian Experience?* Australian National University Centre for Economic Policy Research, Discussion Paper No 123 ANU July 1985.

⁹⁷ For a detailed consideration of the history of pay equity in Australia refer to Hon Justice Glynn *Report of the NSW Pay Equity Inquiry: Reference by the Minister for Industrial Relations pursuant to section 146(1)(d) of the Industrial Relations Act 1996* Matter No. IRC6320 of 1997 Appendix 8 and Mark Bahnisch "History of Pay Equity in Queensland" Attachment 1 to *Queensland Government Submission to the Queensland Industrial Relations Commission Pay Equity Inquiry* No B1568 of 2000 December 2000.

⁹⁸ Commissioner Dominica Whelan Paper presented at the Conference "*The Gender Pay Gap: Assessing Possible Futures In The Post-Inquiries Era*" University of Western Australia, Perth Australian Industrial Relations Commission Friday 29 April 2005.

⁹⁹ Christine Short, 'Equal Pay - What Happened?' (1986) 28(3) *Journal of Industrial Relations*, 315-335.

¹⁰⁰ See for example *Re Confectioners Award 1959* (1975) 166 CAR 912.

¹⁰¹ See for example *re Private Hospitals' and Doctors' Nurses (ACT) Award 1972* (1986) 18 IR455.

Commission's 'anomalies and inequities' and 'structural efficiency' principles. This enabled different occupations to be compared on the basis of comparability of qualifications as well as standard work value factors.¹⁰²

6. By the mid 1980s it had become clear that the 1972 Principle was being underutilised and an explicit framework for comparison of work across awards was negotiated through a series of Prices and Incomes Accord agreements between the ACTU and the federal Government. These agreements informed the parties' submissions in the 1988 and 1989 National Wage cases¹⁰³ which adopted the 'structural efficiency' and 'minimum rates adjustment' principles. A program for award restructuring was adopted, consisting of:
 - a simplified and modern award structure;
 - the removal of obsolete classifications, covering new classifications;
 - broadbanding of a range of jobs under appropriate single classifications;
 - developing career paths for all employees within the award; and
 - links between training, classifications and wages.
7. This led to an award restructuring process consisting of three associated steps:
 - raising minimum rates in relevant awards to ensure that restructuring was carried out on an equitable basis;
 - broadbanding by establishing six to eight skill levels; and
 - providing the means by which employees could progress through education, training and experience.
8. The 'minimum rates adjustment' principle introduced in August 1989 took this one step further when an attempt was made to establish comparable minimum rates of pay across all federal awards based on classification structures which set rates by reference to relativities to a metal industry tradesperson.¹⁰⁴
9. Despite the effect of this process on women's wages being uneven and limited by the scope of comparisons available through the award restructuring process, many women in female dominated industries and occupations received pay increases. However there was a notable absence of systematic gender neutral work value assessments and in a number of female dominated industries, particularly the hospitality and accommodation sector, this led to an increase in casualisation of the workforce. While casual work is certainly the preference of many, it remains a source of great uncertainty for women, particularly those with family commitments.
10. Work value comparisons continued to be largely based on male dominated industries – in particular the Metal Industry Award – with parallel difficulties continuing in respect of accurately assessing the work value in female dominated industries such as childcare. The development of the Australian Qualifications Framework and competency standards attempted to provide a mechanism for addressing these difficulties. However the

¹⁰² Felicity Rafferty 'Equal pay – Past Experience, Future Directions: A Practitioners Perspective' (1989) 31 (4) *Journal of Industrial Relations*, pp526-537.

¹⁰³ *National Wage Case* August 1988 [Print H0900]; *National Wage Case* August 1989 [Print H9100]

¹⁰⁴ *National Wage Case* 1989 [Print H9100]

framework was not incorporated sufficiently into awards at either a State or Federal level to adequately address this problem.¹⁰⁵

11. There remained two significant limitations in the ability of these approaches to addressing equal remuneration. They could not address rates of pay above the award minimums and did not essentially challenge the undervaluation of female dominated occupations except by reference to tertiary qualifications. In 1993 the Federal Government attempted to address the problem of the gap between equal pay - being the minimum award rate for the job - and equal remuneration - through amendments to the then *Industrial Relations Act 1988*.
12. Despite the best intentions, these amendments in the form of equal remuneration provisions, now replicated in the WRA have not proved particularly useful mechanisms for improving pay equity for Australian women. To date, there have been no equal remuneration orders made in the AIRC.¹⁰⁶ It is no accident that recent cases aimed at improving the remuneration of women in female dominated industries like the federal childcare workers cases brought on behalf of workers in a number of states by the Australian Services Union and Liquor Hospitality and Miscellaneous Workers Union¹⁰⁷ were brought as work value rather than equal remuneration cases.

Gender segregation in the workforce

13. The Australian workplace can be characterised as highly gender segregated, and women remain clustered in the low wage sectors of the workforce. Our labour market is one of the most sex-segregated among OECD countries which has important implications for the continuing of the gender wage gap.
14. A 1999 study concluded that between 58 and 81 per cent of the gender pay gap was associated with working in feminised occupations, industries, workplaces or job-cells.¹⁰⁸ It was found that the largest individual effect was for concentrations at the industry level with women working in industries that were close to 100 per cent female-dominated earning 32 per cent less per hour than women with otherwise identical characteristics in industries that were close to 100 per cent male-dominated. At the occupational level the penalty for women being in a highly feminised occupation, compared to one that is male-dominated, was 15 per cent, women working in totally female-dominated workplaces suffered an earnings penalty of 18 per cent, and those in a highly feminised occupation within a particular workplace (that is a highly feminised job-cell) incurred a penalty of 14 per cent.¹⁰⁹

¹⁰⁵ URCOT, Participation, Research, Innovation *Pay Equity: How to Address the Gender Pay Gap* A Research Report by URCOT for Industrial Relations Victoria February 2005 Melbourne p64

¹⁰⁶ The only cases ultimately dealt with under the provisions thus far, the HPM and Age cases, were eventually settled as a result of the introduction of a new enterprise agreement and by consent respectively. Cf: *AMWU vHPM Industries* P9201 and Print Q1002 and *AMWU and David Syme & Co Limited* Print R3273.

¹⁰⁷ See for example AIRC Full Bench Decision in Australian Liquor, Hospitality and Miscellaneous Workers Union Application for variation in respect of the *Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998* 13 January 2005 PR954938.

¹⁰⁸ Barbara Pocock and Michael Alexander 'The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia' *Labour and Industry* 10(2) 1999 pp 75-100.

¹⁰⁹ Barbara Pocock and Michael Alexander 'The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia' *Labour and Industry* 10(2) 1999 pp.75-100.

15. Despite changes in women's educational attainments and labour force participation, there has been very little change in the overall level of gender segregation in the Australian labour market. It has been estimated that up to one half of women would need to change their occupation in order for women's occupational distribution to be congruent to that of males.¹¹⁰
16. Recent research carried out for HREOC has found that there are five key industries for women's employment in Australia, which exhibit similar characteristics: a relatively high proportion of women employees, a high level of award only coverage, high levels of part time work and low levels of hourly earnings. These industries are accommodation, cafes and restaurants (58.3 per cent women), cultural and recreational services (50.5 per cent women), health and community services (78.6 per cent women), personal and other services (47.0 per cent women) and retail trade (51.4 per cent women).¹¹¹

Women and wage setting arrangements

17. Women are less likely to engage in enterprise bargaining than men. Nearly one third of women in the private sector depend on awards to determine their wages as opposed to only 17 per cent of men.¹¹² For those women on enterprise agreements, the level of wages negotiated tends to be lower.¹¹³
18. While wages for men on registered collective agreements and AWAs are not significantly different, women on AWAs (not including managers) currently earn 11 per cent less than women on collective agreements.¹¹⁴
19. Evidence indicates that women have more difficulty in striking strong bargains on pay than men do. A recent study from the US found that women tended to shy away from competitive environments while men were keener to compete, despite there being no gender difference in their performance levels. Men were also more confident about their talent with three quarters believing they were the best in a group, compared to slightly more than 40 per cent of women.¹¹⁵ In the context of individual bargaining in the workplace, such research must be of concern.
20. A further American study into salary negotiations showed that many women found it difficult to negotiate for themselves - they undervalued themselves and their worth and

¹¹⁰ Yew Liang Lew and Paul W Miller. 'Occupational Segregation on the Basis of Gender: The Role of Entry-Level Jobs' *Australian Journal of Labour Economics* 7(3) 2004 p355-374 at p 355.

¹¹¹ WiSER Women in Social and Economic Research Unit Curtin University of Technology *Women's pay and conditions in an era of changing working regulations* Progress Report Part One: Women's Employment Status Key Indicators Perth July 2006, p13.

¹¹² Victorian Pay Equity Working Party *Advancing Pay Equity: Their Future Depends On It* Report to the Minister for Industrial Relations Melbourne February 2005.

¹¹³ In May 2004, women on registered collective agreements received average hourly earnings of \$22.50 compared to men's \$25.10, and on unregistered collective agreements received \$20.30 compared to \$22.00: ABS *Employee Earnings and Hours* Cat No 6306.0 May 2004. See also Marian Baird and Patricia Todd 2005 *Government Policy, Women and the New Workplace Regime: A contradiction in terms and policies* paper presented to the workshop Federal Government's Proposed Industrial Relations Policy University of Sydney June 20-21 2005.

¹¹⁴ David Peetz *The Impact of Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage Test'* University of Sydney 2005.

¹¹⁵ Muriel Niederle and Lise Vesterlund *Do Women Shy Away From competition? Do Men Compete Too Much?* Draft Working Paper June 2005 Department of Economics Stanford University.

they felt they lacked skills and experience.¹¹⁶ Recent surveys of MBA graduates in Australia suggest that similar patterns emerge with women receiving substantially lower salaries than men for comparable jobs.¹¹⁷ This is of particular concern when it is considered that MBA students have been specifically trained as part of their university education in the development of negotiation skills and in negotiating job offers in particular.

21. As previously discussed, the lowest weekly average earnings in Australia are found in those industries which are also the most award reliant.¹¹⁸ Of all Australian employees, 19.9 per cent, approximately 1.6 million people are award dependent workers. More than 965,000, slightly more than 60 per cent of these low paid workers, are women. Eighty-two per cent earn less than the median weekly wage and 46 per cent are casual employees. The most award-reliant industries are retail, accommodation, cafés and restaurants.¹¹⁹
22. Further evidence in relation to bargaining demonstrates that women have not been able to effectively bargain for additional employment benefits such as bonuses, non-cash benefits and allowances.¹²⁰ A 1992 study by HREOC into over-award payments found that over-award payments were often paid in a manner which represented by direct and indirect sex discrimination. At the time the research was conducted, women earned only 54 per cent of the over-award payments made to their male counterparts. With the growth of in-kind payments over the past decade, over-award payments have become increasingly difficult to quantify. The most recent statistics show that this continues to be a significant issue for women employees with 52.4 per cent of women compared to 83.5 per cent of men receive non-leave employment benefits in their main job including goods and services, transport and shares.¹²¹

Women's Concentration in Part Time and Casual Work

23. While women's employment has increased significantly in recent decades, much of the growth in employment for women has been in part time employment.
24. As a result of the changes to the proportion of men and women who are employed, women now account for 45 per cent of all employed people compared with 36 per cent in 1979. The proportion of women who were employed part time increased from 14 per cent of all women in 1979 to 25.2 per cent in 2006. The proportion of women who were employed full time also increased (from 26 per cent in 1979 to 29.4 per cent in 2006).¹²²
25. In May 2006 part time employees accounted for 46.1 per cent of all women employees.¹²³

¹¹⁶ Deborah M. Kolb, Carol Frohlinger, and Judith Williams "Why Don't People Get Paid What They're Worth? (And Some Ideas About What To Do About It)" *The Negotiator Magazine* January 2003 at www.negotiormagazine.com.

¹¹⁷ Mara Olekans "Harder for women on industrial front" *The Age* 7 November 2005

¹¹⁸ Peter Brosnan *Can Australia Afford Low Pay?* University of Sydney 2005.

¹¹⁹ *Safety Net Review of Wages* 7 June 2005 AIRC Decision [PR002005].

¹²⁰ Elizabeth Fletcher *Just Rewards: A Report of the Inquiry into Sex Discrimination in Over-award Payments* AGPS Canberra 1992.

¹²¹ ABS *Employee Earnings Benefits and Trade Union Membership* Cat No 6310.0 August 2004.

¹²² ABS *Australian Social Trends 2006* Cat. No 4102 July 2006 p121 and ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 p 48.

¹²³ ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 p 48.

26. Women are also overrepresented among casual employees. The ABS collects data on employees' entitlements to paid sick or holiday leave which are used as a proxy for what is commonly known as casual employees. The most recent data from the ABS show that women make up more than half of all employees without paid leave entitlements.¹²⁴ This reflects the fact that women are more likely to be in part time work than men and that part time workers are more likely to be employees without paid leave entitlements. In 1992, women made up almost two-thirds (64 per cent) of employees without paid leave entitlements. By 1998 this had declined to 58 per cent, but has since remained relatively stable.¹²⁵
27. Employees without paid leave entitlements are heavily concentrated among part time workers. In August 2005, 70 per cent of employees without paid leave entitlements worked part time (down from 75 per cent in 1992). The largest group of employees without paid leave entitlements are women who worked part-time, making up almost half (47 per cent) of this employment type.¹²⁶
28. In 2005, full time male employees accounted for just under one-fifth (19 per cent) of employees without paid leave entitlements, compared to just 11 per cent of full-time women.¹²⁷
29. Employees without paid leave entitlements also tend to be concentrated in the two lowest skills occupations - skill level 4 (comprising intermediate clerical, sales and service workers, and Intermediate production and transport workers) and skill level 5 (comprising elementary clerical, sales and service workers, and Labourers and related workers). Women account for nearly three quarters of intermediate clerical, sales and service workers, two thirds of elementary clerical, sales and service workers and slightly more than a third of labourers and related workers which includes cleaners.¹²⁸ Between 1996 and 2005, much of the growth in the number of employees without paid leave entitlements occurred in skill levels four and five, reflecting the fact that these two skill levels accounted for 74 per cent of all employees without paid leave entitlements in 2005.¹²⁹
30. Data compiled for HREOC reveals a significant pay gap between men and women working casually. While men working casually as award workers earn an average of \$1.10 more per hour (\$17.50 compared to \$16.40) than the average for all male workers, women casual award workers earn an average 30 cents more per hour than the average female award worker (\$16.70 compared to \$16.40). This suggests that women are less well compensated for casual work. Of further importance, the earnings gap increases for women whose pay is set via individual agreements – women working casually on

¹²⁴ ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 pp 21-24.

¹²⁵ ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 p22

¹²⁶ ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 pp 21-24.

¹²⁷ ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 pp 21-24.

¹²⁸ Women account for 72.4 per cent of intermediate clerical, sales and service workers, 65.6 per cent of elementary clerical, sales and service workers and 36.3 per cent of labourers and related workers including cleaners of whom they comprise 60 per cent: ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 p 47.

¹²⁹ ABS *Australian Labour Market Statistics* Cat No 6105.0 July 2006 pp 21-24.

registered individual agreements earned \$17.10 compared to an average hourly female income of \$20 and compared to an average male hourly income of \$25.10.¹³⁰

31. The recent gender pay gap report for the Western Australian Government referred to a number of Australian studies which confirmed that casual employees are substantially worse off than permanent employees.¹³¹ Findings from a 1999 study by Mark Wooden suggested “a negative wage premium (of around six per cent) associated with casual employment”;¹³² a second study by Barbara Pocock and Michael Alexander found a negative impact of 17 per cent on women casual employees and 23-24 per cent on men.¹³³

Family Responsibilities

32. Australian women continue to shoulder the major responsibility for unpaid work in the home with a significant impact on their earnings. A recent discussion paper released by HREOC *Striking the Balance: Women, men, work and family* considered these issues in detail.¹³⁴
33. In short *Striking the Balance* found that women still carry out around 70 per cent of all household work in Australian families including traditionally male tasks such as lawn mowing, rubbish removal and maintenance. For both men and women unpaid work almost doubles with the birth of the first child and having one child ensures women undertake just under eight hours of unpaid work per day.
34. While the labour force participation of Australian mothers is significantly higher than in earlier decades, relative to comparable countries Australian women have a low level of workforce involvement. In 2000, of Australian women with two or more children, only 43.2 per cent were in the workforce, compared with 81.8 per cent in Sweden, 64.7 per cent in the United States and 62.3 per cent in the United Kingdom.¹³⁵
35. The pattern of women’s participation in paid work changes according to the age of their children. Participation in the Australian workforce dips markedly for women around childrearing age, rising again as children grew older. The Longitudinal Study of Australian Children found that 40 per cent of mothers returned to work with a year of giving birth.¹³⁶ When their youngest dependent child is aged less than five years, the employment rate for mothers is 46.3 per cent. This employment rate rises to 65.5 per cent

¹³⁰ WiSER Women in Social and Economic Research Unit Curtin University of Technology *Women’s pay and conditions in an era of changing working regulations* Progress Report Part One: Women’s Employment Status Key Indicators July 2006 p 53.

¹³¹ Trish Todd and Joan Eveline *Report on the Review of the Gender Pay Gap in Western Australia* University of Western Australia November 2004 pp 39-40.

¹³² Mark Wooden (1999) ‘Gender Pay Equity and Comparable Worth in Australia: A Reassessment’, *The Australian Economic Review* 32(2), pp.157-71 at 165.

¹³³ Barbara Pocock and Michael Alexander (1999) ‘The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia’ *Labour and Industry* 10(2), pp.75-100.

¹³⁴ *Striking the Balance: Women, men, work and family* Discussion Paper 2005 HREOC Sydney. A copy of this document can be found at http://www.hreoc.gov.au/sex_discrimination/strikingbalance/index.html

¹³⁵ *ibid*, p A2-12.

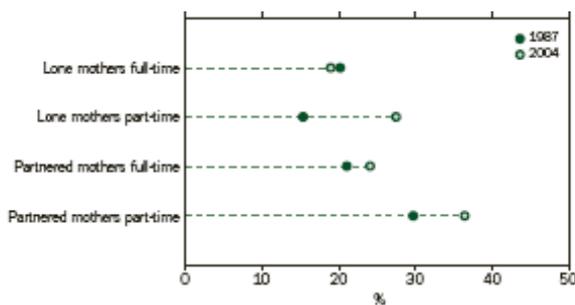
¹³⁶ Department of Family and Community Services and Australian Institute of Family Studies *Growing Up in Australia: The longitudinal study of Australian children – Annual Report 2004* Commonwealth of Australia Melbourne 2005, p 11.

when the youngest child is aged between five and nine years, and increases again to 69.5 per cent when the youngest child is between 10 and 14 years.¹³⁷

36. Women's workforce participation differs according to family type: 55 per cent of coupled mothers with dependent children in 2000 were in the workforce.¹³⁸ By comparison, 30.2 per cent of sole mothers were employed at this same time.

37. The following graph illustrates the gap in labour market participation of different groups of women with young children.

Women with children under 15 years: full-time and part-time employed(a)



(a) As a proportion of the civilian population for each group.

Source: Labour Force, Australia, Detailed - Electronic Delivery, Monthly (ABS cat. no. 6291.0.55.001).

38. Women are also largely responsible for other family commitments in addition to children and this is an increasing problem with Australia's ageing population. As people live longer and continue to live in their homes and communities, greater responsibilities are devolved to spouses, adult children, community services, volunteers and family carers. Women make up 71 per cent of primary carers of older people and people with a disability in Australia and more than a third of primary carers are employed women. Women do the overwhelming majority of caring for aged parents with 91 per cent of parents receiving care being cared for by their daughters.¹³⁹

Training and skill development

39. Accessing training and career development opportunities is an important element of skill acquisition and consequent career and pay progression.

40. The gender gap in earnings occurs despite employees' educational qualifications and in fact is larger between men and women with higher levels of tertiary qualifications. While the average weekly earnings of full-time employees (excluding owner/managers) increased with the level of education from \$790 for those whose level of highest educational attainment was year 10 or below, compared to \$1,624 for those whose level of highest educational attainment was a postgraduate degree, the earnings of males were higher than the earnings of females across all educational attainment categories.¹⁴⁰

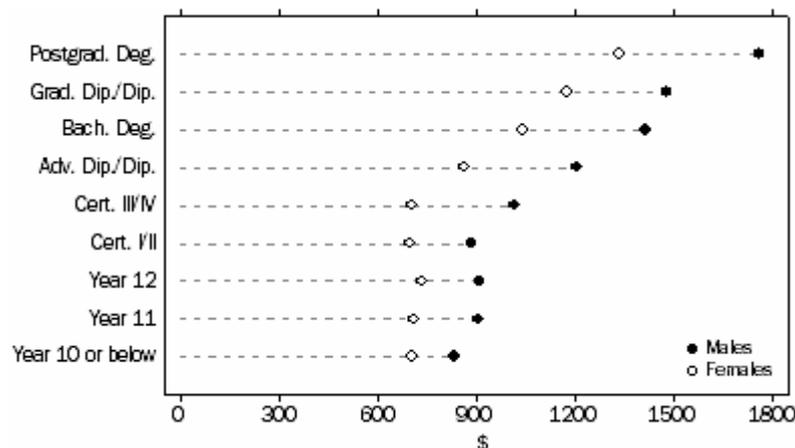
¹³⁷ Iain Campbell and Sara Charlesworth *Key Work and Family Trends in Australia* Centre for Applied Research RMIT Melbourne April 2004, p A2-7.

¹³⁸ ABS *Labour Force Status and Other Characteristics of Families 2000* Cat No 6224.0, p 20.

¹³⁹ See *Striking the Balance: Women, men, work and family* Discussion Paper 2005 HREOC Sydney

¹⁴⁰ ABS *Education and Training Experience, Australia, 2005* Cat No. 6278.0 May 2006 p6

**Full Time Employees (excl owner managers of incorporated enterprises) aged 15+
Average weekly earnings by level of highest educational attainment**



Source: ABS Education and Training Experience, Australia, 2005 Cat No. 6278.0 May 2006 p6

41. The recent pay equity report for the Western Australian Government found that factors that had been identified as impacting on employees' likelihood of receiving training from their employers included occupation, industry, size of employer, nature of employment, length of service, education level, age, marital status and carer responsibilities. Australian research showed that there was less training in feminised industries substantially more training is invested in those in high-level jobs. Structured training was more likely to occur in the public sector and larger organizations are more likely than smaller organizations to provide training. Part time work also affected access to training and, similarly, employers were more likely to provide training to permanent than casual employees. Evidence was also found that caring for children, particularly for a child under 2, decreased substantially the probability of receiving training and younger rather than older women were more likely to be discriminated against in the provision of training.¹⁴¹

Undervaluation of feminised work

42. Women are still concentrated in many areas of employment where their supposedly innate skills can be used most fully. This can be clearly seen in employment sectors where jobs involve such caring for people, communication skills, dealing with distressed people, fine dexterity and so on.

43. The value attached to jobs and skills associated with female and male labour respectively is a key factor in explain the gender pay gap. Research carried out for the International Labour Office (ILO) in 2003 examining minimum wages and pay equity¹⁴² found that the low value attached to the care sector of the economy is reflected in both the low monetary values and low esteem with which care work has been ascribed as it has moved from the domestic sphere to the formal economy.

¹⁴¹ Trish Todd and Joan Eveline Report on the Review of the Gender Pay Gap in Western Australia University of Western Australia November 2004 p39-40

¹⁴² Jill Rubery *Pay equity, minimum wage and equality at work: theoretical framework and empirical evidence* International Labour Office November 2003 p12

44. Much research has been carried out, including that carried out as part of the 1998 Pay Equity Inquiry carried out in the NSW Industrial Relations Commission (IRC)¹⁴³, which analyses the way in which the paid work of women has been historically undervalued.
45. The 1998 NSW Inquiry found that there was undervaluation of female-dominated work in all the areas in which detailed case studies were considered, and put forward a range of characteristics of occupations that make undervaluation more likely. These were:
- female dominated occupation
 - female characterisation of work
 - often no work value exercise by the IRC
 - inadequate equal pay application
 - weak union, few union members
 - consent award/agreements
 - inadequate recognition of qualifications (including misalignment of qualifications)
 - little access to training or career paths
 - large component of casuals
 - small workplaces
 - new industry or occupation
 - service industry
 - home based occupations.¹⁴⁴
46. The critical problem associated with this lack of skills recognition, particularly in service positions, has been how to define ‘skill’ and ‘worth’ so as to more thoroughly recognize and reward work performance in female-dominated occupations and industries. The difficulty of describing, analysis and valuing these non-accredited ‘soft skills’ has been an on-going problem in increasing the pay of employees in female dominated industries and occupations.
47. This is a key area in which the AFPC must be vigilant. If skills are not properly recognised and described, rates are likely to be set on the basis of work being unskilled, with a levelling down effect on the rates for whole classification scales.

¹⁴³ Hon Justice Glynn *Report of the NSW Pay Equity Inquiry: Reference by the Minister for Industrial Relations pursuant to section 146(1)(d) of the Industrial Relations Act 1996* Matter No. IRC6320 of 1997

¹⁴⁴ Philippa Hall ‘Pay Equity Issues and Prospects’ Keynote Address, *New Zealand Conference on Pay and Employment Equity* Wellington June 28-29 2004 p27-28