



Fair Work and Pay Equity in Australia

Lisa Heap

Executive Director

Australian Institute of Employment Rights



Overview

- What is AIER
- Who is Lisa Heap
- What's happening in Australia
- Developments in pay equity
- Q&A



AIER

- **Independent think tank**
- **Tripartite structure**
- **Promotes the recognition & implementation of the rights of employees and employers in a co-operative workplace relations framework**
- **Framework - Charter of Employment Rights**



Charter

- **Legislative - Framework**
- **Guide - mediation, conciliation & arbitration**
- **Agreement making**
- **Employer policy & decision making**
- **Standard-Benchmark Accreditation**
- **Government procurement**
- **Instrument of Education**



Who am I?

- Good Question!
- Director - AIER
- Consultant Advocate
- Accredited mediator
- Former trade union official



Australia Building a new system

“Labor’s new system will be different. It will be based on the rights and responsibilities of those at a workplace and democracy in the workplace.”

Forward with Fairness -(ALP Policy document prior to election)



“Consequently, Labor will give effect to important workplace rights that are essential to a functioning democracy:

- collective bargaining;***
- freedom of association;***
- the right to representation, information and consultation in the workplace;***
- protection against unfair treatment;***
- access to an effective procedure to resolve grievances and disputes;***
- freedom from discrimination; and***
- equal remuneration for work of equal value.”***

Forward with Fairness



Themes

- **Bargaining**
 - **collective only**
 - **Good Faith obligation**
 - **matters pertaining to employment relationship**
 - **enterprise focus - but some multi employer bargaining & last resort arbitration**



Right to Representation

- General protections
- Majority support applications (not recognition ballots)
- Appointment of bargaining representatives - union members have right to have union represent them
- Right of Entry & right to inspect records (including of non members)
- Mandatory provision in awards and agreements recognising right to consultation & representation



Protections against unfair treatment

- **Unfair dismissal - 6 month qualifying period**
- **Small business provisions (15 employees or less) 12 month qualifying period & Small Business Code**
- **Unlawful termination**



- Minimum Standards
 - National Employment Standards
 - Modern Awards



NES

- (a) Maximum weekly hours of work**
- (b) Requests for flexible working arrangements**
- (c) Parental leave (and related entitlements)**
- (d) Annual leave**
- (e) Personal/carer's leave and compassionate leave**
- (f) Community service leave**
- (g) Long service leave**
- (h) Public holidays**
- (i) Notice of termination and redundancy pay**
- (j) Fair Work Information Statement.**



- **NES - Important Themes**
 - **Right to request regime - refuse on reasonable business grounds**
 - **Broadening recognition of work-family balance issues - what about Paid Maternity Leave?**
- **How will the standards be maintained overtime?**



Modern Awards

- **Transition Act authorises AIRC to make modern award in accordance with Ministers request**
- **With constitutional corporations**
- **Object - award to be fair but flexible**
- **10 matters that may be in awards**
- **Prohibition on state based differentials**



- Modern Awards - Important themes
 - **Process - not disadvantage employees & not increased costs**
 - **Constitutional foundation - not all problems will be resolved - who's in/who's out?**
 - Not a national scheme of regulation



Pay Equity Issues

- Impact of Work Choices -individual agreements (AWA's)
- Provisions for equal pay for equal or comparable work -Pay Equity Inquiry
- Where is Paid Maternity Leave? A victim of credit crunch?



PE - current position

- Gender pay gap widened under WorkChoices
 - 2004 - gap 13%
 - 2007 - gap 16%

Figures based on full - time Average Weekly Ordinary Time Earnings

Within industries decline e.g. transport

1994 - gender pay gap 16%

2006 - gender pay gap 25%



- Women to Women

Women on individual agreements (AWA's) earn \$2.90 per hour or (\$100.20 per week) less than their women counterparts on registered collective agreements.



Female dominated industries - stagnant real wage growth or real wage decline

Inequities go beyond pay also -increased working hours, changes to patterns of working time, loss of penalties for working on weekends and inhospitable hours, greater employer discretion to organise work.



How does Fair Work Bill address this?

- Reassertion of benchmark safety net
- NES include flexible work arrangements provisions - ? How far this will assist and what enforcement arrangements
- Removal of AWA's = collective agreements dominant
- Introduction of low-paid bargaining stream with last resort arbitration



How does Fair Work Bill address this?

- Broad discretion for Fair Work Australia to make orders to ensure equal remuneration for work of equal or comparable value



- FWA can make any orders designed to achieve equal remuneration
- Orders can be made on application of employee, union or Sex Discrimination Commissioner
- Establishment of discrimination in wage setting is not required
- Can only increase and not reduce rates
- Equal remuneration order overrides other determinations



Exercising Discretion

- How will FWA do this? Not clear
- Previous provisions in the Act were not utilised regularly
- Currently a Pay Equity Inquiry occurring
- Hopefully adopt Queensland Principles



Queensland ERP as the example

- The Equal Remuneration Principle was adopted by a Full Bench of Queensland IRC in April 2002
- The purpose of the Principle is to provide a mechanism for the gender-neutral assessment of the value of work



It retains the traditional elements used in assessing work value i.e., the nature of the work, skill and responsibility and the conditions under which work is performed

To these, another element is added: other relevant work features. This element allows consideration of such matters as the performance of unpaid overtime or accessing skill development in the employee's own time and at their own expense



Each of the elements is to be assessed transparently, objectively and free of assumptions based on gender

Work value change does not need to be demonstrated

What is to be assessed is the present value of the work having regard to the abovementioned factors and taking into account matters that may have contributed to the work being undervalued in the past.



Consideration is able to be given to such matters as the award history, whether the work has been characterised as female as well as a range of other indicators that were originally included in the Undervaluation Profile



Undervaluation Profile

- A high proportion of small workplaces;
- Predominantly female workforce;
- High proportion of part time and casual employment;
- Award reliance;
- History of award - consent arrangements
- Very few instances of over-award payments being made to employees;
- Low levels of collective bargaining;
- Low wages;
- Low levels of unionisation



If an occupation fits within some or all of the elements of the profile, it is likely that the occupation is undervalued.



Comparisons within and between occupations and industries are not required in order to establish gender based undervaluation of work but may be used to ascertain appropriate remuneration

Where undervaluation has been established the Principle does not limit the Commission as to how to achieve equal remuneration



The Principle provides a non-exhaustive list of the types of measures that might be considered such as the reclassification of work, the establishment of new career paths, changes to incremental scales, wage increases, the establishment of new allowances and the reassessment of definitions and descriptors of work to properly reflect the value of the work



Application of ERP in practice

- The four questions
 - What is the nature of the work being performed?
 - Has the work been undervalued? Why has it been undervalued?
 - What is the extent of the undervaluation?
 - What needs to be done to correct the undervaluation?



Unpacking the nature of the work in detail is critical

Skills involved - in particular “soft skills”,
breaking down notions of inherent qualities or attributes

Environment within which work is performed

Expert evidence a must



Identifying factors of undervaluation

- Applying the Undervaluation profile & providing evidence of this
- Involves a review of the union's activities in the area
- Requires evidence of wage movements, bargaining processes (or lack thereof)
- Includes identifying changes in the value of work via technology change, legislative change, changes in the environment within which work is performed



Establishing the extent of the Undervaluation

- Evidence of wage comparisons between occupations - not required but persuasive
- Difficult task - consider academic survey of what is paid & compare with data from other comparable industries or occupations
- Requires establishing why they are an appropriate comparator



- Consider non wage components too
 - Allowances paid
 - Overtime penalties
 - Extent of unpaid time worked
 - Training taking place in own time & at own costs
 - Environmental factors



Correcting the undervaluation

- Number of components possible
 - Increases in wage rates
 - Change to or new classification structure
 - Alterations to descriptors of work
 - Recognition of qualifications and promotion of attainment of this
 - Adoption of new allowances
 - Inclusion of component to compensation for lack of bargaining outcome



- Success in the future in Australia depends on ensuring that pay equity is seen as core union business.
- This requires a greater level of engagement and also a process to unpack the complexity of these cases and share information.