



Australian
Human Rights
Commission

everyone, everywhere, everyday

Australia's Future Tax System (Retirement Income System)

.....
Australian Human Rights Commission Submission
to the Review Panel

27 February 2009

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1 Introduction

1. The Australian Human Rights Commission ('the Commission')¹ makes this submission to the Review Panel on Australia's future tax system ('the Review'). The submission specifically addresses Australia's retirement income system.
2. The Commission is Australia's national human rights institution.²
3. The Commission administers the *Sex Discrimination Act 1984* (Cth) ('SDA'). The SDA makes unlawful discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy in many areas of public life including employment, education, and the provision of goods, services or facilities. The SDA makes unlawful discrimination on the ground of family responsibilities only in dismissal from employment.
4. The SDA also aims to promote recognition and acceptance within the community of the principle of the equality of men and women.³
5. The Commission has examined inequality between women and men with respect to retirement income and labour market participation in a variety of reports and submissions. It has also undertaken community consultation regarding issues relevant to the Review, most recently to inform the Report, *It's About Time: Women, Men, Work and Family* (2007) and the *Listening Tour Community Report* (2008). The Commission draws on its previous consultation and policy work in making this submission.
6. However, due to the timeframe of the Review, the Commission has not had the capacity to undertake detailed community consultation with respect to the Terms of Reference of this specific Review.
7. This submission will focus on the following areas:
 - Australia's international human rights obligations as they relate to Australia's retirement income system
 - the nature and extent of Australia's gender gap in retirement savings and retirement income
 - the implications of Australia's gender gap in retirement savings and retirement income
 - the reasons for the gender gap in retirement savings and retirement income
 - solutions for increasing women's financial security in retirement.

¹ The Australian Human Rights Commission was until recently known as the Human Rights and Equal Opportunity Commission. In this submission, all footnote references to documents produced prior to this change retain the name they were originally published under.

² The Commission is established by the *Human Rights and Equal Opportunity Commission Act 1986* ('HREOC Act'). Sections 11 and 31 of the HREOC Act set out the Commission's functions relating to human rights and equal opportunity in employment respectively. The Commission also has functions under the *Sex Discrimination Act 1984* (Cth), *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth) and *Age Discrimination Act 2004* (Cth).

³ Section 3(d). The SDA also prohibits sexual harassment in many areas of public life: s 28.

2 Summary

8. The Commission welcomes the review of Australia's retirement income system.
9. There has been a growing global recognition of the role of retirement income systems in maintaining national economic stability and financial security across the lifecycle.⁴ As such, Australia's retirement income system is a vital element of the nation's economic and social policy framework.
10. Over the last two decades, there has been a strong public policy focus on superannuation as a means to provide income during retirement and reduce reliance on the Age Pension.
11. However, the linking of the current system of compulsory savings enforced through the superannuation guarantee ('the SG') exclusively to engagement in paid work disadvantages women and other groups with marginal labour force attachment.
12. Women are more likely to have broken paid work patterns due to caring responsibilities and have lower life-time earnings due to pay inequity. This means that not only do women generally have lower levels of superannuation coverage over the lifetime, but when they do engage in paid work, they accumulate lower amounts of superannuation.
13. As a result, there is a significant disparity between the retirement savings and retirement income of men and women. Current figures show that women's superannuation balances are less than half of those of men.⁵ This stark figure is a clear marker of gender inequality in Australia.
14. With women generally retiring earlier and living longer than men, there are a number of serious implications stemming from the gender inequality in retirement savings. Many women, after a life spent in unpaid caring work, face prospects of financial insecurity and poverty in retirement, often solely relying on the Age Pension. Around 73% of those on the single rate of the Age Pension are women.⁶
15. During her national *Listening Tour*, the Sex Discrimination Commissioner consistently heard deep concerns from women about financial security in retirement and the adequacy of the Age Pension. Reducing the gender gap in retirement savings to increase financial security across the lifecycle is a key priority for the Sex Discrimination Commissioner as part of her *Plan of Action Towards Gender Equality*.⁷

⁴ Robert Holzmann and Richard Hinz, *Old-Age Income Support in the 21st Century: An International Perspective on Pension Systems and Reform* (2005) p 1.

⁵ Ross Clare, *Retirement Savings Update* (2008) p 3. Available at <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 11 February 2009).

⁶ Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. Available at https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009).

⁷ The Sex Discrimination Commissioner, Elizabeth Broderick, conducted a national Listening Tour from November 2007 to May 2008 to seek community and stakeholder feedback on three key themes relevant to gender equality: economic independence for women; work and family balance over the

16. The Commission considers that Australia's retirement income system must be underpinned by the principles of equality and fairness. To fulfill Australia's international human rights obligations, particularly under the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸ at a minimum, the retirement income system as a type of social security,⁹ should protect individuals from poverty and provide for an adequate standard of living.¹⁰ The system should ensure that all individuals are able to live with dignity and respect over their lifecycle. As required by ICESCR and also the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), this outcome should be achieved without discrimination between women and men.¹¹
17. The current retirement income system needs urgent attention to redress the disadvantage experienced by women due to its link to paid work. Additionally, the Review should consider how the system can recognise the value of unpaid work to the nation's economy, work such as caring for family members, the large majority of which continues to be carried out by women.
18. The Commission urges the Australian Government to adopt women's financial security in retirement as a national policy priority. Economic independence for women across the lifecycle is critical to achieving substantive gender equality and economic and social security for all.
19. The Commission recommends strategies in the following areas to increase women's economic security in retirement:
 - removing barriers to labour market participation for women and those with caring responsibilities
 - increasing life-time earnings for women by reducing the gender pay gap
 - extending initiatives to increase superannuation contributions for low income earners and those on welfare payments

lifecycle; and freedom from discrimination, harassment and violence. Commissioner Broderick's *Plan of Action towards Gender Equality*, based on her findings from the *Listening Tour* sets out five priority areas:

- improving laws to address sex discrimination and promote gender equality;
- advocating for policies and systems to achieve a greater balance of paid work and family responsibilities for women and men;
- reducing the incidence and impact of sexual harassment in the workplace;
- reducing the gender gap in retirement savings to increase women's financial security across the lifecycle; and
- increasing the number of women in leadership positions, including supporting Indigenous women's leadership.

For further information see Human Rights and Equal Opportunity Commission, *What matters to Australian women and men: Gender equality in 2008, The Listening Tour Community Report* (2008). Available at http://www.humanrights.gov.au/sex_discrimination/listeningtour/index.html (viewed 9 February 2009).

⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

⁹ The meaning of 'social security' under international human rights law is wider than in the domestic Australian lexicon. See, paragraph 34 in Section 4 of this submission.

¹⁰ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) arts 9.

¹¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 2(2) and 3.

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- ensuring the Age Pension protects individuals from poverty and fulfils Australia's international human rights obligations for women and men to equally enjoy a right to an adequate standard of living,¹² and to social security¹³
- introducing measures to achieve equality in women's representation in superannuation fund governance positions
- regular monitoring and reporting on the gender impact of Federal budgets and reforms
- independent monitoring and reporting on Australia's progress towards achieving substantive gender equality
- reviewing the superannuation exemptions in the *Sex Discrimination Act 1984* (Cth).

¹² *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11.

¹³ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 9.

3 Recommendations

3.1 Remove Barriers to Women's Workforce Participation

Recommendation 1: Extend family and carer responsibilities protection under the Sex Discrimination Act 1984 (Cth)

Implement recommendation 13 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality:

The committee recommends that the prohibition on discrimination on the grounds of family responsibilities under the Act be broadened to include indirect discrimination and discrimination in all areas of employment.¹⁴

Recommendation 2: Positive duty to reasonably accommodate the needs of workers who are pregnant and/or have family or carer responsibilities

Implement recommendation 14 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality:

The Committee recommends that the Act be amended to impose a positive duty on employers to reasonably accommodate requests by employees for flexible working arrangements, to accommodate family or carer responsibilities, modelled on section 14A of the *Equal Opportunity Act 1995* (VIC).¹⁵

Recommendation 3: Strengthen the right to request flexible work arrangements National Employment Standard

To strengthen the right to request flexible work arrangements National Employment Standard the Commission recommends the following:

- qualification requirements that restrict the categories of employees who can make a request for flexible working arrangements should be removed.
- the right to request flexible working arrangements should be extended to all forms of family and caring responsibilities.
- the right to request flexible working arrangements be extended to employees with a disability.

¹⁴ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), para 11.33. At http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

¹⁵ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), para 11.34. Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

- same rights of redress applicable to the other nine National Employment Standards should be extended to the unreasonable refusal of a request for flexible work arrangements.
- the right to request should be accompanied by an education campaign that includes clear information that employees may have access to the provisions of the *Sex Discrimination Act 1984* (Cth) (and the *Disability Discrimination Act*) where flexible arrangements are denied.¹⁶

Recommendation 4: Introduce a national scheme of paid leave for parents

The Australian Government should adopt the Productivity Commission's proposed model for paid parental leave as a matter of urgency. The scheme should include compulsory additional superannuation payments.

Recommendation 5: Modify Family Tax Benefit Part B

Family Tax Benefit Part B should be modified to support choice within couple families around the sharing of paid work and caring responsibilities.

3.2 Increase life-time earnings for women by reducing the gender pay gap

Recommendation 6: Improve data collection and monitoring of the gender pay gap

The Australian Government should revisit previous recommendations made by the Commission in relation to data collection and monitoring of women's pay and employment conditions in order to:

- address gaps in data collection by resourcing the Australian Bureau of Statistics to collect and publish regular gender disaggregated data in areas of need identified by Women in Economic and Social Research¹⁷
- fund the Department of Education, Employment and Workplace Relations to conduct an annual national workplace relations survey to monitor gender differences in changes to pay and conditions and
- establish a comprehensive set of indicators for measuring achievement towards gender equality in this area over time, either independently or as part of a broader set of indicators and monitoring to be developed by the Commission, subject to recommended legislative change to the SDA and appropriate, tied funding.

Recommendation 7: Strengthen legal and institutional arrangements to reduce the gender pay gap

¹⁶ Australian Human Rights Commission, *Submission to the Senate Education, Employment and Workplace Relations Committee for the Inquiry into the Fair Work Bill 2008* (2009). Available at http://www.humanrights.gov.au/legal/submissions/2009/20090123_Fair_Work.html#intro (viewed 11 February 2009).

¹⁷ Women in Economic & Social Research (WiSER), *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database* (2006) p 21.

The Australian Government should consider the range of alternative approaches for achieving pay equity as previously recommended by the Commission, including workplace audit processes, monitoring and enforcement processes.

Possible options include:

- setting up a specialist unit in the new wage setting body of Fair Work Australia to develop and monitor pay equity mechanisms
- requiring Fair Work Australia to undertake investigations focused on undervaluation and comparative worth in female dominated occupations and industries
- amending legislation to require pay equity audits and action plans to be carried out at the workplace level
- introducing the ability for the Equal Opportunity in the Workplace Agency and/or the Commission to receive gender equality action plans, from bodies other than employers currently covered by the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) ('EOWW Act'), including specific plans on pay equity
- amending the EOWW Act or the SDA to provide for an auditing function for gender equality action plans which is properly resourced
- inserting into the SDA the ability to adopt legally-binding standards
- introducing specialised pay equity legislation.

3.3 Extend initiatives to increase superannuation contributions for those not in paid work due to caring responsibilities and low income earners

Recommendation 8: Provide superannuation for those not in paid work due to caring responsibilities

The Australian Government should make direct superannuation contributions for those who are not in the paid workforce because of caring responsibilities. These contributions should be made at the same level as the SG in addition to existing Centrelink income support.

This should include those eligible for the Carer Payment, Parenting Payment or in receipt of the Carer allowance in addition to other Government income support payment for people of working age.

The Australian Government should also extend the Superannuation Co-contribution Scheme to these groups.

Recommendation 9: Investigate establishing a superannuation scheme for carers

The Australian Government should investigate establishing a specific retirement income scheme to recognise the value of unpaid caring work.

This could include government funded carer superannuation credits to be paid at the time of retirement, or a national fund or social insurance scheme established specifically for carers.

Recommendation 10: Model the gender impact of any proposed changes to the Superannuation Guarantee

The Australian Government should model the gender impact of any proposed changes in the coverage or level of the Superannuation Guarantee with a view to minimising financial hardship for those on low incomes. This analysis should be made publically available.

Recommendation 11: Equity in superannuation tax concessions

The Australian Government should review and modify superannuation tax concessions to ensure that benefits are provided equitably between low, middle and high income earners, and to maximise gender equality.

Recommendation 12: Superannuation for those in the Community Development Employment Program

The Australian Government should make direct superannuation contributions at the same level as the SG, in addition to existing benefits, for those who are in the Community Development Employment Program.

3.4 *Ensure the Age Pension fulfils Australia's international human rights obligations for women and men to equally enjoy a right to social security*

Recommendation 13: Ensure the Age Pension protects individuals against poverty and meets international human rights standards

At a minimum, the Age Pension should protect individuals against poverty, ensure an adequate standard of living and fulfil the right to social security for individuals in line with relevant international human rights standards.

The couple and single rate of the Age Pension should be raised progressively to eliminate poverty. This should start with an immediate increase of the single rate to 66% of the couple rate.

Recommendation 14: Monitor and track the incidence and impact of poverty

The Australian Bureau of Statistics should establish an agreed poverty measure and issue an annual report on the incidence of poverty, disaggregated by gender, age, Aboriginal and Torres Strait Islander status, disability, sexuality, cultural background, household type and location.

3.5 *Regularly monitor and report on the gender impact of Federal budgets and reforms*

Recommendation 15: Regular gender budget statements

The report from Australia's future tax system review should include a section containing modelling and analysis of the gender impact of the proposed recommendations.

A Gender Analysis Unit should be established within Treasury to conduct gender disaggregated public expenditure analysis, gender disaggregated tax incidence analysis, and yearly gender budget statements.

3.6 *Introduce measures to achieve equality in women's representation in superannuation fund governance positions*

Recommendation 16: Achieving equality in women's representation in superannuation fund governance positions.

The Australian Government should investigate specific strategies to achieve equality in the representation of women in senior leadership positions, and specifically, in superannuation fund governance positions. This could include the introduction of mandatory quotas and targets, allocation of specific funding to train women trustees and board directors or tax incentives for funds that have an appropriate balance of gender in trustee positions.

At a minimum, superannuation funds should be required to report on the gender balance of their trustee boards as part of their annual compliance reporting to the Australian Prudential Regulatory Authority.

3.7 *Independent monitoring and reporting on Australia's progress towards achieving substantive gender equality*

Recommendation 17: Independent monitoring of national gender equality indicators and benchmarks

Implement recommendations 33 and 34 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality:

The committee recommends that the Act be amended to require the Sex Discrimination Commissioner to monitor progress towards eliminating sex discrimination and achieving gender equality, and to report to Parliament every four years.

...The Committee recommends that HREOC be provided with additional resources to enable it to...perform the additional roles and broader functions recommended in this report...¹⁸

3.8 *Review the superannuation exemptions in the Sex Discrimination Act 1984 (Cth)*

Recommendation 18: Review superannuation exemption in the Sex Discrimination Act 1984 (Cth)

¹⁸ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), paras 11.87-11.90. At http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

With the objective of achieving gender equality, implement recommendation 36 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality:

The committee recommends that further consideration be given to removing the existing permanent exemptions in section 30 and sections 34 to 43 of the Act and replacing these exemptions with a general limitations clause.¹⁹

¹⁹ Ibid para 11.98.

4 Australia's international human rights obligations

20. A review of the retirement income system in Australia needs to assess the extent to which people in retirement can exercise and enjoy their basic human rights. This section provides an overview of Australia's international human rights obligations, particularly in relation to:
 - the human right to social security
 - the human right to gender equality.
21. The Australian Government has agreed to be bound by a number of international instruments relevant to the retirement income system. .
22. The UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) obligates Australia to take all appropriate measures to eliminate discrimination against women to ensure the equal enjoyment of the right to social security.²⁰
23. The right to social security is articulated under the ICESCR.
24. Australia's international human rights obligations under the ICESCR include:
 - everyone's human right to enjoy the right to social security²¹
 - the human right for women and men to equally enjoy the right to social security.²²
25. One essential element of the right to social security is that it supports the realization of the right to an adequate standard of living.²³

4.1 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

26. CEDAW is scheduled to the SDA. Under CEDAW, Australia is required to:

...take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular...The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave...²⁴
27. The Committee on the Elimination of all forms of Discrimination against Women ('CEDAW Committee') is responsible for monitoring the implementation of CEDAW by those States which are party to it.

²⁰ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 11(1)(e).

²¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 9.

²² *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 3

²³ CESCR, General Comment 19, para 28.

²⁴ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 11(1)(e).

28. In reviewing state party obligations in this area, the CEDAW Committee has made several observations about the nature and extent of this obligation. For example, in its concluding comments on Canada's report under CEDAW in 2006, the CEDAW Committee noted with concern that:

In most Provinces and Territories, social assistance benefits are lower than a decade ago, in that they do not provide adequate income to meet basic needs for food, clothing and shelter, and that welfare levels are often set at less than half the Low-Income Cut-Off.²⁵

29. Similarly, in its concluding comments to the United Kingdom in 1999, the CEDAW Committee notes that

Demographic change in the State party requires urgent action with regard to the situation of older women, and of related implications for women's health, poverty and especially pension entitlements...²⁶

30. Earlier, in its concluding comments to the United Kingdom in 1993, the CEDAW Committee noted that the UK had reported implementing independent taxation for husbands and wives, and was taking steps to make discrimination in occupational pensions illegal.²⁷

4.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)

31. The ICESCR articulates what is meant by the right to social security.

(a) *The human right to social security*

32. Australia became a state party to the ICESCR in 1976, which provides:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.²⁸

33. Under the ICESCR, social security includes:

- *Systems of social insurance*: This is where individuals, employers and in some cases governments make contributions to ensure people have access to income support when their earnings are interrupted or cease. Old age or retirement is one of these circumstances. The Australian Superannuation Guarantee is an example.
- *Universal schemes of social assistance*: These are met entirely through the general resources of governments and provide important financial

²⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination Against Women: Concluding Comments, Canada*, 19 May 2006, CEDAW/C/CAN/CO/4-5, para 21.

²⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination Against Women: Concluding Comments, United Kingdom*, 26 June 1999, CEDAW/C/1999/L.2/Add/7, para 314.

²⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination Against Women: Concluding Comments, United Kingdom*, 28 January 1999, CEDAW/C/SR.223), para 544.

²⁸ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 9.

support and protection for people who are particularly vulnerable or need particular assistance to realise basic rights such as older people, people with a disability or other marginalised groups. The Australian Age Pension is an example.

34. The Committee on Economic, Social and Cultural Rights ('the Committee') is responsible for monitoring the implementation of ICESCR by those States which are party to it. The Committee states:

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights.²⁹

35. The obligation to fulfill the right to social security requires the Australian Government to:
- Adopt necessary measures directed towards the full realization of the right to social security.³⁰
 - Take positive measures including legislative and policy measures, to assist individuals and communities to equally enjoy the right to social security.³¹
 - Ensure appropriate education and public awareness of social security schemes.³²
 - Establish non-contributory schemes and other measures to provide support to people who are unable to make contributions to social insurance schemes.³³
36. At a minimum, governments have a core obligation to ensure people have access to a social security system and benefits which allow them to acquire essential health care, basic housing, water and sanitation and food as well as the most basic forms of education.³⁴
37. The Committee has set out a number of factors essential to the right to social security.³⁵
- *Available, accessible and non-discriminatory:* Social security must be provided under a system which is established under domestic law and administered or supervised by public authorities. Social security must be available and accessible to all people who are in need, especially

²⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007).

³⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 47.

³¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 48.

³² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 49.

³³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 50.

³⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 59(a).

³⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) paras 9-28.

people who belong to marginalised or disadvantaged groups. Social security must be provided in a way which is not discriminatory.

- *Comprehensive:* Social security systems must provide income support in a range of possible circumstances or life events which affect people's ability to maintain employment or provide themselves with an adequate standard of living. These include:
 - i. Old-age – Governments must ensure that older people who reach an age specified by national government and who do not have access to an income based pension or any other income have access to old-age benefits, services and other assistance.
 - ii. Sickness, injury and disability – Governments must provide cash and other health benefits to people who are incapable of working either temporarily or permanently due to ill-health, injury or disability.
 - iii. Unemployment – Governments must endeavour to provide adequate protection for people who are unable to secure suitable employment.
 - iv. Maternity – Governments must provide all working mothers with paid leave or leave with adequate social security benefits. The right to paid maternity leave is also recognised in article 11(2)(b) of CEDAW.
 - v. Families and children – Governments must provide cash benefits and social services to families including survivors and orphans.
 - vi. Health care – Governments have an obligation to guarantee the establishment of health systems which provide adequate access to health services for all.
- *Adequate:* Social security benefits can take the form of cash payments and in kind benefits such as concessions. In order to be considered adequate, social security benefits must ensure that people are able to afford the goods and services to realise the other rights under the ICESCR, including adequate food, clothing and housing. Access to health care should also ensure people are able to enjoy the highest attainable standard of physical and mental health.
- *Participation and information:* People who receive social security benefits must be able to participate in the administration of the system. Social security systems must ensure the right of individuals and organisations to seek, receive and impart information on all social security entitlements.
- *Affordable:* Where a social security system requires contributions, the costs and charges associated with making those contributions must be affordable for all people and must not impinge upon the enjoyment of other rights.

38. Additionally, governments have the following obligations:

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- To avoid any deliberate retrogressive measures that will reduce the availability and accessibility (including coverage) of the right to social security.³⁶
- To adopt a national strategy and plan of action to realise the right to social security.³⁷
- To regularly review social security systems to ensure they comply with the right to social security.

(b) *Relationship between the right to social security and the right to an adequate standard of living*

39. The Committee has emphasized the special relationship between the right to social security (above) and other economic, social and cultural rights in the ICESCR - including the right to an adequate standard of living.³⁸

40. Article 11 of the ICESCR provides:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.³⁹

41. The Committee has not yet authored a General Comment on the right to an adequate standard of living, although there are General Comments on elements of the right, including General Comment 4 on the right to adequate housing and General Comment 12 on the right to adequate food.

42. The Committee has considered the right to an adequate standard of living in General Comment 6 'the economic, social and cultural rights of older persons'. The Committee attaches great importance to principle 1 of the United Nations Principles for Older Persons, which provides that 'older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help'.

43. The right to social security, along with other complimentary measures to combat poverty and social exclusion and providing supporting social services, play an important role in supporting the realization of the right to an adequate standard of living. The Committee warns that the adoption of other measures to realize the right to an adequate standard of living will not in itself act as a substitute for the creation of adequate and accessible social security schemes.⁴⁰

³⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 42.

³⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 59(d).

³⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 28.

³⁹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 11.

⁴⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 28.

(c) *Equal enjoyment of the right to social security for women and men*

44. Under Article 2(2) of the ICESCR and Article 3 of the ICESCR, the Australian Government has an obligation to prevent discrimination and ensure that all women and men equally enjoy their economic, social and cultural rights, including the right to social security.
45. Article 2(2) of ICESCR ensures the principle of non-discrimination is guaranteed for economic, social and cultural rights, such as the right to social security:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status.

46. Article 3 of ICESCR imposes a duty on governments not only to prevent discrimination, but also to ensure that women and men equally enjoy the economic, social and cultural rights contained within the Covenant:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

47. The Committee has stated that the definition of equality includes both formal and substantive equality.

Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.⁴¹

48. The Committee has directed governments to take specific action to ensure substantive equality:

Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are gender-neutral on their face. In implementing Article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women, because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.⁴²

49. Under article 2 of ICESCR, the Australian Government is obliged to:

take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

⁴¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 (2005) para 7.

⁴² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 16: *The equal right of men and women to the enjoyment of all economic, social and cultural rights* E/C.12/2005/4 (2005) para 8.

50. Accordingly, there are clear international human rights obligations to which Australia is bound which should inform the outcomes of the Review, both in terms of the Review ensuring that the Australia Governments meets its obligation to fulfill a person's right to social security and to ensuring that this fundamental human right is enjoyed equally between women and men .

5 The extent of the gender gap in retirement savings and retirement income in Australia

51. The Commission views the significant disparity between women and men's retirement savings, and the high proportion of women with alarmingly low superannuation balances, as one of the gravest aspects of gender inequality in Australia. Several researchers and organisations have commented on the extent of the gender gap in retirement savings and retirement income in Australia.⁴³
52. This section provides an overview of the nature and extent of the gender gap in retirement savings and retirement income. It examines:
- average superannuation account balances of women and men
 - distribution of superannuation account balances by gender and age
 - income and assets during retirement for women and men and
 - the impact of divorce and separation on financial security in retirement.
53. Retirement savings refers both to compulsory savings accumulated through the SG and voluntary contributions. Retirement income refers to income received during retirement from government transfers such as the Age Pension, superannuation or annuity, investments or capital income from assets.

5.1 Average superannuation account balances and payouts

54. The most recent assessment of retirement savings, compiled by the Association of Superannuation Funds of Australia, reports that in 2006, the average superannuation account balance was \$35 520 for women, compared to \$69 050 for men. This data may be compared with 2004, when it was reported that the average superannuation balance as \$23 900 for women, compared to \$56 400 for men. Between 2004 and 2006, women's superannuation balances, as a proportion of men's balances, increased from 42% to 51%. Accordingly, while there has been a slight improvement in women's superannuation balances overall, there remains a significant gender gap.⁴⁴

⁴³ Therese Jefferson, 'Women and Retirement Incomes in Australia: A Review' (2005) 81(254) *The Economic Record* p 273; Diana Olsberg, *Ms...ing Out? Women and Retirement Savings: A Position Paper Prepared by the University of NSW Research Centre on Ageing & Retirement, Sydney, Australia for the Economic Policy Summit* (2001); Simon Kelly, 'Entering Retirement: the Financial Aspects' (Paper presented at the Communicating the Gendered Impact of Economic Policies: The Case of Women's Retirement Incomes, Perth, 12-13 December 2006) p 12.; Therese Jefferson and Alison Preston Siobhan Austen, *Women and Australia's Retirement Income System* (2002).

⁴⁴ Ross Clare, *Retirement Savings Update* (2008) p 3. Available at <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 11 February 2009).

55. Similarly, in 2006, the average retirement payouts (determined by the average balance for those aged 60 to 64) were \$63 000 for women and \$136 000 for men. In 2004, the average payout was \$37 000 for women and \$110 000 for men. As a proportion of the average payouts for men, women's average payouts increased from 34% to 46% between 2004 and 2006. Again, while this represents an improvement, a significant gender gap persists.⁴⁵
56. A gender breakdown of the total shares of superannuation assets shows that, in 2006, men held around 66% of total superannuation account balances, compared to 34% for women.⁴⁶
57. Further, a recent study released by Access Economics and AMP, based on data from 320,000 AMP members, reports that in December 2007 the average superannuation balance was \$51,639 for men and \$30,887 for women.
58. The data overwhelmingly reveals a significant gap in the average superannuation balances and payouts between women and men.

5.2 *Distribution of superannuation*

59. While the disparity between men and women's average superannuation balances and payouts provides some indication of the gender gap in retirement savings, examining the distribution of superannuation amongst age groups, and within age groups provides further insight into the problem.
60. For instance, breaking the average superannuation balances down by age, shows that the gender gap widens over the lifetime for individuals, with women's superannuation balances as a proportion of men's balances decreasing from 71.1% (25-34 age bracket) to 46.1% (60-64 age bracket). These figures are set out in the following table.

Age group	Males	Females	Persons	Female/Male Proportion
25-34	\$19,780	\$14,060	\$16,920	71.1%
35-44	\$46,890	\$25,580	\$36,150	54.6%
45-54	\$93,920	\$48,250	\$70,820	51.4%
55-59	\$126,090	\$58,760	\$92,460	46.6%
60-64	\$135,810	\$62,600	\$99,430	46.1%
All ages	\$69,050	\$35,520	\$52,200	51.4%

⁴⁵ Ibid.

⁴⁶ Ibid p 4.

⁴⁷ Ross Clare, *Retirement Savings Update* (2008) p 6. Available at <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 11 February 2009).

61. Further analysis of the data on superannuation balances shows significant inequality in the distribution of superannuation balances amongst women, with a significant majority of women holding superannuation balances that are alarmingly low. For example, in 2004, the Australian Bureau of Statistics reported that, despite average woman having \$35 000 in superannuation, 30% of women have no superannuation, 50% have \$8 000 or less and 70% have \$25 000 or less'. A disparity between men aged 45-59 also exists. For example, although the average balance for these men is \$87 100, 30% have \$9 000 or less, 50% have \$31 000 or less and 70% have \$80 000 or less. However, a significant gender gap is still evident.⁴⁸

5.3 *Income and assets during retirement*

62. As a consequence of the gender gap in retirement savings, women generally have lower incomes from superannuation during retirement in comparison to men. In particular, *single* women are likely to fare worse financially in retirement, compared to women and men in couples and single men. This is compounded by the higher living costs for single individuals, compared to those in couples.
63. A report based on the data from the *Household, Income and Labour Dynamics in Australia Survey* (HILDA), found the average household disposable income for a single retired woman over the age of 65 was \$14 000, compared to \$18 000 for a single retired man. The average household income for a couple over the age of 65 was \$28 000, shared by both members of the couple.⁴⁹
64. Another aspect of financial security during retirement is based on wealth acquired from assets. In Australia, property is the most common type of household asset followed by superannuation.⁵⁰ Again, a gender gap becomes apparent in assessing the average household net worth. For example, in 2002, the average household net worth for single retired women over 65 was \$160 000, compared to \$238 000 for men.⁵¹
65. Many women who participated in the Sex Discrimination Commissioner's *Listening Tour* reported their struggles to meet their basic financial commitments. For example:

Because I was unable to access superannuation funds through my work in earlier years I had to return to work at the age of 66 [years], because I found it was impossible to maintain a house on my own and pay service bills etc. on the old age pension. I am now 72 [years] old and still working. I love my work

⁴⁸ Simon Kelly, 'Entering Retirement: the Financial Aspects' (Paper presented at the Communicating the Gendered Impact of Economic Policies: The Case of Women's Retirement Incomes, Perth, 12-13 December 2006) p 12.

⁴⁹ Diana Warren, *Aspects of Retirement for Older Women* (2006) p 38. Available at http://www.ofw.facsia.gov.au/downloads/pdfs/Aspect_of_Retirement%20report_final.pdf (viewed 9 February 2009).

It should be noted that this data is from 2002-03 when the rate of the Age Pension was \$11447.80 per annum for singles, and \$9555.00 per person for couples.

⁵⁰ Gary Marks and Mark Wooden Bruce Headey, 'The Structure and Distribution of Household Wealth in Australia' (2005) 38(2) *The Australian Economic Review* p 159.

⁵¹ Diana Warren, *Aspects of Retirement for Older Women* (2006) p 42. Available at http://www.ofw.facsia.gov.au/downloads/pdfs/Aspect_of_Retirement%20report_final.pdf (viewed 9 February 2009).

and am dedicated to it - but long hours are having a deleterious effect on my health and the constant worry of not being able to meet the greedy interest rate payments is very stressful...Paying [a loan] back, out of a pension, is impossible - and women don't realise this until they have been forced in to the situation of using their only asset to try to achieve a liveable income.⁵²

66. The higher likelihood of poverty for women in retirement is the end result of women being unable to enjoy their right to social security on equal basis with men. This unequal protection of their right to social security is due to systemic disadvantage that women experience as a result of the current retirement income system being linked exclusively to paid work.

5.4 The impact of divorce and separation on financial security in retirement

67. Divorce and separation is a further factor contributing to financial insecurity for older women. The number of divorced women entering retirement is expected to rise significantly in the next two decades.⁵³
68. It is well established that women often experience financial hardship following divorce. However, a study examining the impact of divorce in retirement has found that divorce has lifetime financial consequences.⁵⁴
69. For example, examining the financial circumstances of individuals aged 55-74, by marital status and gender, shows that divorced women have the lowest levels of household equivalent income, superannuation and per capita household net assets compared to married women and men and divorced men. Divorced women were also less likely to own their home outright compared to married women.⁵⁵
70. Although divorced women are more likely than divorced men to own their home, women's disposable income decreases following separation, thereby limiting their capacity to accumulate superannuation or make voluntary savings.⁵⁶

⁵² Anonymous, *Blog entry* (2007) Human Rights and Equal Opportunity Commission Listening Tour website at 18 December 2007

⁵³ Matthew Gray David de Vaus, Lixia Qu and David Stanton, *The consequences of divorce for financial living standard in later life* (2007) p 13. Available at <http://www.aifs.gov.au/institute/pubs/rp38/rp38.html> (viewed 9 February 2009).

⁵⁴ *Ibid* p 3.

⁵⁵ *Ibid* p 13.

⁵⁶ AMP and NATSEM, *Financial impact of divorce in Australia: Love can hurt, divorce will cost*, Income and Wealth Report Issue 10. 2005, p 9-10. Available at http://www.melbourneinstitute.com/hilda/Biblio/ophd/AMP.NATSEM_love_can_hurt.pdf (viewed 6 February 2009).

6 The implications of the gender gap in retirement savings

71. This section sets out the consequences of the gender gap in retirement savings. It examines the:

- number of women in receipt of the Age Pension
- incidence of poverty amongst older women
- consequences of poverty for older women.

72. The most critical implication of the gender gap in retirement savings is the likelihood of poverty for women in retirement. Lower levels of retirement savings, a likelihood of early retirement and longer life expectancy places women at greater risk of a sharp decline in their standard of living during retirement.⁵⁷

73. The Commissioner heard many stories of women justifiably anxious about prospects of poverty in retirement on her Listening Tour, and working longer hours to redress their situation:

As a baby boomer approaching retiring age and having spent most of my years raising children, I have very little hope of retiring and will need to work for as long as possible. I will not be independent financially...The pressure is really on women who have not been high income earners and the outlook for the future is bleak. I see many tired women who are working fulltime, supporting husbands and trying to be a helpful grandparent.⁵⁸

74. As a result of low superannuation savings, women are currently and will continue to be heavily reliant upon the Age Pension. The Australian Government has reported that 58.3% of all Age Pensioners are women and 73% of those receiving the single rate of the Age Pension are women. Of all retired households, single women are most likely to be reliant on the full Age Pension as their main source of retirement income.⁵⁹

75. The Commission is concerned that the current single rate of the Age Pension is below the commonly used poverty line of 50% of median income.⁶⁰ This has a disproportionate impact on women due to the higher proportion of women in receipt of the single rate of the Age Pension.

⁵⁷ Diana Warren, *Aspects of Retirement for Older Women* (2006) p 44. Available at http://www.ofw.facsia.gov.au/downloads/pdfs/Aspect_of_Retirement%20_report_final.pdf (viewed 9 February 2009).

⁵⁸ Anonymous, *Blog entry* (2007) Human Rights and Equal Opportunity Commission Listening Tour website at 18 December 2007

⁵⁹ FAHCSIA, *Pension Review Background Paper* (2008) p 6. Available at http://www.facs.gov.au/seniors/pension_review/pension_review_paper.pdf (viewed 9 February 2009); Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. Available at https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009).

⁶⁰ Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. Available at https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009).

76. The Commission views women's vulnerability to poverty in retirement as a serious failing of the current retirement income system. Of all household types in Australia,⁶¹ elderly single women are at the greatest risk of poverty, with 56.3% of these households living in poverty between 2001 and 2005. Elderly single women are also the most likely household to experience persistent poverty with over one third consistently living in poverty for the entire 5 year period between 2001 and 2005.⁶²
77. There are a number of serious consequences of poverty for women in retirement, including the inability to pay for basic expenses such as food, housing, utilities, clothing and health expenses not covered by Medicare.
78. In a study on life after retirement, 43.5% of single women reported that their standard of living was worse or much worse after retirement. Of these single women, divorced women were even more likely to experience a decline in standard of living, with 54.3% of divorced or separated women reporting their standard of living had worsened, which was a higher proportion compared to women and men who were widows and women and men who were never married.⁶³
79. Reliance on the Age Pension in retirement results in women making major adjustments to meet their living expenses. Both single and partnered women are more likely than men to cut back on their normal weekly spending in retirement. Retired single women are almost twice as likely as single men to sell their house to move to lower cost accommodation because of their financial circumstances in retirement.⁶⁴

⁶¹ This includes: working age couple with no children; working age couple with children; working age lone female; working age lone male; lone mother household; elderly couple household; elderly lone male; elderly lone female.

⁶² The poverty measurement tool for this study is 50% of the median income poverty line. Bruce Heady and Diana Warren, *Families, Incomes and Jobs, Volume 3: A Statistical Report on Waves 1 to 5 of the HILDA Survey* (2008) p.55. Available at <http://www.melbourneinstitute.com/hilda/statreport/statreport-v3-2008.pdf> (viewed on 9 February 2009).

⁶³ Ibid p 31.

⁶⁴ Diana Warren, *Aspects of Retirement for Older Women* (2006) p 45. Available at http://www.ofw.facsia.gov.au/downloads/pdfs/Aspect_of_Retirement%20_report_final.pdf (viewed 9 February 2009).

7 The reasons for the gender gap in retirement savings and retirement income

80. This section sets out the factors contributing to the gender gap in retirement savings. It examines the:
- level of women's earnings compared to men's earnings
 - level of women's labour market participation, and underlying factors
 - specific barriers to labour market participation for older women.
81. The Commission acknowledges that, since the introduction of Australia's compulsory superannuation system in 1992, there has been a series of positive changes made to improve the coverage and level of superannuation for women. These developments include:
- removal of the blanket exemption which exempted superannuation or provident fund schemes from the operation of the SDA
 - protection for small superannuation accounts (under \$1000) against depletion from fees and charges
 - introduction of measures to assist in the roll-over or consolidation of small superannuation accounts
 - introduction of a spouse rebate entitlement to allow spouses to make contributions on behalf of a spouse who is not in a paid workforce or on a low income
 - introduction of super splitting provisions whereby one spouse can split their superannuation into two accounts and superannuation can be split in cases of divorce
 - introduction of the Superannuation Co-contribution Scheme to increase superannuation savings for low income earners.⁶⁵
82. However, the extent of the gender gap in retirement savings demonstrates that a number of significant systemic barriers remain for women's equal participation in and benefit from the current superannuation system. Accordingly, these systemic barriers prevent women being able to equally enjoy their human right to social security.
83. The factors contributing to the gender gap in retirement savings are complex and interconnected. As the superannuation guarantee is linked to participation in the paid workforce and the level of individual earnings, this disadvantages women, as women generally have lower earnings over the lifetime and lower levels of labour market participation due to caring responsibilities.

⁶⁵ Diana Olsberg, *Ms...ing Out? Women and Retirement Savings: A Position Paper Prepared by the University of NSW Research Centre on Ageing & Retirement, Sydney, Australia for the Economic Policy Summit* (2001); Ross Clare, *Women and Superannuation* (2001) p 33. Available at <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 11 February 2009); Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper* (2007) p 145.

84. Prior to the introduction of the SG, many women were excluded from superannuation schemes. This is a further contributing factor to the gender gap in retirement savings.

7.1 Lower earnings over the lifetime

85. One of the factors contributing to the gender gap in retirement savings is the ratio of women's to men's earnings – commonly known as pay inequity or the gender pay gap. This means that women will have lower earnings over the lifetime, resulting in women accumulating lower amounts of superannuation. As a further result of lower earnings, women generally have a lower capacity to make voluntary contributions to superannuation without significant detriment to current consumption.
86. The gap between men's and women's ordinary full time earnings is currently 16%.⁶⁶ The gender pay gap is even greater when women's part-time and casual earnings are considered, with women earning around two thirds of the amount earned by men.⁶⁷
87. In Australia, women constitute a higher proportion of casual workers, are more likely to be working under minimum employment conditions and be engaged in low paid occupations and industries. Whilst the gender difference overall for casualised work is modest with fifty-six per cent of casual workers being women, 82% of female casual workers are part time. In comparison, 52% of male casual workers are part-time, representing a significant gender difference.⁶⁸
88. Industries and occupations in Australia remain highly segregated by gender and women's work is often undervalued. Women are generally concentrated in lower level work classifications with few opportunities for training and skill development.⁶⁹
89. An explanation offered by *Listening Tour* participants for the gap between women and men's earnings is the lack of value ascribed to what is commonly characterised as 'women's work'. A woman working in the child care sector drew attention to the complex set of skills required in her work and the social benefit of high quality care for children. She pointed out that the pay and status of workers in this sector fails to acknowledge the skills required or the benefits returned:

The amount of pay is incredibly low and the work is undervalued. Caring for children should be valued in our society but we are invisible.⁷⁰

⁶⁶ Australian Bureau of Statistics, *Average Weekly Earnings, Australia, August 2008*, Cat no. 6302.0 (2008).

⁶⁷ Australian Bureau of Statistics, *Average Weekly Earnings, Australia, August 2008*, Cat no. 6302.0 (2008).

⁶⁸ Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership* Cat no. 6310.0 (2008).

⁶⁹ See Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* Final paper (2007), pp 79-81.

⁷⁰ Human Rights and Equal Opportunity Commission, *Sex Discrimination Commissioner's Listening Tour - Women's focus group 6* (2008).

90. A further explanation of pay inequity is women's continuing greater responsibility for the care of dependent family members such as children, elderly parents, partners or people with disability requiring care.⁷¹
91. Women may typically take on paid work to balance caring responsibilities which does not fully reward their skills and experience in order to work part-time or secure flexible working arrangements. Such trade-offs between conditions and pay were reported to the Commission throughout the consultations for the report, *It's About Time: Women, Men, Work and Family* ('*It's About Time* (2007)').⁷²
92. The Commission has also found that pay inequity is a major factor in determining who undertakes care in couple families, creating limited choices and opportunities for both women and men.⁷³
93. Along with an often unspoken assumption that women will undertake the majority of unpaid caring work, pay inequity in effect forces the higher earner to take on the majority of paid work while the lower earner is left with the majority of unpaid caring work. This occurs regardless of skill levels, preferences or the needs of those requiring care.
94. The gender pay gap means that women are generally further disadvantaged through the superannuation tax concessions. Current taxation arrangements in relation to superannuation are configured to advantage high income earners, which in turn generally disadvantages women because of their lower earnings. For example, higher income earners receive a greater benefit from superannuation tax concessions (contributions tax), compared to lower income earners. The flat contributions tax rate for employer contributions and salary sacrifice arrangements mean that high income earners effectively save more tax per dollar contributed towards their superannuation accounts. Given that higher income earners also have greater capacity to make voluntary contributions, this tax arrangement further perpetuates gender inequality within the superannuation system.⁷⁴

7.2 Disrupted and lower rates of labour market participation

95. The superannuation system has been designed to provide maximum economic security in retirement on the premise of participants' maximum benefit on their investment following 35 years of continuous full-time labour market participation. However, this system inherently disadvantages women.

⁷¹ See Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007), pp 40-41 and pp 99-122. See also Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* Discussion paper (2005), pp 52-55 and p 57.

⁷² See Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007), pp 76-77.

⁷³ See Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family* (2007), p 79 and Human Rights and Equal Opportunity Commission, *Gender equality: What matters to Australian women and men The Listening Tour Community Report* (2008).

⁷⁴ Rhonda Sharp and Siobhan Austen, 'The 2006 Federal Budget: A Gender Analysis of the Superannuation Taxation Concessions' (2007) 10(2) *Australian Journal of Labour Economics* p 69.

96. Women's' disrupted and lower rates of labour market participation is a key factor resulting in their lower capacity to make compulsory contributions to superannuation and their lower capacity to contribute to voluntary savings.
97. Overall, women's labour market participation has steadily increased to 58.7%, but is still significantly lower compared to 72.9% for men.⁷⁵ Further, 45% of women workers work part time,⁷⁶ many of them mothers working part time in order to balance their paid work and family responsibilities. Seventy-one per cent of all part time workers are women.⁷⁷
98. Over the lifecycle, women spend fewer years in paid work compared to men. For example, women born between 1948 and 1964 are estimated to spend 60% of the time in paid work that is estimated for men in their age group.⁷⁸
99. In Australia, mothers' workforce participation continues to be low by international standards. The employment rates for Australian women with children, particularly those where the youngest child is under six years of age, are low by comparison with other OECD countries. The employment rate of mothers with a youngest child under six years of age is 49.6%, compared with the OECD average of 59.2%.⁷⁹
100. Employment rates also vary considerably between different groups of women, such as women with disability,⁸⁰ Indigenous women⁸¹ and women from culturally and linguistically diverse backgrounds.⁸² This results in even lower superannuation savings for these groups, increasing their vulnerability to poverty under the current retirement income system
101. The Commission has reported on the significant and persistent barriers to women's workforce participation in the *Listening Tour Community Report (2008)* and *It's about Time (2007)*. The barriers to women's full and equal participation in the workforce include, but are not limited to:
 - ongoing direct and indirect discrimination on the basis of sex, pregnancy, potential pregnancy and family and carer responsibilities
 - limited availability of flexible working arrangements and quality part time work

⁷⁵ Australian Bureau of Statistics, *Labour Force, Australia* Cat No 6202.0 December 2008 (2009)

⁷⁶ Australian Bureau of Statistics, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008)

⁷⁷ Australian Bureau of Statistics, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008)

⁷⁸ Therese Jefferson, 'Women and Retirement Incomes in Australia: A Review' (2005) 81(254) *The Economic Record* p 258.

⁷⁹ Australian Bureau of Statistics, *Australian Social Trends, 2007* Cat No 4102.0 (2007).

⁸⁰ Women with disability are less likely to be in the paid workforce than men with disability: See HREOC, Issues paper 1 *Employment and Disability – the Statistics* (2005). Available at http://www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm (viewed 15 September 2008).

⁸¹ Aboriginal and Torres Strait Islander people have a labour market participation rate of 56%. The labour market participation rate for Indigenous men is 65%, while for Indigenous women it is 48%: Australian Bureau of Statistics, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007* Cat No 6287.0 (2008).

⁸² In 2004, migrant men had a similar age standardised labour force participation rate (74%) to Australian-born men (75%). Migrant women's age standardised labour force participation (52%) was lower than Australian-born women (60%), and much lower than migrant men: Australian Bureau of Statistics, *Australian Social Trends, 2006* Cat No 4102.0 (2006).

- a lack of access to paid maternity, paternity and/or parental leave
- a lack of access to quality, affordable child care and other care facilities
- tax arrangements that provide a disincentive to women's workforce participation.

102. These barriers must be addressed for women to be able to participate equally and gain benefits equally from Australia's retirement income system.

(a) *Ongoing discrimination*

103. Women in Australia continue to experience workplace discrimination on the basis of sex, pregnancy, potential pregnancy and family and carer responsibilities. In the 2007-2008 year, the Commission received 438 complaints under the SDA, 84% of which were from women. 87% of these complaints were in the area of employment.

104. On the *Listening Tour*, the Sex Discrimination Commissioner heard that discrimination remains a reality of women's lives, despite nearly 25 years of legislation. A participant at the Hobart community consultation described the experience of her daughter-in-law, which highlights how discrimination can impact upon women's labour market participation:

I have a daughter-in-law who works for a call centre. She fell pregnant and had a baby, at this time her boss said that if she wanted to come back she could. After six months, he gave her a hard time and said she had to work full time if she wanted to work. He did this because he thought women should be in the home. She ended up leaving. She knew it was discrimination but he is the boss.⁸³

105. To increase women's labour force participation, and subsequently increase women's retirement savings, the Commission views the need to strengthen legislative protection against discrimination, both in relation to sex, and also family and carer responsibilities, particularly given the ageing of the Australian population and the likelihood of an increasing number of women in particular combining child rearing and elder care with paid work.⁸⁴

⁸³ Human Rights and Equal Opportunity Commission, *Sex Discrimination Commissioner's Listening Tour - Hobart Community Consultation* (2007)

⁸⁴ The Australian Institute of Health and Welfare (AIHW) anticipates there will be at least around 600,000 primary carers by 2013, with 70% likely to be women: AIHW, *Carers in Australia: assisting frail older people and people with a disability* (2004). For an extensive discussion on this point see Human Rights and Equal Opportunity Commission, *Striking the Balance* (2005) Chapter 4 and Chapter 6 and Human Rights and Equal Opportunity Commission, *It's About Time* (2007) pp 173-179. For the further information on legislative protection from discrimination on the grounds of family and carer responsibilities see Section 10 of Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008). Available at http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html (viewed 6 February 2009).

(b) *Lack of flexible work arrangements and paid parental leave*

106. Perhaps the most fundamental barrier to women's full participation in paid work is the struggle to balance paid work and family responsibilities, which prevents many women from participating in the labour market to the degree that they would like, thereby limiting their capacity to accumulate superannuation and voluntarily contribute to savings.
107. A recent survey of time-use has found that mothers of young children (where the youngest child in the family was aged 0 to 4 years) spend over 30 hours a week caring for children, compared to 11 hours for fathers. The same survey found that women spend double the time on unpaid domestic work compared to men.⁸⁵ More time spent in unpaid and caring work means that there is less time for paid work.
108. The Commission views the current structure of workplaces as inherently disadvantageous to women. Workplace structures have evolved around an 'ideal worker' norm of the traditional male breadwinner who is supported by a wife at home full time raising children. The 'ideal worker' norm refers to a traditional male breadwinner pattern of continuous full time work with no recognition of caring responsibilities.⁸⁶ A consequence of this model is lower rates of labour market participation for women and the resulting gender gap in retirement savings.
109. The Commission has identified a lack of access to family-friendly policies such as flexible working arrangements and paid parental leave as a key barrier to women's workforce participation. However, often where these policies are available, resistant and inflexible management and cultures prevent their take up.⁸⁷
110. Increasing the availability and application of family friendly policies such as flexible work arrangements and paid parental leave will increase women's labour market attachment. For example, retention rates for some companies with paid leave entitlements such as Monash University, GM Holden and other 'Employer of Choice for Women' companies are around 90%.⁸⁸
111. The Commission has also jointly commissioned research which shows that parents with children of school age nominate greater flexibility in paid work as a

⁸⁵ Australian Bureau of Statistics, *How Australians Use Their Time*, Cat no. 4153.0 (2006). Available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4153.0Main+Features12006?OpenDocument> (viewed 9 February 2009).

⁸⁶ See Joan Williams *Unbending Gender: Why work and family conflict and what to do about it* (2000), p 2. See also Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* (2005), p 59 and *passim*.

⁸⁷ See Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007).

⁸⁸ Equal Opportunity for Women in the Workplace Agency, *Paid Maternity Leave – The Business Case* <http://www.eowa.gov.au/Developing_a_Workplace_Program/Employment_Matter_Resources/EM_5_Resources/EOWA_Paid_Mat_Leave_Info/The_Business_Case.htm> at 26 May 2008

priority for providing better support in balancing their paid work and family responsibilities.⁸⁹

112. The Commission holds the view that measures to improve women's labour market attachment, such as protection from discrimination on the grounds of family and carer responsibilities, for both women and men,⁹⁰ and flexible work practices and paid parental leave,⁹¹ can be expected to improve their the ability of women to engage in paid work and to thereby accumulate greater lifetime earnings and subsequently higher retirement savings.

(c) *Lack of access to quality, affordable child care and other care facilities*

113. In relation to women's workforce participation, the Commission has consistently heard that there is a dire need for access to quality, affordable child care and other care services.⁹² During the Commissioner's *Listening Tour*, many participants reported that the cost and limited availability of child care often meant that it made better financial sense for one parent, commonly the female partner, to stay at home.⁹³

114. To improve women's workforce participation, the Commission has previously reported that there needs to be: increased availability of formal child care, particularly in regional areas; improved affordability for parents; flexibility of child care for long and irregular hours workers; and integration of school and work hours and availability of outside school hours care.⁹⁴

115. With the rapid ageing of the population it is paramount also that the accessibility and affordability of other care services, such as disability and elder care services are also considered in the context of increasing women's labour market participation.

⁸⁹ Newspoll, *Out of School Hours Care Study* (2008). Study jointly commissioned by National Foundation of Australian Women, the WomenSpeak Network, Security for Women, Women's Information and Referral (Vic), Network of Community Activities (NSW), Queensland Children's Activities Network and Human Rights and Equal Opportunity Commission.

⁹⁰ See Section 10 of Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008). Available at http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html (viewed 6 February 2009).

⁹¹ See Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007).

⁹² Human Rights and Equal Opportunity Commission, *Gender Equality: What Matters to Australian Women and Men: The Listening Tour Community Report* (2008); Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper* (2007).

⁹³ Human Rights and Equal Opportunity Commission, *Gender Equality: What Matters to Australian Women and Men: The Listening Tour Community Report* (2008).

⁹⁴ See Chapter 7, Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper* (2007) p 157.

(d) *Tax arrangements that provide a disincentive to women's workforce participation*

116. The Commission has previously reported on community concern regarding the current tax arrangements where Family Tax Benefit Part B ('FTB(B)') is withdrawn on the income of the secondary earner in two parent families.

117. Researchers have argued that this creates a disincentive to labour market participation for secondary earners, primarily women, as it results in financial penalties through a higher effective marginal tax rate.⁹⁵ In *It's About Time* (2007), the Commission reported:

It has been argued that this situation is inequitable towards second earners – overwhelmingly women – and damaging to the economy in respect of encouraging female labour force participation and that a fairer system lies in a return to a progressive individual tax system. Such a system would apply a lower rate of tax to the lower earning partner, improve vertical equity, allow the expansion of the tax base and thus provide greater resource to provide a more universal system of child benefits and improve women's labour market participation.⁹⁶

118. The Commission considers that the family tax system should support choice within families about paid work and caring responsibilities.

7.3 *Specific barriers to labour force participation for older women*

119. The tendency of women to retire earlier than men has been documented as a further contributing factor for lower levels of retirement savings.⁹⁷ For example, in the 50-54 age bracket, 17.7% of women are retired, compared to 8% of men. In the 55-59 age bracket, 31.4% of women are retired, compared to 17.4% of men.⁹⁸

120. It is commonly often suggested that older women should stay in the paid workforce for longer to accumulate greater retirement savings. The Commission notes that although increasing labour market participation for older women has some positive role in increasing retirement savings, this alone will not close the gender gap on retirement savings. This is because the system is designed upon the principle that contributions made early in life will accrue the most benefits over time.⁹⁹

⁹⁵ Patricia Apps, Ray Rees and Margi Wood, 'Population Ageing Taxation, Pensions and Health Costs', (2007) 10(2) *Australian Journal of Labour Economics* p 83.

⁹⁶ Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper* (2007) p131.

⁹⁷ Simon Kelly, 'Entering Retirement: the Financial Aspects' (Paper presented at the Communicating the Gendered Impact of Economic Policies: The Case of Women's Retirement Incomes, Perth, 12-13 December 2006)

⁹⁸ Australian Institute of Health and Welfare, *Older Australians at a Glance 4th edition* (2007) p 24. Available at <http://www.aihw.gov.au/publications/index.cfm/title/10402> (viewed 25 January 2009).

⁹⁹ Department of Victorian Communities and Industrial Relations Victoria, *Paving the Way for Older Women in the Workforce 2025* (2005)

121. Furthermore, older women encounter a number of specific barriers to workforce participation including sex and age discrimination, lack of flexible work to accommodate caring responsibilities and a lack of training and education opportunities. These barriers need to be removed to increase workforce participation for women in this age group.

(a) *Discrimination*

122. Older women experience unique forms of discrimination based on their age and gender. For example, some studies have found that older women are more likely to receive negative responses during recruitment and are more likely to be made redundant.¹⁰⁰

123. Research undertaken by Dr Barry Partridge of Workplace Images Consulting on 'Age-Gender Based Discrimination in Australian Workplaces' provides insight into this discrimination. Based on interviews with more than 100 managers from workplaces around Australia, the research investigates employment decisions made by managers across different age and gender employee categories. Decisions on promotion, selection, and training were considered.¹⁰¹

124. Of the preferences expressed by managers, mid-aged women between 30 and 45 years of age received the highest percentage of positive *selection* decisions of all age and gender groups. Women less than 30 years of age received the highest percentage of positive *training* decisions. However, on the question of promotion, men aged between 30 and 45 received the highest percentage of positive *promotion* decisions. In stark contrast, across all decisions made on selection, training and promotion, older women (45+) received the lowest percentage of positive decisions from managers. Even older female managers would not hire, train or promote other women over 45.

125. The stereotypes and assumptions behind these results reveal the extent of negative attitudes towards older women workers. Managers saw older women as 'loyal but lacking in potential' which in turn impacts on their ability to be promoted. Older women were also perceived as being 'low in energy' and as 'unwilling to accept criticism' which again can effect manager's selection and training decisions.

126. The Commission considers these discriminatory attitudes act as a barrier to older women being able to find and maintain employment, and consequently being able to build savings for retirement.

¹⁰⁰ See Chapter 2, Department of Victorian Communities and Industrial Relations Victoria, *Paving the Way for Older Women in the Workforce 2025* (2005) p 17. Available at http://www.business.vic.gov.au/busvicwr/_assets/main/lib60079/wiwchapter2.pdf (viewed 25 January 2009).

¹⁰¹ These unpublished research findings were provided by Dr Barry Partridge to the Australian Human Rights Commission during the Commission's consultations in the age discrimination area. Further information can be found at www.workplaceimages.com (viewed 17 February 2009).

(b) *Caring responsibilities*

127. Secondly, older women also often find it difficult to find work that is flexible to support their family responsibilities including caring for children, grandchildren, relatives with disability, elderly parents or sick spouses.¹⁰² This accords with the research finding that women commonly retire early due to caring responsibilities.¹⁰³
128. The Commission considers that flexible work arrangements should be made available to women of all ages to maximise labour market participation across the lifecycle. Legal protection from discrimination on the grounds of caring responsibilities is also required.

(c) *Access to education and training*

129. Participants in the Commissioner's *Listening Tour* reported a lack of access to training and return to work preparation programs for older women which presents another barrier to older women's labour market participation.¹⁰⁴ Current consultations being undertaken by the Commission in the area of age discrimination have also identified this is a key barrier for re-entry into the labour market.¹⁰⁵

7.4 The impact of women's past exclusion from superannuation schemes

130. Until 1993, there was a blanket exemption in the SDA which allowed superannuation funds and insurance to discriminate on the basis of sex. During the early years of superannuation, prior to the 1991 amendment to the SDA and the introduction of the SG, many funds excluded women. For example, in 1988, only 47% of women working full-time were members of superannuation funds, compared to 64% of men.¹⁰⁶
131. Participants in the Commissioner's *Listening Tour*, commented on the impact of this exclusion:

When I worked years ago men could join the super fund but women couldn't. My husband said, "Don't worry about super because you'll be leaving [the paid workforce] soon". Then my marriage fell apart and I was left with no superannuation because all the money had gone into the house instead. I left after 15 years in the paid workforce with nothing, no superannuation, a bit of long service leave. I didn't get the same wage as the males yet I was

¹⁰² See Executive Summary, Department of Victorian Communities and Industrial Relations Victoria, *Paving the Way for Older Women in the Workforce 2025* (2005) p 7. Available at <http://www.business.vic.gov.au/busvicwr/assets/main/lib60079/wiwsummary.pdf> (viewed 25 January 2009).

¹⁰³ Australian Bureau of Statistics, *Employment Arrangements, Retirement and Superannuation, Australia*, Cat no. 6361.0 (2008) p14.

¹⁰⁴ Human Rights and Equal Opportunity Commission, *Gender Equality: What Matters to Australian Women and Men: The Listening Tour Community Report* (2008)

¹⁰⁵ The outcomes of these consultations are anticipated to be released in 2009.

¹⁰⁶ Australian Institute of Health and Welfare, *Older Australia at a glance* (1997) p.44. Available at <http://www.aihw.gov.au/publications/age/oag/oag-c21.html> (viewed 11 February 2009).

expected to take on more secretarial work. That is the way the work was structured. Everyone worries about retirement savings but let's remember we were not invited to join the superfund until 25 years ago.¹⁰⁷

8 Solutions for increasing women's financial security in retirement

132. This submission specifically addresses the gender inequality in Australia's retirement income system. Whilst the Commission has not had the capacity to undertake detailed analysis of the retirement income system and the taxation system more broadly, the Commission considers that a broad range of immediate and long term strategies must be implemented in order to redress the disadvantage that women experience. A range of measures need to be adopted in order to ensure that women and men equally enjoy their human right to social security under article 3 and 9 of the ICESCR.

133. The Commission has developed recommended areas for action which draw upon its previous work and expertise in the following areas:

- removing barriers to women's labour market participation
- increasing life-time earnings for women by reducing the gender pay gap
- extending initiatives to increase superannuation contributions for low income earners and those on welfare payments
- ensuring the Age Pension protects individuals from poverty and fulfils Australia's international human rights obligations for women and men to equally enjoy a right to social security
- regular monitoring and reporting on the gender impact of Federal budgets and reforms
- introducing measures to achieve equality in women's representation in superannuation fund governance positions
- independent monitoring and reporting on Australia's progress towards achieving substantive gender equality
- reviewing the superannuation exemptions in the *Sex Discrimination Act 1984* (Cth).

8.1 Removing barriers to women's labour market participation

134. Increasing women's labour market participation across the lifecycle is critical to closing the gender gap in retirement savings and increasing women's financial security in retirement.

135. The Commission recommends the following actions to remove barriers to women's labour market participation:

¹⁰⁷ Human Rights and Equal Opportunity Commission, *Sex Discrimination Commissioner's Listening Tour - Women's focus group 7* (2008)

Australia's future tax system (Retirement income system) – 27 February 2009

- Extend legal protection from discrimination on the grounds of family and carer responsibilities; and
- Introduce a positive duty to reasonably accommodate family and carer responsibilities;
- Introduce a national scheme of paid leave for parents; and
- Remove tax disincentives to women's labour market participation.

(a) *Extend legal protection from discrimination on the grounds family and carer responsibilities*

136. Ensuring that women with family and carer responsibilities have reasonable access to flexible work arrangements is important for improving labour market participation and subsequently increasing superannuation.
137. If employees are able to access flexible work arrangements in accordance with their family and carer responsibilities, more women will be able to remain in secure forms of work that are commensurate with their skill levels, retain access to benefits, training and promotional opportunities. This in turn will increase their level of earnings.
138. The Commission has found that many men and women workers with family and carer responsibilities want to share the care of children and other dependents more equally. However, they face a number of barriers to doing so.¹⁰⁸
139. Increasing access to flexible working arrangements for both women and men will also facilitate greater choice for couples who wish to share their caring responsibilities more equally, thus creating greater opportunities for women to participate in the workforce and increase their superannuation.
140. The Commission has welcomed the proposed extended protections against discrimination on the grounds of family and carer responsibilities set out in the Fair Work Bill 2008 (Cth).¹⁰⁹
141. However in the Commission's view, the family responsibilities provisions of the SDA continue to provide insufficient protection for men and women workers with family responsibilities. In the *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality (2008)* ('SDA Submission (2008)'), the Commission reiterated its view that protection from discrimination on the grounds of family and carer responsibilities needs to be extended. Increasing legal protection in this area would have a significant impact on women's labour force participation and earnings over the lifetime.¹¹⁰

¹⁰⁸ Human Rights and Equal Opportunity Commission, *Gender Equality: What Matters to Australian Women and Men: The Listening Tour Community Report* (2008); Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper* (2007).

¹⁰⁹ Australian Human Rights Commission, *Submission to the Senate Education, Employment and Workplace Relations Committee for the Inquiry into the Fair Work Bill 2008* (2009) p 3. Available at http://www.humanrights.gov.au/legal/submissions/2009/20090123_Fair_Work.html#intro (viewed 11 February 2009).

¹¹⁰ For further information see Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex*

142. While the SDA provides protection from discrimination on the ground of family responsibilities it is more limited than the other grounds, in that it only provides protection from:

- direct discrimination; and
- dismissal (including constructive dismissal) from employment.¹¹¹

143. To increase women's labour market participation, the Commission considers that the SDA should be amended as soon as possible to ensure that all forms of discrimination on the grounds of family and carer responsibilities are unlawful. The amendment should:

- make unlawful discriminatory treatment *in all aspects of work*, rather than restricting protection to discriminatory treatment in employment that results in dismissal.
- make unlawful *indirect* family and carer responsibilities discrimination.
- extend the definition of family responsibilities to include *family and carer responsibilities*, which is inclusive of same-sex families, and provide a definition of family members and dependents which ensures adequate cover for both children and adults to whom care is being provided.¹¹²

144. The Report of the Senate Inquiry into the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality (*'The SDA Inquiry Report (2008)'*) adopted the Commission's recommendation to extend family responsibilities under the SDA.¹¹³ The Commission urges the Australian Government to implement this recommendation without delay.

Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality (2008). Available at http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html (viewed 6 February 2009).

¹¹¹ *Sex Discrimination Act 1984 (Cth)* ss 7A and 14(3A).

¹¹² Submissions to the Women, Men, Work and Family project advocated the extension of 'family responsibilities' protection to all workers with carer responsibilities. See, for example, Women Lawyers Association of New South Wales, Submission 112, pp 9-10. This would provide protection to workers based on the nature of their responsibilities rather than the more arbitrary nature of their relationship to the person requiring care.

¹¹³ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality (2008)*, para 11.33. At http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

Recommendation 1: Extend family and carer responsibilities protection under the *Sex Discrimination Act 1984* (Cth)

Implement recommendation 13 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality:

The committee recommends that the prohibition on discrimination on the grounds of family responsibilities under the Act be broadened to include indirect discrimination and discrimination in all areas of employment.¹¹⁴

(b) *Introduce a positive duty to reasonably accommodate family and carer responsibilities*

145. Introducing a positive duty to reasonably accommodate family and carer responsibilities would provide a greater level of support for women and men who require flexible working arrangements. As stated in the section above, greater availability of flexible work arrangements for both women and men would increase women's labour market participation. This in turn would increase superannuation accumulations.

146. Introducing a positive duty would also assist in clarifying employer responsibilities in this area.

147. In the *SDA Submission (2008)*, the Commission recommended that the SDA be amended to introduce a positive obligation on employers and other appropriate persons to reasonably accommodate the needs of workers in relation to their pregnancy or family and carer responsibilities. This would complement the right to request flexible work practices in the proposed *National Employment Standards* in the proposed Fair Work Bill 2008 (Cth).

148. This recommendation was adopted by the *SDA Inquiry Report (2008)*.¹¹⁵

149. In the *Submission to the Senate Education, Employment and Workplace Relations Committee for the Inquiry into the Fair Work Bill 2008*, the Commission made a number of recommendations to strengthen the proposed National Employment Standard on the right to request flexible work practices.¹¹⁶ These recommendations were made with the objective of removing barriers to women's labour market participation. The Commission repeats these recommendations to this Review.

¹¹⁴ Ibid.

¹¹⁵ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), para 11.34. At http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

¹¹⁶ Australian Human Rights Commission, *Submission to the Senate Education, Employment and Workplace Relations Committee for the Inquiry into the Fair Work Bill 2008* (2009). Available at http://www.humanrights.gov.au/legal/submissions/2009/20090123_Fair_Work.html#intro (viewed 11 February 2009).

Recommendation 2: Positive duty to reasonably accommodate the needs of workers who are pregnant and/or have family or carer responsibilities

Implement recommendation 14 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality:

The Committee recommends that the Act be amended to impose a positive duty on employers to reasonably accommodate requests by employees for flexible working arrangements, to accommodate family or carer responsibilities, modelled on section 14A of the *Equal Opportunity Act 1995* (VIC).¹¹⁷

Recommendation 3: Strengthen the right to request flexible work arrangements National Employment Standard

To strengthen the right to request flexible work arrangements *National Employment Standard* the Commission recommends the following:

- qualification requirements that restrict the categories of employees who can make a request for flexible working arrangements should be removed.
- the right to request flexible working arrangements should be extended to all forms of family and caring responsibilities.
- the right to request flexible working arrangements be extended to employees with a disability.
- same rights of redress applicable to the other nine National Employment Standards should be extended to the unreasonable refusal of a request for flexible work arrangements
- the right to request should be accompanied by an education campaign that includes clear information that employees may have access to the provisions of the *Sex Discrimination Act 1984* (Cth) (and the *Disability Discrimination Act*) where flexible arrangements are denied.¹¹⁸

¹¹⁷ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), para 11.34. Available at http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

¹¹⁸ Australian Human Rights Commission, *Submission to the Senate Education, Employment and Workplace Relations Committee for the Inquiry into the Fair Work Bill 2008* (2009). Available at http://www.humanrights.gov.au/legal/submissions/2009/20090123_Fair_Work.html#intro (viewed 11 February 2009).

(c) *Introduce a national scheme of paid leave for parents*

150. In the *Submission to the Productivity Commission Inquiry into Paid Maternity, Paternity, and Parental Leave* the Commission urged the government to introduce a national paid leave scheme in two stages. Stage One proposed a first phase of paid maternity leave (14 weeks) and supporting parent leave (two weeks). The Commission recommended that Stage Two include an additional paid parental leave component (38 weeks, of which four weeks are reserved for the supporting parent on a “use it or lose it” basis).¹¹⁹
151. In addition to other benefits, the Commission considers that a national paid leave scheme will increase women’s labour market attachment and consequently increase retirement savings. The Commission recommended that the leave entitlements be paid as taxable income including superannuation.
152. In November 2008, the Commission endorsed the national paid leave scheme model proposed by the Productivity Commission, with recommendations for improvement in a number of areas. The Commission welcomed the inclusion of superannuation as part of the payments under the proposed scheme.¹²⁰

Recommendation 4: Introduce a national scheme of paid leave for parents

The Australian Government should adopt the Productivity Commission’s proposed model for paid parental leave as a matter of urgency. The scheme should include compulsory additional superannuation payments.

(d) *Remove tax disincentives to women’s labour market participation.*

153. Creating an equitable tax system that both supports families *and* facilitates equal workforce participation by women and men is important for closing the gender gap in retirement savings and ensuring financial security in retirement.
154. In *It’s About Time (2007)*, the Commission made recommendations specifically in reference to Family Tax Benefit Part B. These recommendations were based on the principle of maximising choice within families about the sharing of paid work and caring responsibilities.¹²¹ These changes will also provide low income secondary earners, primarily women, higher disposable incomes, to enhance their capacity to make voluntary superannuation contributions.¹²²

¹¹⁹ For further information see Human Rights and Equal Opportunity Commission, *Submission to the Productivity Commission Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). Available at http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html (viewed 6 February 2009).

¹²⁰ For further information see Human Rights and Equal Opportunity Commission, *Submission to the Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave* (2008). At http://www.humanrights.gov.au/legal/submissions/2008/20081124_maternity.html (viewed 6 February 2009).

¹²¹ Human Rights and Equal Opportunity Commission, *It’s About Time: Women, Men, Work and Family: Final Paper* (2007) p 133.

¹²² Patricia Apps, *Women and Retirement Incomes* (2009) p 8. Available at <http://nfaw.org.au/assets/Socialpolicy/Tax/retPA.pdf> (viewed 2 February 2009).

Recommendation 5: Modify Family Tax Benefit Part B

Family Tax Benefit Part B should be modified to support choice within couple families around the sharing of paid work and caring responsibilities.

8.2 Increasing life-time earnings for women by reducing the gender pay gap

155. The gender gap in retirement savings is a consequence of women's lower earnings over the lifetime. Reducing the gender pay gap is an important priority for increasing women's financial security in retirement.

156. In 2008, the Commission made a submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the *Inquiry into pay equity and associated issues related to increasing female participation in the workforce* ("Pay Equity Submission (2008)").¹²³

157. The Commission made a number of recommendations in the *Pay Equity Submission (2008)* to reduce the gender pay gap. The Commission considers that these measures should be introduced without delay to increase women's retirement savings and improve financial security in retirement.

Recommendation 6: Improve data collection and monitoring of the gender pay gap

The Australian Government should revisit previous recommendations made by the Commission in relation to data collection and monitoring of women's pay and employment conditions in order to:

- address gaps in data collection by resourcing the Australian Bureau of Statistics to collect and publish regular gender disaggregated data in areas of need identified by Women in Economic and Social Research¹²⁴
- fund the Department of Education, Employment and Workplace Relations to conduct an annual national workplace relations survey to monitor gender differences in changes to pay and conditions and
- establish a comprehensive set of indicators for measuring achievement towards gender equality in this area over time, either independently or as part of a broader set of indicators and monitoring to be developed by the Commission, subject to recommended legislative change to the SDA and appropriate, tied funding.

Recommendation 7: Strengthen legal and institutional arrangements to reduce

¹²³ Human Rights and Equal Opportunity Commission, *Submission to the House of Representatives Standing Committee on Employment and Workplace Relations on the Inquiry into pay equity and associated issues related to increasing female participation in the workforce* (2008). Available at http://www.humanrights.gov.au/legal/submissions/2008/20080923_pay_equity.html (viewed 6 February 2009).

¹²⁴ Women in Economic & Social Research (WiSER), *Women's pay and conditions in an era of changing workplace regulations: Towards a "Women's Employment Status Key Indicators" (WESKI) database* (2006) p 21.

the gender pay gap

The Australian Government should consider the range of alternative approaches for achieving pay equity as previously recommended by the Commission, including workplace audit processes, monitoring and enforcement processes.

Possible options include:

- setting up a specialist unit in the new wage setting body of Fair Work Australia to develop and monitor pay equity mechanisms
- requiring Fair Work Australia to undertake investigations focused on undervaluation and comparative worth in female dominated occupations and industries
- amending legislation to require pay equity audits and action plans to be carried out at the workplace level
- introducing the ability for the Equal Opportunity in the Workplace Agency and/or the Commission to receive gender equality action plans, from bodies other than employers currently covered by the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) ('EOWW Act'), including specific plans on pay equity
- amending the EOWW Act or the SDA to provide for an auditing function for gender equality action plans which is properly resourced
- inserting into the SDA the ability to adopt legally-binding standards
- introducing specialised pay equity legislation.

8.3 Extending initiatives to increase superannuation contributions for those not in paid work due to caring responsibilities and low income earners

(a) Superannuation for those not in paid work due to caring responsibilities

158. In *It's about Time (2007)*, the Commission reported on community concern about the linking of superannuation payments to paid employment and the lack of social and economic value placed on unpaid work. Individuals and organisations commented on the inequity of the current system being linked to paid work, particularly given the significant value of unpaid work to the nation's economy.¹²⁵

159. The Commission's view is that Australia's retirement income system should recognise the value of unpaid work to the economy. At a minimum, those who take time out of paid work to provide care, should receive superannuation contributions in addition to their Centrelink payments. Carers should also be eligible for the Superannuation Co-Contribution Scheme.

¹²⁵ Human Rights and Equal Opportunity Commission, *It's About Time: Women, Men, Work and Family: Final Paper* (2007) p 144.

160. Importantly, the Commission views that superannuation contribution should not be made in place of an *adequate* carer payment to meet current living costs. Accordingly, these superannuation payments should have a new and separate budget allocation.
161. The Commission recognises that even with superannuation contributions paid in addition to Centrelink payments for carers, many will remain reliant on the Age Pension. Carers also have a lower capacity to make voluntary contributions. Therefore, the Commission considers that, in the medium term, there is a need to establish a specific scheme to recognise the economic contribution of unpaid carers with a retirement benefit. This could include government funded carer superannuation credits to be paid at the time of retirement, or a national fund or social insurance scheme established specifically for carers.

Recommendation 8: Provide superannuation for those not in paid work due to caring responsibilities

The Australian Government should make direct superannuation contributions for those who are not in the paid workforce because of caring responsibilities. These contributions should be made at the same level as the SG in addition to existing Centrelink income support.

This should include those eligible for the Carer Payment, Parenting Payment or in receipt of the Carer allowance in addition to other Government income support payment for people of working age.

The Australian Government should also extend the Superannuation Co-contribution Scheme to these groups.

Recommendation 9: Investigate establishing a superannuation scheme for carers

The Australian Government should investigate establishing a specific retirement income scheme to recognise the value of unpaid caring work.

This could include government funded carer superannuation credits to be paid at the time of retirement, or a national fund or social insurance scheme established specifically for carers.

(b) Increasing superannuation savings for low income earners

162. Greater efforts are needed to build adequate superannuation balances for low income earners, many of whom are women.

163. The Commission notes that the requirement to earn \$450 a month before employers contribute superannuation results in casual and low paid workers (primarily women) being excluded from coverage. However, the Commission shares the concern that removing the \$450 threshold may result in the loss of current income amongst those who are in greatest need.¹²⁶

164. The Commission is also concerned that any increases in the SG may have a disadvantageous effect for low and middle income earners as further increases

¹²⁶ Therese Jefferson and Alison Preston Siobhan Austen, *Women and Australia's Retirement Income System* (2002) p 36.

may lead to financial hardship because of reduced disposable income and lower increases in salary.¹²⁷ The Commission views that any modifications to the SG, in terms of level and coverage, should be modelled to assess whether they reduce or increase gender inequality and create financial hardship for those on low incomes.

165. Additionally, the Commission considers that the current tax arrangements should be modified to provide greater equity across income levels and provide better incentives for low income earners, primarily women, to save for retirement and reduce reliance on the Age Pension. Accordingly, the Commission proposes a review, including a gender impact assessment, of the current tax concessions related to superannuation.¹²⁸

166. Finally, the Commission proposes that the Australian Government should also make superannuation apply to Aboriginal and Torres Strait Islanders on the Community Development Employment Program in addition to their benefits, in recognition of the value of this work to the community.

Recommendation 10: Model the gender impact of any proposed changes to the Superannuation Guarantee

The Australian Government should model the gender impact of any proposed changes in the coverage or level of the Superannuation Guarantee with a view to minimising financial hardship for those on low incomes. This analysis should be made publically available.

Recommendation 11: Equity in superannuation tax concessions

The Australian Government should review and modify superannuation tax concessions to ensure that benefits are provided equitably between low, middle and high income earners, and to maximise gender equality.

Recommendation 12: Superannuation for those in the Community Development Employment Program

The Australian Government should make direct superannuation contributions at the same level as the SG, in addition to existing benefits, for those who are in the Community Development Employment Program.

8.4 Ensuring the Age Pension fulfils Australia's international human rights obligations for women and men to equally enjoy a right to social security

167. The Age Pension has an important role in the retirement income system as a safety net for those unable to save for retirement.

168. Even though current projections show that the gender gap in retirement savings will gradually reduce over time, economic modelling reveals that even following

¹²⁷ Ibid p 35.

¹²⁸ Rhonda Sharp and Siobhan Austen, 'The 2006 Federal Budget: A Gender Analysis of the Superannuation Taxation Concessions' (2007) 10(2) *Australian Journal of Labour Economics* p 73; Therese Jefferson and Alison Preston Siobhan Austen, *Women and Australia's Retirement Income System* (2002) p.33.

the maturation of the SG, a significant proportion of women will remain solely reliant on the Age Pension.¹²⁹

169. In the absence of a specific component of the retirement income system to recognise unpaid caring work, the Age Pension remains a critical framework for redressing the gender inequality inherent in the superannuation system due to its link to paid work. The Commission views that from a gender equality perspective, a strong policy focus should be maintained on the Age Pension to ensure that it provides an adequate standard of living in retirement for those unable to save through superannuation or voluntary savings, as an essential component of fulfilling the right to social security without discrimination.

(a) *Objectives of the Age Pension*

170. The Commission considers that at a minimum, the Age Pension should protect people from poverty and provide an adequate standard of living.¹³⁰ Long term reform is required to ensure that both the couple and single rate of the Age Pension provides sufficient income to eliminate the incidence of poverty for those in retirement and no longer able to work.

171. Australia's retirement income system, including the Age Pension and Superannuation Guarantee must at a minimum, incorporate the essential factors of the right to social security, such as being available, accessible, non-discriminatory and comprehensive.¹³¹

(b) *Single rate of the Age Pension*

172. Give the high proportion of women reliant of the single rate of the Age Pension, and the greater risk of poverty amongst this group, the Commission views that the single rate of the Age Pension should be increased as an urgent priority to ensure women and men equally enjoy the right to adequate social security.

173. Data from the National Centre for Social and Economic Modelling shows that increasing the single rate of the Age Pension from 60% of the couple rate to the OECD average of 63% would decrease the incidence of poverty amongst single women households (over age of 65) by around 4%. Increasing the single Age Pension rate to 66% of the couple rate would decrease the incidence of poverty

¹²⁹ Therese Jefferson and Alison Preston Siobhan Austen, *Women and Australia's Retirement Income System* (2002); Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. Available at https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009).

¹³⁰ According to the World Bank, 'First, all pension systems should, in principle, have elements that provide basic income security and poverty alleviation across the full breadth of the income distribution.' Robert Holzmann and Richard Hinz, *Old-Age Income Support in the 21st Century: An International Perspective on Pension Systems and Reform* (2005) p 1.

¹³⁰ Ross Clare, *Retirement Savings Update* (2008) p 3. Available at <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 11 February 2009).

¹³¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) paras 9-28.

amongst single women households (over age of 65) by around 10%. However, even this increase would not eliminate poverty completely within this group.¹³²

(c) *Monitoring and tracking of poverty*

174. Given the higher risk of poverty amongst single retired women, and the wide social policy and human right imperative of ensuring that all people enjoy an adequate standard of living, it is important that the incidence of poverty is monitored to evaluate the effectiveness of reforms to the Age Pension and retirement income system more broadly.

175. The Committee on Economic, Social and Cultural Rights has expressed specific concern that Australia lacks an officially set poverty line in Australia. The lack of an official measure of poverty means it is not possible to determine the progress of Australian Government efforts to reduce poverty.¹³³

176. The Commission recognises that the measurement of poverty remains highly contested with practical and theoretical limitations associated with various poverty measures. However, the Commission supports the need for a nationally agreed national poverty measure to allow the tracking and monitoring of the incidence of poverty over time.

Recommendation 13: Ensure the Age Pension protects individuals against poverty and meets international human rights standards

At a minimum, the Age Pension should protect individuals against poverty, ensure an adequate standard of living and fulfil the right to social security for individuals in line with relevant international human rights standards.

The couple and single rate of the Age Pension should be raised progressively to eliminate poverty. This should start with an immediate increase of the single rate to 66% of the couple rate.

Recommendation 14: Monitor and track the incidence and impact of poverty

The Australian Bureau of Statistics should establish an agreed poverty measure and issue an annual report on the incidence of poverty, disaggregated by gender, age, Aboriginal and Torres Strait Islander status, disability, sexuality, cultural background, household type and location.

¹³² This study uses the 50% of median income as the poverty measure. Robert Tanton, Yogi Vidyattama, Justine McNamara, Quoc Ngu Vu and Ann Harding, *Old Single and Poor: Using Microsimulation and Microdata to Analyse Poverty and the Impact of Policy Change Among Older Australians* (2008) p 15. Available at https://guard.canberra.edu.au/natsem/index.php?mode=download&file_id=880 (viewed 9 February 2009).

¹³³ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 19: The Right to Social Security*, E/C.12/GC/19 (2007) para 20.

8.5 Regular monitoring and reporting on the gender impact of Federal budgets and reforms

177. The gender gap in retirement savings highlights the need for regular monitoring of the gender impact of government policies and budgetary measures. As Sharp and Austen set out:

Budgetary decision making is rarely gender neutral, and policy decisions that are of great consequence to the largest proportion of the population (i.e. women) can take place without any research into their potential effects. This approach to policy fails the standard policy test of efficiency, effectiveness and equity. Further research is needed on the actual (rather than predicted) impacts of recent budgetary measures on the retirement incomes of men and women, and on the level of retirement income inequality within these two groups.¹³⁴

178. Gender budgeting is the monitoring of budgeting and expenditure of public funds to assess whether 'policies and their associated resource allocations likely to reduce or increase gender inequalities.'¹³⁵

179. The United Nations Commission on the Status of Women ('CSW') urges governments to improve financing for gender equality. The Agreed Conclusions of CSW, adopted by member states in New York in March 2008, recommend that governments should:

Develop and implement, where appropriate, methodologies and tools, including national indicators, for gender-responsive planning and budgeting, in order to systematically incorporate gender perspectives into budgetary policies at all levels, with a view to promoting gender equality in all policy areas.¹³⁶

180. There are many different tools to examine Government budgets and advocate for more responsive budgets. These include:

- *Gender-disaggregated public expenditure incidence analysis:* This research technique compares public expenditure for a given programme, usually with data from household surveys, to reveal the distribution of expenditure between women and men, girls and boys.
- *Gender-disaggregated tax incidence analysis:* This research technique examines both direct and indirect taxes in order to calculate how much taxation is paid by different individuals or households.
- *Gender-disaggregated analysis of the impact of the budget on time use:* This looks at the relationship between the national budget and the way

¹³⁴ Rhonda Sharp and Siobhan Austen, 'The 2006 Federal Budget: A Gender Analysis of the Superannuation Taxation Concessions' (2007) 10(2) *Australian Journal of Labour Economics* p 73.

¹³⁵ UNIFEM, 'Tools for Gender-Sensitive Analysis of Budgets', April 2005 at http://www.idrc.ca/uploads/user-S/11279431651Tools_for_Gender-Sensitive_Analysis_of_Budgets.pdf (viewed 3 February 2009).

¹³⁶ UN Commission on the Status of Women, *Agreed Conclusions on Financing for Gender Equality and the Empowerment of Women*, para 21(p), UN Doc E/CN.6/2008/L.8, available at: http://www.un.org/womenwatch/daw/csw/csw52/AC_resolutions/L.8_Advance%20unedited_as%20corrected.pdf.

time is used in households. This ensures that the time spent by women in unpaid work is accounted for in policy analysis.

- *Gender-aware medium term economic policy framework:* This attempts to incorporate gender into the economic models on which medium term economic frameworks are based.
- *Gender-aware budget statement:* This involves an accountability process which may utilise any of the above tools. It requires a high degree of commitment and co-ordination throughout the public sector as ministries or departments undertake an assessment of the gender impact of their line budgets.¹³⁷

181. Where there is a group of people who are marginalised or disadvantaged and unable to enjoy particular human rights, it may be legitimate for governments to take actions which are gender specific or that require differential treatment between women and men in order to achieve substantive gender equality outcomes. These are called temporary special measures. Governments may introduce temporary special measures which are advantageous to that group of people and aim to deliver formal and substantive equality. If these measures are necessary to redress discrimination and last only until equality is achieved, they will not be considered to be a violation of the right to non-discrimination and equality.¹³⁸

182. CEDAW permits special measures to promote substantive gender equality.¹³⁹ In Australia, special measures to achieve substantive gender equality are permitted under section 7D of the SDA.

183. Section 7D of the SDA provides that:

(1) A person may take special measures for the purpose of achieving substantive equality between:

- (a) men and women; or
- (b) people of different marital status; or
- (c) women who are pregnant and people who are not pregnant;
- (d) women who are potentially pregnant and people who are not potentially pregnant.

(2) A person does not discriminate against another person [on the grounds of sex, marital status or pregnancy or potential pregnancy] by taking special measures authorised by subsection (1)

(3) A measure is to be treated as being taken for a purposes referred to in subsection (1) if it is taken:

- (a) solely for that purpose; or
- (b) for that purpose as well as other purposes, whether or not that purpose is the dominant or substantial one.

¹³⁷ Unifem, 'Tools for Gender-Sensitive Analysis of Budgets', at http://www.idrc.ca/uploads/user-S/11279431651Tools_for_Gender-Sensitive_Analysis_of_Budgets.pdf (viewed 3 February 2009),

¹³⁸ CESCR, General Comment 16, para 35.

¹³⁹ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 4.

(4) This section does not authorise the taking, or further taking, of special measures for a purpose referred to in subsection (1) that is achieved.

184. Under CEDAW and the SDA special measures should be discontinued when the specific objective of the measure have been met.

185. With respect to Australia's retirement income system, gender budgeting and monitoring would assist in identifying policies and measures that increase inequity. This may provide a basis for the introduction of gender-specific measures, as special measures, to redress gender inequity and improve women's economic security over the lifecycle.

Recommendation 15: Regular gender budget statements

The report from Australia's future tax system review should include a section containing modelling and analysis of the gender impact of the proposed recommendations.

A Gender Analysis Unit should be established within Treasury to conduct gender disaggregated public expenditure analysis, gender disaggregated tax incidence analysis, and yearly gender budget statements.

8.6 Increasing the representation of women in superannuation fund governance positions

186. Increasing women's representation in decision making positions and the governance of superannuation funds has been suggested as a complementary strategy to improve financial security for women in retirement. It is argued that better representation of women in superannuation fund governance would improve outcomes for women by ensuring that women's experiences and perspectives are reflected in the operation and management of superannuation schemes. This may also ensure that women's interests are equally considered by the superannuation industry more broadly.¹⁴⁰

187. Although currently women make up around 45% of those in the paid workforce¹⁴¹, the most recent estimate had the proportion of female trustees in major superannuation funds at 18%. Only 7 % of funds had female chairs and 40% of boards had no female trustees at all.¹⁴²

¹⁴⁰ Diana Olsberg, *Ms...ing Out? Women and Retirement Savings: A Position Paper Prepared by the University of NSW Research Centre on Ageing & Retirement, Sydney, Australia for the Economic Policy Summit* (2001) p 63.

¹⁴¹ Australian Bureau of Statistics, *Labour Force, Australia, Spreadsheets, Jan 2009, Cat no. 6202.0.55.001* (2009). Available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6202.0.55.001Jan%202009?OpenDocument> (viewed 13 February 2009).

¹⁴² Diana Olsberg, *Ms...ing Out? Women and Retirement Savings: A Position Paper Prepared by the University of NSW Research Centre on Ageing & Retirement, Sydney, Australia for the Economic Policy Summit* (2001) p 63; Ross Clare, *Women and Superannuation* (2001) p 33. Available at <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 11 February 2009).

188. The Commission is concerned about the absence of women in superannuation fund governance positions. Given that superannuation fund trustees have a specific duty to act in the best interests of members while managing the superannuation savings in their care¹⁴³, it is imperative women are equally represented in fund governance positions. It is important that women's experiences and perspectives around workforce participation, financial management, and retirement are included in decision making processes around the investment and management of funds.
189. The statistics regarding female representation in superannuation fund governance positions are representative of the broader picture of women's representation in leadership positions. Currently in ASX200 companies, women chair only 2% of companies, hold only 8.3% of board directorships, hold only four chief executive officer positions and represent only 10.7% of executive management positions. Australia trails behind the United States, United Kingdom, South Africa and Canada on the proportion of female board directors¹⁴⁴
190. With reference to superannuation funds, breaking down the gender representation on boards by industry found that the insurance industry has 17% female board directors, the diversified financials sector has 12.5% and banking had 16.4%.¹⁴⁵
191. The Commission considers that women's representation in senior leadership positions needs to increase across all sectors as a national priority. Under CEDAW, it is recognised that women must be fully and equally involved in decision making in all fields and all levels, both to achieve women's empowerment and the advancement of society as a whole.¹⁴⁶
192. Greater representation of women in leadership positions has a number of positive flow-on effects. In a business context, international evidence suggests that a greater female representation in senior management positions is linked to better financial performance.¹⁴⁷ For example, a study of Fortune 500 companies in the United States found that companies with the highest proportion of women board directors performed better financially, compared to those companies with the lowest proportion of women directors.¹⁴⁸
193. CEDAW recognises that simply removing discriminatory practices is not sufficient to redress gender inequality. In some instances, temporary gender-

¹⁴³ Australian Prudential Regulatory Authority, *A recent history of superannuation in Australia* (2007) p 6. Available at <http://www.apra.gov.au/insight/upload/history-of-superannuation.pdf> (viewed 11 February 2009).

¹⁴⁴ Equal Opportunity for Women in the Workplace Agency, *2008 EOWA Australian Census of Women in Leadership* (2008) p 22. Available at http://www.eowa.gov.au/Australian_Women_In_Leadership_Census/2008_Australian_Women_In_Leadership_Census/Media_Kit/EOWA_Census_2008_Publication.pdf (viewed 11 February 2009).

¹⁴⁵ *Ibid* p 5.

¹⁴⁶ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 23: Political and Public Life*, A/52/38 (1997) para 17.

¹⁴⁷ Catalyst, *Advancing Women Leaders: The Connection Between Women Board Directors and Women Corporate Officers* (2008); McKinsey and Company, *Women Matter: Gender diversity, a corporate performance driver* (2007).

¹⁴⁸ Catalyst, *Advancing Women Leaders: The Connection Between Women Board Directors and Women Corporate Officers* (2008) p 4.

specific measures may be required to accelerate the achievement of substantive gender equality.¹⁴⁹ As noted above, these are referred to as 'special measures'.

194. Special measures may be introduced to increase women's representation in senior positions. There are a number of options including targeted recruitment of women for senior positions, mandatory gender targets or quotas and prioritised promotion of women candidates of equal merit.¹⁵⁰
195. For example, a mandatory women's representation in board director positions has been introduced in Norway. In 2004, legislation was introduced to oblige companies to have a minimum of 40% representation of each gender on their boards in the Norwegian Parliament. This legislation covers 500 public limited companies in the private sector and all state-owned and inter-municipal companies in Norway. All companies were given a two year period of transition to comply with the law from these dates. The Norwegian Parliament later amended the act to enable courts to dissolve a company if it was found not to be complying with the law. By the time the transition period for public limited companies expired in July 2008, 39% of Board members were women. This was an increase from 7% in 2003.¹⁵¹
196. The Commission considers that the Australian Government should investigate specific strategies to increase the representation of women in senior leadership positions, and specifically, in superannuation fund governance positions. This could include the introduction of mandatory quotas and targets, allocation of specific funding to train women trustees and board directors or tax incentives for funds that have an appropriate balance of gender in senior management.
197. A requirement for gender balance on superannuation fund trustee boards could operate similarly to the requirement that there is equal representation of employees and employers on the trustee board of employer sponsored funds with 200 or more members.¹⁵²
198. At a minimum, superannuation funds should be required to report on the gender balance of their trustee boards as part of their annual compliance reporting to the Australian Prudential Regulatory Authority.

Recommendation 16: Increasing women's representation in superannuation fund governance positions.

The Australian Government should investigate specific strategies to increase the representation of women in senior leadership positions, and specifically, in superannuation fund governance positions. This could include the introduction of mandatory quotas and targets, allocation of specific funding to train women trustees

¹⁴⁹ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 4 (1).

¹⁵⁰ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 23: Political and Public Life*, A/52/38 (1997) para 15.

¹⁵¹ Ministry of Children and Equality, Government of Norway, *Balanced gender representation on company boards* (2008). Available at

http://www.regjeringen.no/en/dep/bld/Topics/Equality/kjonn_og_makt/Balanced-gender-representation-on-compan.html?id=1250 (viewed 12 February 2009).

¹⁵² *Superannuation Industry (Supervision) Act 1993* (Cth) s 89.

and board directors or tax incentives for funds that have an appropriate balance of gender in trustee positions.

At a minimum, superannuation funds should be required to report on the gender balance of their trustee boards as part of their annual compliance reporting to the Australian Prudential Regulatory Authority.

8.7 Independent monitoring and reporting on Australia's progress towards achieving substantive gender equality

199. The extent of the gender gap in retirement savings and the various contributing factors are key markers of gender inequality in Australia. To progressively improve Australia's social and economic well-being, it is paramount that the markers of gender inequality are independently monitored and reported, on a regular, periodic basis.

200. In Australia, regular independent monitoring and reporting on progress in achieving gender equality does not occur. Data collection is conducted in a range of important areas. However there are gaps and gender disaggregated data is not always readily available.

201. The Commission remains concerned that there is no institutional arrangement in place for an agency independent of government to report to Parliament and the Australian public, providing a considered evidence-based assessment of progress against an integrated set of national gender equality indicators and to benchmark progress against those indicators over time.

202. The Commission already has existing functions, such as its education and research function, which would enable ongoing monitoring and reporting on gender equality benchmarks and indicators at a national level. However, with one exception,¹⁵³ the Sex Discrimination Commissioner and the Commission has assessed that it is not in a position to assume this important national role under existing funding arrangements.

203. In 2007, the Commission recommended to the Australian Government's 2020 Summit that comprehensive gender equality benchmarks be established, which should be independently monitored to track progress on key indicators of equality between men and women. The gender gap in retirement savings would be one such benchmark.

¹⁵³ The Sex Discrimination Commissioner has now conducted two periodic National Telephone Surveys on the nature and extent of sexual harassment in Australia. The first study in 2003 was the first major population-based research to measure the incidence of sexual harassment in Australian workplaces. The 2008 study provided an assessment of trends in the incidence and nature of sexual harassment in the preceding five years. For further information see Human Rights and Equal Opportunity Commission, *Sexual harassment: Serious business, Results of the 2008 Sexual Harassment National Telephone Survey* (2008). Available at http://www.humanrights.gov.au/sexualharassment/serious_business/index.html (viewed 25 February 2009).

204. In the *SDA Submission (2008)*, the Commission recommended that it could perform this role with specific tied funding.¹⁵⁴ This recommendation was adopted in the *SDA Inquiry Report (2008)*.¹⁵⁵

Recommendation 17: Independent monitoring of national gender equality indicators and benchmarks

Implement recommendations 33 and 34 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality:

The committee recommends that the Act be amended to require the Sex Discrimination Commissioner to monitor progress towards eliminating sex discrimination and achieving gender equality, and to report to Parliament every four years.

...The Committee recommends that HREOC be provided with additional resources to enable it to...perform the additional roles and broader functions recommended in this report...¹⁵⁶

8.8 Reviewing the superannuation exemptions in the Sex Discrimination Act 1984 (Cth)

205. Until 1991, the SDA contained a blanket provision which exempted superannuation or provident fund schemes from complying with the Act.

206. In 1991, the blanket exemption was removed and replaced with a range of specific exemptions which permit discrimination in the following instances:

- The discrimination is based on actuarial or statistical data from a source on which is it reasonable for the discriminator to rely.¹⁵⁷
- The discrimination is in the case of a member who has no spouse or has no child.¹⁵⁸
- The discrimination is in relation to the vesting, preservation or portability of benefits.¹⁵⁹

207. In the *SDA Submission (2008)*, the Commission argued that the removal of permanent exemptions such as those described above needed further

¹⁵⁴ Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality (2008)* ('*SDA Submission (2008)*'). At http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html (viewed 6 February 2009).

¹⁵⁵ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality (2008)*, paras 11.87-11.90. At http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

¹⁵⁶ *Ibid.*

¹⁵⁷ *Sex Discrimination Act 1984 (Cth)* s41A(i)A.

¹⁵⁸ *Sex Discrimination Act 1984 (Cth)* ss41A(ii).

¹⁵⁹ *Sex Discrimination Act 1984 (Cth)* ss41A(iii).

consultation and consideration, and as such, should be subject to a 3 year sunset clause.

208. The *SDA Inquiry Report (2008)* recommended that further consideration be given to removing the permanent exemptions and replacing these exemptions with a general limitations cause.¹⁶⁰

Recommendation 18: Review superannuation exemption in the Sex Discrimination Act 1984 (Cth)

With the objective of achieving gender equality, implement recommendation 36 of the Standing Committee on Legal and Constitutional Affairs' report on the Effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality:

The committee recommends that further consideration be given to removing the existing permanent exemptions in section 30 and sections 34 to 43 of the Act and replacing these exemptions with a general limitations clause.¹⁶¹

¹⁶⁰ Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), para 11.98. At http://www.aph.gov.au/Senate/committee/legcon_ctte/sex_discrim/report/index.htm (viewed 9 February 2009).

¹⁶¹ Ibid.