



A•S•U
Australian Services Union

ASU Submission

Gender segregation in the workplace and its impact on women's economic equality

The Senate
Finance and Public Administration Committee

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1. Introduction

The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Currently ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Social and community services
- Local government, including early childhood education
- State government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and South Australia)

The ASU has members in every State and Territory of Australia, as well as in most regional centres. Around 50% of ASU members are women, the exact percentage varies between industries, e.g. in social and community services around 70% of our members are women.

2. The Inquiry

The ASU is pleased to provide this submission to the Finance and Public Administration Committee inquiry into gender segregation in the workplace and its impact on women's economic equality.

Over many decades there has been a major shift in society from one where women's primary role was in the private sphere of home and family care to one where women's lives revolve around both paid work and family care.¹ Despite this shift and the introduction of significant legislative reforms, such as equal pay for equal work, women in Australia continue to experience a persistent and seemingly intractable pay differential.

Currently the gender pay gap sits at 17.7%, based upon women's average full-time base salary across all industries and occupations.² In general, males continue to be paid at a higher rate than females, with a sizeable proportion of women being employed on a part time, casual or insecure basis, often to allow them greater flexibility to balance work and family commitments.

We are concerned about Australia's labour market which has particularly high levels of gender segregation, both horizontal and vertical, which has resulted in women earning far less than their male counterparts. The Workplace Gender Equality Agency (WGEA) recently stated "Australia as a country has some of the worst industrial and occupational gender segregation of any [OECD] country." WGEA data shows that six in 10 Australian employees work in an industry that is dominated by one gender.³

¹ Strachan, Glenda. *Still Working for the Man?: Women's Employment Experiences in Australia since 1950* [online]. Australian Journal of Social Issues, The, Vol. 45, No. 1, Autumn 2010: 117-130.

² WGEA, *Australia's 2015-2016 Gender Equality Scorecard* [online]. Accessed at:
<https://www.wgea.gov.au/sites/default/files/2015-16-gender-equality-scorecard.pdf>

³ Financial Review, *WGEA boss vows to tackle Australia's highly gender segregated workforce* [online] Accessed at:
<http://www.afr.com/leadership/wgea-boss-vows-to-tackle-australias-highly-gender-segregated-workforce-20161212-gt958a>

The gender pay gap and gender segregation of the workforce affect women's earnings, assets and economic and financial security throughout their lives. This gender inequality accumulates and compounds to further disadvantage women throughout their lifecycle and impacts of both their health and wellbeing.⁴ The most serious consequence of the gender gap is the likelihood of financial insecurity and poverty in retirement for women.

We must address this inequality now, otherwise if left ignored it will continue to grow as a major social and economic problem.⁵ Gender inequality exacerbates economic inequality and economic inequality, in turn, reinforces gender inequality. Research has shown that closing the pay gap between men and women's employment rates would boost the level of Australia's GDP by 11%.⁶

The Grattan Institute found in 2013 that removing disincentives for women to enter the paid workforce would increase the size of the Australian economy by about \$25 billion per year.⁷ Goldman Sachs has estimated that if Australia got as many women as men working it would boost the economy by \$195 billion a year.⁸

The ASU has consistently pressed for the re-examination of the historical undervaluing of women's work. For example the ASU ran a successful Equal Pay Case for employees in the social and community services sector. We believe the government should examine how the system can be improved to ensure the mechanisms for bringing forward equal pay cases are accessible and not overly burdensome for applicants.⁹ We look forward to participating in this inquiry.

3. Summary of ASU recommendations

The ASU makes the following recommendations to the inquiry:

Women in Local Government

Recommendation: Identify women in lower classifications with the capability to undertake training and skills development with the aim of promoting them through the classifications eventually to management level or skilled professional roles.

Recommendation: Enforce the provision of flexibility conditions that exist in EBAs and awards and change the workplace culture around accessing those conditions.

Recommendation: Focus on the recruitment of women in blue collar areas and para-professional roles.

Early childhood education in Local Government

Recommendation: The federal government recognise the endemic low pay that characterises Early Childhood Education and Care by ensuring success of the equal remuneration order.

Women in Social, Community and Disability Services

Recommendation: Social and community services need longer-term secure funding, as the current short-term funding model has deleterious effect on women's job security.

⁴ NSW Council of Social Service, *A New Year for Women: Economic Empowerment Discussion Paper* [online] Accessed at: https://www.ncoss.org.au/sites/default/files/public/campaign/New%20Year%20for%20Women_discussion_FINAL.pdf

⁵ Australian Human Rights Commission, *Accumulating poverty? Women's experiences of inequality over the lifecycle* [online] Accessed at : <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/accumulating-poverty-women-s-experiences-inequality-over>

⁶ Goldman Sachs JBWere, *Australia's Hidden Resource: The Economic Case for Increasing Female Participation* [online] Accessed at: http://www.asx.com.au/documents/about/gsjbw_economic_case_for_increasing_female_participation.pdf

⁷ Government of South Australia, *Women's Policy – Economic Status* [online] Accessed at: <https://officeforwomen.sa.gov.au/womens-policy/womens-employment-and-economic-status>

⁸ Herald Sun, *Closing Gender Pay Gap Makes Economic Sense* [online] Accessed at: <http://www.heraldsun.com.au/news/opinion/wendy-tuohy/wendy-tuohy-closing-gender-pay-gap-makes-economic-sense/news-story/8f5f24fa9db952e63f9435b5d77a17a4>

⁹ Australian Government, *A husband is not a retirement plan – Achieving economic security for women in retirement* [online] Accessed at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report

Recommendation: The establishment of an industry certification and accreditation body to set minimum professional standards to properly recognise the skills and experiences of workers in social, community and disability services and ensure quality service provision. The body should comprise representatives of employers, employees, educators and clients.

Women to benefit from a portable long service leave scheme in social, community and disability services

Recommendation: The inclusion of a portable long service leave scheme as an essential strategy for tackling gender inequality.

Women in Private Sector Clerical Roles

Recommendation: Measures to make flexible working arrangements an accepted part of mainstream working life for both men and women

Recommendation: All Australian businesses to conduct a transparent pay gap analysis to work towards achieving zero pay inequity

Pay Secrecy/Pay transparency

Recommendation: Prohibiting companies from taking adverse action against employees who disclose information about their pay to colleagues.

Recommendation: All Australian companies should be legally required to advertise their salary rates and to end pay secrecy policies

Closing the Gender Super Retirement Gap

Recommendation:

- Immediately increase compulsory employer contributions from 9.5 to 12 per cent.
- Boost women's superannuation balances and address the effects of longevity on annual retirement incomes by increasing compulsory employer contributions for women at a level that is two per cent higher than the mandatory rate for men or a lump sum payment of \$10 000 at age 21.
- Amend sex discrimination legislation to make these extra payments possible for women.
- Introduce progressive taxation of superannuation, based on marginal rates minus a rebate that will address the inequitable nature of current tax settings to improve women's retirement incomes, particularly for those on lower incomes.
- Remove the current exemption for employer superannuation payments to employees earning less than \$450 per month, as these employees are mostly female.
- Make the \$500 low income payment permanent for all women regardless of income levels.
- Allow super funds to discriminate in favour of women in regards to fees charges.
- Compulsory super payments during paid parental leave
- Free financial planning and education for women.

Superannuation guarantee should be paid on periods of paid parental leave

Recommendation: Payment of compulsory superannuation contributions should be made for periods of paid parental leave to help grow women's retirement nest eggs.

ASU's equal remuneration case

Recommendation: Consideration should be given to a non-adversarial scheme for correcting the undervaluation of women's work. The recommendations in the "Making it Fair" report should be implemented in full.

Recommendation: That Commonwealth and State Governments ensure that future successful pay equity cases are fully funded by increases in the grants, subsidies and payments provided by Government to the service provider/employer, where necessary.

Gender related violence

Recommendation: All levels of government should support paid domestic violence leave in the National Employment Standards.

Measures to encourage women's participation in male dominated occupations and industries

Recommendation: The Australian Government should promote initiatives to improve women's economic participation in male-dominated industries.

4. ASU issues of concern

The ASU's primary concerns regarding gender segregation in the workplace and its impact on women's economic equality have to do with:

- Women in Local Government
- Early Childhood Education in Local Government
- Women in Social, Community and Disability Services
- Women to benefit from a portable long service leave scheme in SACS
- Women in Private Sector Clerical & Administration
- Industrial Relations challenges
- Pay Secrecy/Pay transparency
- Closing the gender superannuation retirement gap
- Superannuation guarantee should be paid on periods of paid parental leave
- ASU's equal remuneration case
- Gender related violence

4.1 Women in Local Government

The statistics on women's employment in the higher classifications of local government is startling. Ninety one percent of civil engineers are men, 90% of building surveyors are men, and 93% of Chief Executive Officers are men!¹⁰

Women in local government are overwhelmingly concentrated at the bottom end of the pay scale, often in part time jobs and largely in the clerical and administrative areas. Many of these women are capable of promotion but for various reasons, both structural and social, are not offered or do not apply for promotional opportunities.

If local government is to be truly representative and inclusive women need to be employed across all classifications, including in senior management and leadership.

Apart from being an equity issue the lack of women in higher classifications and senior management reflects a failure by local government to invest in and utilise the potential of its workforce.

With the right training, investment in skills, and career paths women in lower level classifications can be trained to become para-professionals and even skilled professionals to meet skills shortages in civil engineers and building surveyors and improve the representation of women in those non-traditional professions. With the right mix of family friendly conditions and training women can also be promoted to senior management and leadership positions.

Women in non-traditional professions

The reason that women compose only nine percent of all civil engineers and just ten percent of building surveyors are a range of social and cultural attitudes that go beyond local government. Until these attitudes change we will continue to see a disproportionate amount of men choosing to go into these fields as compared to women.

That being said, by improving the recruitment of women in blue collar occupations and para-professional roles we can improve on those statistics. Once these women are in the sector and working in non-traditional fields, such as building surveying and engineering, they can be offered

¹⁰ ASU Submission, *Draft Local Government Workforce Strategy* [online] Accessed at:
<http://www.asu.asn.au/resources/submissions>

training and development opportunities to encourage and equip them to take up the skilled professional roles within that field.

Women in senior management and leadership positions

There are a number of structural problems in the local government workforce that create disincentives and barriers for women to gain or choose promotion to management or leadership positions.

These are as follows:

- Women do not receive the relevant incentives to take up management positions; women are paid less than their male counterparts¹¹ and more often than not have to give up flexible working arrangements to take up a promotion.
- Our experience is women with the ability and skill set to be promoted to a management position either do not apply or are not offered promotions because of their family responsibilities. It is rarely overt discrimination. More often than not women will not apply for promotion because they would lose the flexibility and family friendly conditions which are available at the lower end of the pay scale.
- One example of this is the nine day fortnight. This condition is a common benefit found in enterprise agreements and awards for blue collar and clerical and administrative workers. In return for working longer hours workers receive a rostered day off every fortnight. This condition is essential for working families as it can mean one less day of childcare, a day to run errands or perform the many hours of unpaid and unrecognised work in the home that women perform.
- This condition is usually not available to workers in management level classifications. A "promotion" therefore can actually mean a loss of conditions that is often perceived by women as more valuable than a pay increase.
- These perceptions are reinforced by the experience of women in managerial positions who find it very difficult to access flexible conditions. Our experience with members working at managerial or higher classifications is that it is very difficult to transition to part time work or return to work part time. Our members report that the negotiations are very difficult, and they often have to accept reduced conditions or loss of entitlements in exchange for access to flexible or reduced hours.
- One example of the lost entitlements that sometimes occurs when women move to part time work is that they lose their car. This represents a very real financial detriment to taking up flexibility options and makes life harder for women juggling work and family. This in turn sends a message to other women in the workplace that they should not apply for managerial positions because the working conditions are not family friendly.

The real solution to this problem is a more equitable division of family responsibilities between men and women. Short of this social revolution occurring there are many initiatives local government can implement to better support women (and men) with family responsibilities to enable them to take up management and leadership opportunities.

These are as follows:

Recommendation: Identify women in lower classifications with the capability to undertake training and skills development with the aim of promoting them through the classifications eventually to management level or skilled professional roles.

¹¹ Workforce Victoria, Department of Innovation, Industry and Regional Development, *Pay equity and productive workplaces in local government*

Recommendation: Enforce the provision of flexibility conditions that exist in EBAs and awards and change the workplace culture around accessing those conditions.

The problem is not that conditions are not 'available', technically they are but the culture of the workplace and attitude of human resources is such that women do not feel they can or are not allowed to access the conditions. Local government pays lip service to family friendly conditions but it is yet to translate into a reality for many women managers. The sector requires a genuine shift in attitude and enforcement of entitlements if it is to truly support its female managers and make the positions attractive for more women to apply.

Recommendation: Focus on the recruitment of women in blue collar areas and para-professional roles.

4.2 Early childhood education in Local Government

The ASU is the largest Local Government union in Australia, and represents Early Childhood Educators and other workers employed in Local Government Child Care centres, including Long Day Care, Pre-schools, Out of School Hours Care (OOSHC), and facilitation of Family Day Care (FDC).

To work in child care, educators need a vocational qualification (certificate III or diploma). Teachers in long day care and preschools have an education degree, often the same qualification as teachers in schools. Yet, wages and conditions are poor by comparison, particularly in long day care.

Today families of children in care have increased expectations of service and professionalism due to the increased awareness of the importance of education and development in the early years of a child's life.¹²

In 2013 United Voice and the Australian Education Union lodged an Equal Remuneration Order for employees who are employed in a long day care centre or pre-schools covered by a number of modern awards. Women make up 97% of educators in the early learning sector.¹³

In their pre-budget submission for 2017-2018 United Voice says "ensuring professional wages for educators is a crucial step in redressing the imbalance between women and men's earnings in Australia and improving the quality and status of jobs in female-dominated fields."¹⁴ They are basing their application on the fact most childcare workers are women who earn less than men for doing comparable jobs in male-dominated industries.

They recommend that the federal government recognise the endemic low pay that characterises gender-segregated occupations and industries such as Early Childhood Education and Care (ECEC) and that it assumes responsibility for addressing this inequity. The Australian Services Union supports this recommendation.

Recommendation: The federal government recognise the endemic low pay that characterises Early Childhood Education and Care by ensuring success of the equal remuneration order

¹² Herald Sun, *Childcare workers too poor to start families of their own* [online] Accessed at: <http://www.heraldsun.com.au/news/childcare-workers-too-poor-to-start-families-of-their-own/news-story/7b6b9d64b587d3a8c5436972f45f1f07>

¹³ United Voice, *Frustrated Early Childhood Educators demand pay equity: Where's Malcolm Turnbull on Equal Pay for Women?* [online] Accessed at: <http://www.unitedvoice.org.au/press-releases/frustrated-early-childhood-educators-demand-pay-equity-where%28%99s-malcolm-turnbull-equal>

¹⁴ United Voice, *Pre-Budget Submission 2017-2018* [online] Accessed at: www.unitedvoice.org.au/documents/big-steps-pre-budget-submission

4.3 Women in Social, Community and Disability Services

The provision of social, community and disability services depends on the existence on an adequate, accessible and sufficiently skilled workforce. Our members working in the not-for profit (NFP) social, community and disability services sector hold a unique position in which they not only support and care for the most vulnerable members of society, but they are also key advocates for their rights and aspirations to fully participate in society.

Short term funding and insecure work in social and community services

In the social and community service sector 70% of our membership is female with approximately 80% being reliant on the *Social, Community, Home Care and Disability Services Industry Award 2010*. In 2012, workers in the social, community and disability services sector were the subject of an Equal Remuneration Order (ERO) which awarded increases of between 23% and 45% following a successful application by the ASU and other unions (the Equal Pay Case is discussed in detail in section 4.9 of this submission).

The ERO is currently being phased in over eight years and when fully implemented, will go a long way towards addressing historic gender based undervaluation of work in the social and community services sector. However, these workers continue to rely very heavily on the terms of the Social, Community, Home Care and Disability Services Industry Award 2010 with respect to conditions of employment such as allowances, overtime and penalty rates.

This means labour costs are fixed, and the only way for an organisation to manage such costs is by hiring employees on lower pay grades (and therefore with less experience or qualifications) or with less job security (for example, casual employees).

Ongoing downward pressure on social and community services sector funding has led to a sector that has a large component of casual workers, or other forms of insecure employment such as short-term contracts. Funding is typically provided on the basis of competitive tendering and often involves short-term grants. The nature of the funding has contributed to the following features in the sector:

- i. a significant proportion of employees in the sector are engaged on a part-time and/or casual basis;
- ii. a significant proportion of employees are engaged on temporary contracts;
- iii. there is limited access to paid overtime;
- iv. there is relatively high turnover of employees between employers but within the sector, leading to very limited access to long service leave;
- v. low wages meaning limited accumulation of superannuation benefits;
- vi. high levels of unpaid work;
- vii. employees undertaking unpaid training in the employees' own time.¹⁵

In their *Secure Jobs, Better Future* paper the Australian Council of Trade Unions (ACTU) identified fixed term employment as generally having similar wages and conditions to ongoing employees, with the important exception of job security. In addition, many workers on fixed-term contracts face difficulties accessing similar training and career opportunities to their permanent counterparts.¹⁶

The chance to pursue training and career opportunities is regarded as an important tool in closing the gender pay gap and the gender inequality women experience in the workplace.

The ASU recommends the Commonwealth government implement longer term funding cycle arrangements in the social and community service sector with the aim to improve certainty of work and longer term employment for women and thus help mitigate the precarious nature of work and the economic consequences often experienced in this sector.

¹⁵ ASU Submission to Fair Work Commission – C2010/3131 – Application for an Equal Remuneration Order in the Social and Community Services Industry

¹⁶ ACTU paper *Secure Jobs Better Future Paper* (2011) [online] Accessed at:
<http://www.actu.org.au/media/125289/Future%20of%20work%20industrial%20options%20paper.pdf>

Finally, competitive tendering and short term funding must end. These are inappropriate funding models for the delivery of social and community services. These models of funding undermine the attraction and retention of quality staff and frustrate sustained effort in addressing disadvantage and marginalisation. Quality rather than lowest cost must underpin the provision of services.¹⁷

Recommendation: Social and community services need longer-term secure funding, as the current short-term funding model has deleterious effect on women's job security.

Industry Accreditation and Staff Certification

The ASU recommends that the government establishes an industry-based and independent tripartite accreditation board with responsibilities including enforcement of minimum standards and rating of service performance above the minimum standard according to a series of industry informed legislated standards.

The regulation of the social, community and disability services industry must be managed by the industry itself. Experience shows that self-regulation within a legislative framework is the best form of regulation bringing with it ownership and responsibility of those directly involved. Accreditation of services will improve quality assurance; reduce the regulatory burden and free services to focus on clients rather than government red tape and unnecessary compliance.¹⁸

A social, community and disability services industry accreditation and staff certification board should be established. It would be comprised of industry representatives (employer bodies, Unions, and bodies representing clients and educators).

The Board will have responsibility for the establishment of:

- Standards and mechanisms for the accreditation of service.
- Codes of conduct for employers and employees.
- Standards and mechanisms for the certification of staff. The establishment of standards for certification of staff shall be via formal certification of the courses of study that provide access to the profession.
- The body will have two distinct divisions:
 - Accreditation of Services.
 - Certification of Staff.

Accreditation of services

All services must be accredited as part of a long term commitment to quality service delivery.

Certification of all Staff aligned with new Career and Education Pathways

Social, community and disability services staff are dedicated and highly skilled practitioners and collectively form a third of the caring professions.

Within the 'Certification of Staff' division of the social, community and disability services board, members of the profession establish standards for the certification of all staff engaged in the industry. These standards will be established progressively over time.

The primary mechanism for certification will be by the Board certifying the courses that will be aligned with the education pathways referred to above. In essence, the attainment of an accredited qualification will act as the certification, subject to necessary police checks and any other mechanisms deemed appropriate by the Board for certification.

Certification will be for an initial period of five years.

¹⁷ ASU, *A national plan to address the workforce crisis in the Social, Community and Disability Services Industry 2009*

¹⁸ ASU, *A national plan to address the workforce crisis in the Social, Community and Disability Services Industry 2009*

Recommendation: The establishment of an industry certification and accreditation body to set minimum professional standards to properly recognise the skills and experiences of workers in social, community and disability services and ensure quality service provision. The body should comprise representatives of employers, employees, educators and clients.

4.4 Women to benefit from a portable long service leave scheme in social, community and disability services

A recent report¹⁹ found women are particularly likely to benefit from a portable long service leave scheme. This is because women are over-represented in casual or part-time employment without long service leave benefits when compared to men, and are also less likely to be employed with one employer for 10 years or more.²⁰

"Women still take on the lion's share of caring responsibilities in this country. Whilst career breaks as a result of taking maternity, paternity or adoption leave do not break continuity of service they are not counted as service towards long service leave accruals and therefore it can be argued that many women will take much longer to ever realise a paid entitlement when their employment periods are broken as a result of having and caring for children".²¹

Whilst on maternity leave many women access their annual and long service leave entitlements to boost their income in the later months of unpaid leave. This additional money matters as although many women are eligible for the Government funded 18 weeks paid parental leave this amount of leave does not provide financial security and may contribute to women returning to work earlier than they wish after having a baby.

A portable long service leave scheme would assist women in accruing larger amounts of paid leave for them to access whilst on unpaid leave and would allow them to optimise their financial security and economic participation, two of the most important factors that influence women's health and wellbeing¹⁷. Crucially any scheme that helps women to take paid periods of leave which enables them to return to work will not only benefit employers it will help boost the local labour supply while retaining skills in the labour market.

The current funding arrangements clearly disadvantage workers in the social, community and disability services sector. Funding is clearly an issue of significance for our members with many experiencing ongoing uncertainty as to whether they will be employed with the same service provider in just a few months' time. A portable long service leave scheme would help to combat the stress and anxiety many workers suffer due to current funding arrangement insecurity.

In our report *Building Social Inclusion in Australia; recommendations for stronger social and community services*²² the number one condition valued most by our social, community and disability services members would be the ability to take their accumulated long service leave with them when they move to another service.

This issue ranked higher than paid parental leave, guaranteed employee training, more employer superannuation and even higher rates of pay. This outcome is not surprising given our members face multiple pressures including low pay, predominately female, short term tenure of employment, high staff turn-over and dependence on government funding for recurrent income.

¹⁹ Macquarie University, Centre for Workforce Futures, *The Desirability of Extending Portable Long Service Leave* [online] Accessed at:
http://www.parliament.vic.gov.au/images/EDJSCommittee/Sub_19_07082015_Centre_for_Workforce_Futures_Macquarie_University.pdf

²⁰ Macquarie University, Centre for Workforce Futures, *The Desirability of Extending Portable Long Service Leave* [online] Accessed at:
http://www.parliament.vic.gov.au/images/EDJSCommittee/Sub_19_07082015_Centre_for_Workforce_Futures_Macquarie_University.pdf

²¹ ASU Victorian and Tasmanian Authorities and Services Branch submission, *Victorian Government inquiry into portability of long service leave entitlements* [online] Accessed at <http://www.parliament.vic.gov.au/ejsc/article/2561>

²² ASU, *Building Social Inclusion in Australia; recommendations for stronger social and community services*, 2009

A national portable long service leave scheme would allow our members to optimise their work-life balance by enabling them to take breaks between positions while retaining their attachment to the sector. This not only has an immediate benefit but also has flow-on positive benefits, including women's superannuation balances for retirement and career planning, which does not see them disengaging from the sector altogether.²³

The Victorian Government in November 2016 accepted recommendations on the introduction of portable long service leave in the community services, security and contract cleaning industries. Due to the fact that employees in these sectors are often unable to continue working for a single employer due to the nature of the industries and a variety of short term funding arrangements.²⁴

Recommendation: The ASU recommends the inclusion of portable long service leave as an essential strategy for tackling gender inequality.

4.5 Women in Private Sector Clerical Roles

The ASU has members employed as private sector clerical and administrative (C&A) employees in most industries in Australia. The majority of ASU members have their employment conditions regulated by federal awards and/or certified agreements in the Federal jurisdiction.

Regardless of the size of business, the gender pay gap is considerably larger in the private sector when compared to the public sector. The clerical pay gap is the result of two major factors: occupational segregation within clerical occupations and the lack of equal pay for equal work.

Clerical and administrative workers are predominately women who make up more than 70% of all employees within this occupation.²⁵ The occupational segregation, with women being over-represented in clerical and administrative roles, suggests that while this industry may be high-paying, in many cases women are concentrated in the lowest paying clerical classifications.

Research demonstrates that despite an increased presence of female employees in mid-management positions in the private sector, executive positions across Australia continue to be dominated by men. This may be due to existing networks in organisations that are homogenous and long-standing such as "old boys networks" and the challenges faced by women in balancing their career and motherhood.

Many ASU members report that accessing flexible work arrangements is detrimental to career prospects and does not work within the status quo expectations of long hours for senior positions.

We are aware of some private sector companies having workforce policies that specifically state leadership roles are unable to be fulfilled on a part-time basis. This is a major barrier to women's career progression as former full-time employees with advanced skills and considerable experience are often forced into lower clerical grades when they return to work from parental leave and reduced to part-time hours.

Gender segregation in the clerical and administrative sector often makes it difficult to compare the relative skills between women and men directly and may help disguise the influence of gender on wage differentials. Often women's skills are simply not visible nor valued as pay and grading structures are still often based on male-type skills. We need to make women's skills visible and take steps to professionalise women's work.

²³ Victorian Government inquiry into portability of long service leave entitlements, Hearings and Transcripts of the Australian Services Union [online] Accessed at <http://www.parliament.vic.gov.au/eejsc/article/2562>

²⁴ Victorian Government, *Step Forward For Portable Long Service Leave* [online] Accessed at: <http://www.premier.vic.gov.au/step-forward-for-portable-long-service-leave/>

²⁵ WGEA, *Gender Equity Insights 2016* [online] Accessed at: https://www.wgea.gov.au/sites/default/files/BCEC_WGEA_Gender_Pay_Equity_Insights_2016_Report.pdf

The ASU believes there must be a commitment from private sector organisations to redesign jobs as the current work structure favours the “ideal worker”: male, without any visible caring responsibilities and able to work for more than the usual full time hours in a week.²⁶

Private sector organisations need to demonstrate that flexible career paths are viable for all employees and we need widespread acceptance and implementation of different ways of working to help both women and men to effectively manage career-life transitions.

The most effective initiatives in overcoming barriers for women in the private sector and to assist them in obtaining executive positions are to:²⁷

- Provide training to improve skills
- Provide training for men and women to change beliefs or perceptions
- Set and monitor targets for gender parity
- Proactively support women’s career development
- Ensure recruitment and promotion processes are unbiased and involve a diverse set of decision makers
- Create working models that support men and women with family responsibilities
- Visible and committed leadership over the long term

Flexible working arrangements do not just mean part-time career options at various stages in a career. It can mean allowing flexible start times, finish times and the option to work from home. Flexible working practices are integral to closing the gender pay gap. Until there is a greater uptake of such initiatives by both men and women the strong association between caregiving, gender and reduced work intensity will never be reduced.²⁸

Recommendation: Measures to make flexible working arrangements an accepted part of mainstream working life for both men and women.

Furthermore the ASU believes private sector organisations should be required to conduct and report a remuneration gap analysis on an annual basis. Currently only 27% of organisations reported a remuneration gap analysis had been conducted in 2015-2016.²⁹ This is far from ideal as to understand the problem of pay equity one has to investigate and identify the inequities to develop an action plan to address the gap.

Recommendation: All Australian businesses to conduct a transparent pay gap analysis to work towards achieving zero pay inequity.

4.6 Pay Secrecy/Pay transparency

An often overlooked cause of the pay gap is pay secrecy. Pay secrecy is the practice of prohibiting employees from sharing pay information. Through pay secrecy, employers control pay information and prevent employees from discussing their pay rate with colleagues.³⁰

In recent years, Australian organisations have increasingly moved to opaque pay structures, so that it is difficult for workers to know and understand the basis of remuneration.³¹ In Australia, more than half of all employers enforce pay secrecy policies.³²

²⁶ Human Rights and Equal Opportunity Commission, *Gender equality: What matters to Australian women and men – The Listening Tour Community Report* [online] Accessed at:
https://www.humanrights.gov.au/sites/default/files/content/sex_discrimination/listeningtour/ListeningTourCommunityReport.pdf

²⁷ Bain & Company, *What stops women from reaching the top? Confronting the tough issues* [online] Accessed at:
http://www.bain.com/offices/australia/en_us/publications/what-stops-women-from-reaching-the-top.aspx

²⁸ Bain & Company, *What stops women from reaching the top? Confronting the tough issues* [online] Accessed at:
http://www.bain.com/offices/australia/en_us/publications/what-stops-women-from-reaching-the-top.aspx

²⁹ WGEA, Australia's gender equality scorecard – November 2016 [online] Accessed at:
https://www.wgea.gov.au/sites/default/files/80653_2015-16-gender-equality-scorecard.pdf

³⁰ Australian Government, *A husband is not a retirement plan – Achieving economic security for women in retirement* [online] Accessed at:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report

³¹ Australian Government, *Equal Opportunity for Women in the Workplace Amendment Bill 2012* [online] Accessed at:
http://www.austlii.edu.au/au/legis/cth/bill_em/eofwitwab2012587/memo_0.html

Pay secrecy allows conscious or unconscious bias and stereotyping when making pay allocation decisions.³³ Without scrutiny, it is also impossible for women, or the organisations which represent them, to determine the basis for pay differentials in order to assess whether they are founded on discriminatory issues and if so, contest them.³⁴ Without pay transparency there is no incentive for companies to correct the existing pay inequities being experienced by women.

Many workers, especially those who receive a salary and those in the private sector, are not allowed to talk about their pay with colleagues. Many employment contracts include a "gag clause", which means that workers can be disciplined or even sacked for discussing their pay.³⁵

In our experience pay secrecy puts women in a precarious position when they suspect pay discrimination. They are unable to present any evidence of discrimination they have managed to collect without revealing to their employer that they have breached the pay secrecy policy. Penalties for employees breaching such policies range from informal warnings to, at worst, dismissal.

Prohibiting companies from taking adverse action against employees who disclose information about their pay would help to close the gender pay gap and help to ensure women are paid more equitably. Additionally we believe all Australian companies should be legally required to advertise their salary rates and to end pay secrecy policies. We know that where rates of pay and bonuses are disclosed, there tends to be less of a gender based pay gap.

Recommendation: Prohibiting companies from taking adverse action against employees who disclose information about their pay to colleagues.

Recommendation: All Australian companies should be legally required to advertise their salary rates and to end pay secrecy policies.

4.7 Closing the Gender Super Retirement Gap

In late 2015 the ASU made a submission into the Government's inquiry into economic security for women in retirement. The ASU conducted an online survey to gather information on the views of our members regarding issues relating to women's economic security in retirement. Our survey results highlighted the fact that women earn significantly less than men over a lifetime.

The gender pay gap and career breaks put women at a disadvantage to accumulate superannuation balances, as well as reducing their capacity to top-up with voluntary contributions and make other capital gains on investments external to superannuation.

When women have to extend their working year by 70 days just to reach the average annual male wage, it becomes an even harder and more daunting task to accumulate a decent superannuation nest egg. This superannuation gender gap is the real crisis facing our quickly ageing membership and society.

The union movement and industry super funds have warned about this gap for many years, and it's encouraging to now see retail super funds echoing these concerns.

³² The Sydney Morning Herald, *Pay secrecy lets employers get away with paying women less* [online] Accessed at: <http://www.smh.com.au/comment/pay-secrecy-lets-employers-get-away-with-paying-women-less-20160306-gnbz0w.html>

³³ Australian Government, *A husband is not a retirement plan – Achieving economic security for women in retirement* [online] Accessed at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report

³⁴ Australian Government, *Equal Opportunity for Women in the Workplace Amendment Bill 2012* [online] Accessed at: http://www.austlii.edu.au/au/legis/cth/bill_em/eofwtwab2012587/memo_0.html

³⁵ Australian Government, *A husband is not a retirement plan – Achieving economic security for women in retirement* [online] Accessed at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Economic_security_for_women_in_retirement/Report

In 2015, the average super balance at retirement for women was \$138,150 but was \$292,500 on average for men. Based on modelling from Industry Super Australia, that current \$154,000 gap will increase to \$170,000 by 2030.

There are clear reasons for this: women on average earn less than men, women tend to take time out of the workforce to raise children, often return to work on a part time basis, and regularly take on other caring responsibilities for elderly parents and/or grandchildren. Divorce and separation can also negatively impact their retirement income.

Women are living longer than men, with an average life expectancy of 84 years compared with 80 years for men, and as such need their retirement income to stretch over a longer period of time.

However, figures from the Association of Superannuation Funds of Australia (ASFA) show that women are retiring on average with 53% less super than men. Even women who contribute to their maximum ability can face a retirement shortfall. But this doesn't give governments and employers an excuse to simply ignore this issue.

Despite decades of legislative, industrial and social advancement, women are still so far behind at a vulnerable time in their lives.

During the 2016 federal election campaign, the LNP showed itself a rudderless ship on super. They cut the Low Income Superannuation Contribution for low income workers in 2014 – women are the majority of this group – and then scrambled to replace that with their own version, the Low Income Superannuation Tax Offset.

The ASU makes the following recommendations to kick start measures to at least move towards some form of equity for women in superannuation:

Recommendation:

- * Immediately increase compulsory employer contributions from 9.5 to 12 per cent.
- * Boost women's superannuation balances and address the effects of longevity on annual retirement incomes by increasing compulsory employer contributions for women at a level that is two per cent higher than the mandatory rate for men or a lump sum payment of \$10,000 at age 21.
- * Amend sex discrimination legislation to make these extra payments possible for women.
- * Introduce progressive taxation of superannuation, based on marginal rates minus a rebate that will address the inequitable nature of current tax settings to improve women's retirement incomes, particularly for those on lower incomes.
- * Remove the current exemption for employer superannuation payments to employees earning less than \$450 per month, as these employees are mostly female.
- * Make the \$500 low income payment permanent for all women regardless of income levels.
- * Allow super funds to discriminate in favour of women in regards to fees charges.
- * Compulsory super payments during paid parental leave
- * Free financial planning and education for women.

4.8 Superannuation guarantee should be paid on periods of paid parental leave

The failure to ensure superannuation contributions are made during PPL by both employers and the government remains a weakness of the current scheme with long-term negative consequences for women's retirement savings. In addition to the persistent gender pay gap, the absence of superannuation during parental leave embeds lower lifetime earnings and retirement income for women.³⁶

³⁶ The University of Sydney, *Election Benchmarks 2016* [online] Accessed at: http://www.workandfamilypolicyroundtable.org/wp-content/uploads/2016/05/Work-Care-Family-Policies_Online_s.pdf

Whilst the structure of the retirement system does not directly discriminate against women, it operates to magnify the pay gap between men and women. This is because women generally work in lower paid jobs, are paid less, do less paid work and more unpaid work and therefore have lower compulsory and voluntary superannuation contributions.

Carers who take extended breaks from the workforce, and often return part-time, are significantly disadvantaged in a system that only values paid full-time employment.

A recent parliamentary inquiry found that women should get taxpayer-funded superannuation whilst on PPL:

The committee recommends that the superannuation guarantee should be paid on the Commonwealth Paid Parental Leave Scheme.

Recommendation: Payment of compulsory superannuation contributions should be made for periods of paid parental leave to help grow women's retirement nest eggs.

4.9 ASU's equal remuneration case

The SACS case was the first major test of the equal remuneration order provisions of the Fair Work Act.

Previously the *Workplace Relations Act 1996* and its predecessor Acts provided:

623 Equal remuneration for work of equal value

(1) A reference in this Division to **equal remuneration for work of equal value** is a reference to equal remuneration for men and women workers for work of equal value.

This was changed in the *Fair Work Act* which now provides:

302 FWC may make an order requiring equal remuneration

Power to make an equal remuneration order

(1) FWC may make any order (an *equal remuneration order*) it considers appropriate to ensure that, for employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value.

Meaning of equal remuneration for work of equal or comparable value

(2) *Equal remuneration for work of equal or comparable value* means equal remuneration for men and women workers for work of equal or comparable value.

There is no doubt this change to the legislation has made a difference. The only successful equal pay case federally has been under the *Fair Work Act* because of this change. Previously of the 17 or so cases run under the predecessor legislation none had been successful.

The ASU is well placed to critique the effectiveness of these mechanisms to gain equal pay as we ran the only successful case federally under the *Fair Work Act* for Social and Community Sector workers covered by the *Social, Community, Home Care and Disability Services Industry Award 2010*.

The ASU, together with four other applicants, initiated this case in respect of workers in the social, community and disability services sectors. The claim was lodged in March 2010 and involved extensive proceedings over nearly two years before a Full Bench of the Fair Work Commission. An interim decision was made in May 2011 and a final decision in February 2012.³⁷ The decision operates in respect to certain classifications in the modern *Social, Community, Home Care and Disability Services Industry Award 2010*.

³⁷ [2011] FWAFB 2700 and [2012] FWAFB 1000

The ASU welcomed the successful outcome of the case which will ensure equal remuneration for many employees in these important sectors when fully implemented. In the May 2011 decision the Full Bench unanimously concluded that "for employees in the SACS industry there is not equal remuneration for men and women workers for work of equal or comparable value by comparison with workers in state and local government employment".³⁸

This case was preceded by a successful case for the Queensland Social & Community Sector workers where the Queensland Industrial Relations Commission found that a range of factors contributed to the undervaluation of work in the relating to the Queensland Community Services and Crisis Assistance State Award and 'a pattern emerges that gender is at the core of present work value of the community sector' and the 'work has been undervalued on a gender basis'. These workers received wage increases that range from 18% to 37%.

While the changed legislation was critical to the success of the case in the federal jurisdiction, it did not come without significant cost, effort and preparation. The successful application required extensive witness and other evidence as the ASU case statistics demonstrate:

- 33 days of hearings/inspections
 - 9 days inspections of 16 non-government organisations in VIC, SA, QLD, NSW
 - 4 days inspections of 6 government and local government comparators in NSW and VIC
 - 20 hearing days (7 for witnesses)
- 76 Witnesses statements for applicants
 - 20 witnesses cross examined
 - 56 witnesses unchallenged
- 187 Exhibits
- 10,000 plus pages of evidence
- 886 pages of transcript
- 33 parties and interveners filed one or more written submissions including 8 govt or govt agencies (C'th, VIC, NSW, QLD, ACT, TAS, SA) and AHRC plus 18 employer or industry groups.
- 21 organisations announced an appearance (excluding applicants)
- ASU cost – Tens of thousands of dollars (excluding ASU staff hours)

To get the true cost of this achievement you have to multiple this many times by the costs of each of the governments, agencies, employers and employer groups involved.

This landmark case will not be easily emulated. It took a major union like the ASU (assisted by other unions and the ACTU) to initiate and prosecute this case. It involved the hiring of barristers and other experts, organising many witnesses and devoting hundreds of hours of work by key ASU staff from around the country. This is obviously something that individuals and/or small organisations can never hope to replicate.

We are not advocating against having a legislative framework or a process for determining equal pay. Although successful in the current framework we have to reflect on there being a better way to narrow the gender pay gap.

³⁸ [2011] FWAFB 2700 at par 291

The ASU believes the Chair of the House of Representatives Standing Committee on Employment and Workplace Relations in their "Making it Fair"³⁹ report on Pay Equity and associated issues related to increasing female participation in the workforce made a telling observation, with which we agree, when she said:

*"I am convinced that an alternative mechanism that allows for a non adversarial consideration of the undervaluing of women's work and a comprehensive scheme to correct undervaluation across industries is more efficient and preferable."*⁴⁰

The recommendations of the Standing Committee are comprehensive and detailed, some have been implemented while others have not. Recreating the wheel and isolating the problem has been done many, many times. In the ASU's view it is time for real action with a combination of legislative change, approach change and commitment and targets to narrow the gap. To do otherwise is to watch the gender pay gap widen.

Recommendation: Consideration should be given to a non-adversarial scheme for correcting the undervaluation of women's work. The recommendations in the "Making it Fair" report should be implemented in full.

Recommendation: That Commonwealth and State Governments ensure that future successful pay equity cases are fully funded by increases in the grants, subsidies and payments provided by Government to the service provider/employer, where necessary.

4.10 Gender related violence

Gender equality is a precondition for the prevention of family violence and other forms of violence against women and girls.⁴¹

At the time of writing, it is estimated 71 women died during 2016 in Australia as a result of violence against women.⁴² Many of these women have died at the hands of an intimate partner, former partner or family member. It is vital that we act to end violence against women.

Access to paid Domestic Violence leave is an essential industrial entitlement that the ASU has a proud history of pursuing through Enterprise bargaining. We have seen its inclusion in approximately 375 enterprise agreements across every industry that ASU members work in.

We know that access to Paid Domestic Violence leave has the real and practical effect of saving the lives of women and their children. It also enables women to remain engaged in the paid workforce, and financially secure while they are experiencing and leaving violence.

The ASU recognises the important Modern Award case that the ACTU is running in pursuit of having paid domestic violence leave included in all modern awards. We remain committed in our support of this case and note that the ASU has provided a significant number of witnesses to the case.

The ASU further acknowledges that ACTU congress in 2015 adopted the call for paid domestic violence leave to be included in the National Employment Standards.

³⁹ House of Representatives (2009) *Making it Fair, Pay equity and associated issues related to increasing female participation in the workforce* [online] Accessed at:
http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ewr/payequity/report.htm

⁴⁰ House of Representatives (2009) *Making it Fair, Pay equity and associated issues related to increasing female participation in the workforce* [online] Accessed at:
http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ewr/payequity/report.htm

⁴¹ Victorian Government, *Safe and Strong – A Victorian Gender Equality Strategy* [online] Accessed at:
http://www.vic.gov.au/system/user_files/Documents/women/161108_Victorian_Gender_Equality_Strategy_ONLINE.pdf

⁴² Facebook, *Destroy the Joint* [online] Accessed at: <https://www.facebook.com/DestroyTheJoint/>

Including Paid Domestic Violence Leave in the National Employment Standards is important because it would not only ensure that every National System employee would be entitled to it, but that no Enterprise Agreements could remove workers' entitlement to paid domestic violence leave.

The NES includes entitlements to annual leave, personal carers leave, parental leave, community services leave and long service leave. We must ensure that domestic violence leave is not seen as any less of an entitlement.

If we are going to end violence against women and their children, we must also address community perceptions about the issue, and including paid domestic violence leave in the NES is a step towards this.

Recommendation: All levels of government should support paid domestic violence leave in the National Employment Standards.

4.11 Measures to encourage women's participation in male dominated occupations and industries

For many years, women have not been associated with, or considered for, jobs in male-dominated industries, resulting in us having highly occupationally segregated workforces in some sectors.⁴³

In 2013 Elizabeth Broderick launched "Women in male-dominated industries: A toolkit of strategies" where Broderick identified the following four areas as crucial to addressing the increased representation of women in male-dominated industries:⁴⁴

- *Attracting women*
 - Job advertisements that attract women to apply
 - Cases and content that inspire women to believe in opportunities
 - Engagement activities that broaden the pool of potential applicants
- *Recruiting women*
 - Diverse and trained recruitment teams using merit based processes
 - Broaden capabilities and pool potential candidates
 - Interaction with candidates to achieve a positive recruitment experience
- *Retaining women*
 - Workplace culture that is inclusive and embraces diversity
 - Working environment that meets the needs of all employees
 - Ongoing support for employees and families
- *Developing women's skills and careers*
 - Senior leaders who are engaged in development of women
 - Development that promotes the career advancement of women
 - Merit based and inclusive talent process

Recommendation: The Australian Government should promote initiatives to improve women's economic participation in male-dominated industries

⁴³ Australian Human Rights Commission, *Launch of Women in male-dominated industries: A toolkit of strategies* [online] Accessed at: <https://www.humanrights.gov.au/news/speeches/time-bring-women-male-dominated-industries>

⁴⁴ Australian Human Rights Commission, *Launch of Women in male-dominated industries: A toolkit of strategies* [online] Accessed at: <https://www.humanrights.gov.au/news/speeches/time-bring-women-male-dominated-industries>