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Gender equality in the workforce: A feminist approach

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Australian Human Rights Commission

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It's a great pleasure to be speaking here today at the 3rd National Conference on Women and Industrial Relations. Not only is it wonderful to see so many familiar faces but it is wonderful to be in the company of women who play a vital role in providing advice and advocacy support to some of the most disadvantaged women in our country. Thank you.

One of the great joys of being the Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination is that I meet countless inspirational women and men from all walks of life. Many of these are Aboriginal and Torres Strait Islander. So I want to begin by acknowledging that we are gathered here today on the traditional land of the Larrakia People and pay my deepest respects to their elders both past and present.

When I was reflecting on the topic of my speech today "gender equality in the workforce: a feminist approach" I thought to myself, Australian women have much to celebrate. Today, individual women are creating historical firsts – we have our first female prime minister – (for the time being!), a female governor-general, women are CEOs, business leaders, academics, sporting legends as well as mothers, sisters and partners. Australian women

now have more choices about their careers, their studies and their lives more than ever before.ⁱ The possibilities for women in 21st Century Australia are expansive, particularly when compared with those of my mother's or grandmother's generation.

But – and unfortunately we all know there is one – we cannot let the prevailing wisdom become that, because some women have created historical firsts, we have expended our social and political capital, that we have “done” gender equality – at least for now.

For despite these significant social changes, obstacles for women remain entrenched. Women, and especially women experiencing intersectional discrimination and women with family and caring responsibilities, continue to find themselves marginalised in relation to work even as they enter the workforce in greater numbers than ever before.ⁱⁱ My main point today is **that we still remain a long way from achieving equality of *outcomes* – at home, in the public sphere, and at work.**

There is an enormous gap between girls' and women's capabilities and expectations on the one hand; and their social, professional and political *realities* on the other.

That is one of the main reasons why we need specialised advocacy and advice services like the Working Women's Centres. It is also the reason I will continue to speak out for the adequate funding and resourcing of these services.

So, half way through my term of office, and as we head to the polls once again, I think it is important to not only reflect on the significant miles we've traversed, fuelled by the energy and intellect of countless women – and men, but also on the challenges that lie ahead.

Today I want to look at three things:

1. firstly, talk about the progress we have made in the past two years since I conducted my national listening tour;
2. secondly, look at the ways we can change workplace cultures and structures by suggesting some possible new and bold approaches for your consideration; and
3. finally, talk specifically about targets and quotas. A controversial subject I know, but one that needs renewed focus.

In so doing, I want to recognise the valuable and unique role played by specialist women's services, not only in

relation to the work they do for women in Australia, but also for the pivotal role they play in the women's movement worldwide.

What progress have we made in the last two years?

Let's start with the good news - there has been significant legislative progress. This became apparent to me as I prepared to give evidence at the CEDAW treaty body review of Australia in New York last month. Let me explain.

There have been three main examples of legislative progress over this period.

Let's start firstly with Paid Parental Leave. I don't know about you, but I would never have thought that, out of the ashes of the greatest economic downturn since the great depression, a paid parental leave would finally rise! The campaign to get paid parental leave in Australia has been a long and arduous one, one pursued vigorously by many people in this room. I want to acknowledge and congratulate all the people across the country who worked tirelessly, and with determination, to secure a vital, and long overdue, national leap towards greater equality.

The Paid Parental Leave Act is a major triumph for both women and men and a critical piece of social infrastructure that will help deliver stronger outcomes for mothers, families, businesses, the economy and our community as a whole.

I was also pleased to see the inclusion of a two-year independent review of the initial scheme. This allows for a more substantial package of paid leave measures to be introduced over time. I am particularly keen to see the inclusion of a superannuation layer in the scheme. This will recognise the disadvantage that women face in retirement due to their unpaid caring role. The fact that all parties have PPL schemes on the table is a major step forward.

Paid parental leave represents an important step towards helping families to balance their paid work and caring responsibilities, but by itself it is not enough. Because our children are with us not just for the first 18 weeks but more likely 18 years.

Some legislative progress has been made in the form of the *Fair Work Act* (Cth) introduced in 2009. This is the second example of legislative progress.

As many of you will know, the right to request a flexible working arrangement was introduced as part of the National Employment Standards under this Act. It is a good first step in that it encourages employers to focus on the issue of workplace flexibility, but the right to request has a number of limitations.

For example, the right does not apply to employees unless they have at least 12 months continuous service, and also in the case of casual employees, a reasonable expectation of continuing employment. Furthermore, the right is confined to employees with the care of children under school ageⁱⁱⁱ. This ignores the fact that a significant proportion of the working population have family and carer responsibilities that are not confined to the care of pre school age children. The proportion of Australian's over 65 will double by 2040 and over 85 years will quadruple - our caring responsibilities are getting more expansive not less!

Perhaps most importantly, the right to request under the Act contains no enforcement mechanism and there is no grievance procedure or process to provide redress where requests are unreasonably refused.

Another positive was that the *Fair Work Act* also introduced a provision to stop an employer taking adverse action against an employee or prospective employee because of the person's 'family or carer's responsibilities'.^{iv} Adverse action is defined very broadly in the Act and includes refusing to employ a prospective employee, dismissing an employee, injuring an employee in their employment, altering the position of an employee to the employee's prejudice and discriminating between an employee and other employees of the employer.^v One potential benefit to bringing an adverse action claim, rather than a claim under federal discrimination law - is that the applicant need only show that the conduct occurred, and that the reason for the conduct is 'because of' family or carer's responsibilities. The onus of proof then shifts to the employer to rebut the presumption that the alleged action occurred.^{vi}

It is also encouraging to see that the Fair work Ombudsman has launched his first pregnancy

discrimination prosecution in the Federal Court in early July this year. The Ombudsman has powers to investigate and prosecute employers who act in breach of the Act. This is important in order to promote a systemic response to what is a systemic problem.

It is important that both the industrial relations regime and the discrimination regime work together to create discrimination free workplaces. With that in mind the third legislative development was when the federal government recently sought to amend the *Sex Discrimination Act 1984* (Cth).

The amending legislation was designed to broaden the family responsibilities provisions to include indirect discrimination in all areas of employment. This is significant because it means men would have the same protection as women for family and caring responsibilities under the SDA. Given that significant cultural change will not occur unless and until men start working differently - more flexibly - this reform is vital to encourage cultural change.

With the dissolution of parliament this amending bill is in abeyance. It remains to be seen whether it will be introduced when Parliament resumes.

And just while we are on legislative progress, let me look at pay equity for a moment.

The opportunity for more progress has come in the Australian Services Union's test case in Fair Work Australia, which will address lower pay among female-dominated community sector workers. Indeed, 100 years after women first marched in the streets demanding equal pay and four decades after the first Federal pay case, the gender gap lingers malodorously in Australian workplaces. Even more alarming is that, over the last four years the gender gap in pay has actually widened^{vii} to 17 per cent^{viii} and, if current earning patterns continue, the average 25 year old male will earn \$2.4 million over the next 40 years with the average 25 year old female earning only \$1.5 million – that's almost \$1 million less.^{ix} If this application succeeds it will be a major advance for the women who carry out this important work. I am pleased to advise that the Australian Human Rights Commission has intervened in this case so we will be keeping a close eye.

But the reality is that legislative reform is not enough.

As a group of reforms - PPL, the Right to Request NES, the adverse action provisions of the FWA, reform of the SDA and the pay equity test case provide a strong legislative base to support fairer and more flexible workplaces.

But achieving substantive equality requires more than the simple termination of discriminatory practices at a legislative level. For many women legislative change has had only a marginal influence on their day-to-day lives.

We also need attitudinal and cultural change. And this is my second area of discussion today.

In some ways combating discrimination was easier when it was highly visible. Today discrimination has shifted from blatant, socially unacceptable behaviour to an endemic less visible form.^x

In my preparation for my speech today, I came across a term which has recently emerged in the US and been coined by Avivah Wittenberg-Cox, CEO of 20-First, one of

the world's leading gender consulting firms. That term is 'gender asbestos' – a term Cox uses to describe the discriminatory attitudes, stereotypes and toxins that are hidden and embedded in the walls, cultures and mindsets of many organisations.^{xi} This idea that the problem of gender equality can be traced to the institutional arrangements of organisations is one which has been put forward persuasively for many years but I think the term "gender asbestos" captures the issue well.

How do we address "gender asbestos"? How do we create fairer and more equal workplace structures and cultures?

I put forward three suggestions for your consideration.

Firstly, we should stop trying to "fix" women. Up until now much of the focus has been on "fixing women" – on providing more assertiveness training, mentoring, networking and self branding advice. Instead of 'fixing' women, we need to realign or "fix" the system so that it works for everyone. We need to agree on what gender equality in the workplace looks like and then put **all** the options and possibilities on the table so we can work out how to get it. It should be our ambitions which define the

methods and tools, not the other way around. Without a significant change in approach the only thing we can expect is more of the same.

Secondly, we should recognise the importance of men's role in promoting gender equality in workplaces. I firmly believe that we will only see significant gains when men start working with men to solve this problem. After all it is men who dominate nearly every institution in this country, particularly in our workplaces. If there is to be change, male CEOs and business leaders must champion it. We need men taking up the advocacy mantle and leading by example. We need senior men working in flexible work arrangements, we need senior men taking parental leave and we need men investing in job redesign and workplace innovation.

Thirdly, we should aim for critical mass. It is critical mass that will create the change rather than change creating critical mass. When we get a critical mass of women in senior roles, the change we are seeking, of acceptance and appreciation of difference, will occur. Decisions affecting women's promotion and retention will change. Fundamental decisions affecting risk and control in organisations will shift. We need to build critical mass in

the presence of existing barriers. That is why targets and quotas must be part of any discussion.

And with that in mind I would like to make some comments about targets and quotas because they are one of the new approaches we should be considering to take this agenda forward.

The existence of “gender asbestos” means the continued exclusion of women from leadership and decision-making across Australia.

Despite making up 45% of Australia’s total workforce, women remain grossly under-represented in leadership and management positions in virtually all sectors. You will know the EOWA statistics^{xii} – in 2008 the number of women on boards was down from 8.7% to 8.3% and the number of women in line management roles down from 7.5% to 5.9%. And just 2 months ago Governance Metrics International, a global ratings agency released data that discloses our global position^{xiii}. In their March 2010 report, Australia was memorable in two ways:

Firstly, we have now dropped behind all our OECD counterparts on the number of women on corporate boards with the exception of Japan.

Secondly, we have had the largest decline over the last two years together with Hungary, Peru, the Philippines and Poland.

In efforts to promote women into leadership roles, there is no doubt in my mind that a major turning point in thinking about the suitability of targets and quotas as a way of overcoming “gender asbestos” occurred last year. Up until then, the prevailing view was that the system was merit-based and that the problem was with women, who couldn’t - or wouldn’t - step up and take high office. The prevailing mantra was that women would just have to wait for things to change in the fullness of time - that we needed to sit quietly, patiently waiting to be asked.

In September last year, there was a major conference about women on boards. There was agreement - Australia was going backwards and was likely to descend into free fall without systemic intervention.

I agonised over whether I would use the “Q” word – yes call for a mandatory quota for women on boards. After much consideration I decided that a lively debate about quotas was an important vehicle for identifying common ground - for calling business to action.

It is now reassuring to see an open discussion about “targets” and “quotas”. These words have become part of the mainstream debate and are being used by many people, including male and female senior directors who, up until recently, would have been aghast at the very suggestion.

The ASX Corporate Governance Council is to be congratulated for amending their guidelines requiring listed companies to set measurable objectives or targets for the number of women at Board and senior executive level – targets which must be disclosed to the market, with progress reported annually.

The federal Government two weeks ago announced that it will commit to a 40% target for all federal government boards and committees if re-elected.

To reinforce my point about needing to fix the system rather than focus on the women, I refer you to an entry on a blog about quotas which followed an article I wrote several months ago.

The blogger, Tim Champan writes:

“There are really only two conclusions to draw from the evidence presented [in Elizabeth’s article]: Either women are, as a sex, inferior or there is a problem in our culture [and workplaces] that requires going beyond eliminating structural discrimination.

As a man, I agree with the assessment that men have to take equal responsibility to address what is clearly a fault within our society’s current culture.

Quotas are an excellent idea. They are a jolt to the culture - a culture where, after a full generation of women in education, the statistics in Elizabeth’s article are a great disappointment.

I agree that quotas would not be without problems. They would result in many individual cases in which better suited men were passed over simply because of their sex. As a man, I may one-day myself lose out because of a quota system.

But even hundreds of such individual cases cannot be compared to the fact that currently half of our society are not getting the opportunity to contribute to the best of their potential.

I'd gladly miss out on a few jobs I deserved if it meant that our culture changed to the point that, in my daughter's lifetime, women were participating proportionately across a range of occupations, without the need for a quota system to get them there.

If we let things continue at their own pace, it will not be my daughter's generation, but perhaps my great grand-daughter's generation, and that's too long to wait. "

Tim – where are you?

If I could take a moment to summarise, though it is true that there still remains a long way to go in achieving equality of *outcomes* – at home, in the public sphere, and at work – the story is not necessarily as bleak as it sounds. With Paid Parental Leave, the provisions I have outlined in the Fair Work Act, proposed reform of the Sex Discrimination Act and the Australian Services Union's pay equity test case, real legislative progress is on the table. But it is not all about law reform although of course that is an important part. There is also movement in the

workplace itself, at the most senior levels for change. We must harness the momentum, continue our advocacy for ambitious structural fixes, recognise men as part of the solution and create a critical mass of women in decision-making roles, modelling from the top down. And as I've said, we need to start taking targets and quotas seriously.

Women must feel empowered, aware of their rights, and supported to make change in their sphere of influence. So I want to conclude today by talking about the future.

I have a real optimism about the future – this is in part, because of the many women that sit before me in this room today. To the women of the Working Women's Centres, the other specialist organisations represented, women's policy makers, academics, unions and funders - I thank you for your continuing commitment and the essential and direct assistance you give to many of the most vulnerable and disadvantaged women in Australia. Specialist women's advisory and advocacy services are an absolutely vital part of the scenario I have just addressed.

As part of my Listening Tour in 2008, I had the opportunity to meet with many representatives from women's

organisations and I was impressed by the quality of their participation, the depth of their knowledge and the vital role they are playing in providing advice and advocacy support. Not only is there a wealth of specialised knowledge and a practical understanding of the problems faced by working women, particularly those subjected to intersectional discrimination; but these services provide a holistic approach – a place where women feel respected, where they are treated as equals and valued.

Centres such as these are renowned within the Australian Human Rights Commission as being vital to providing high quality and independent support for women who are lodging a complaint with the Commission. In fact, it is my view that these services will become even more important as we continue to fight the current and future challenges. The fields of discrimination law and industrial relations are increasing in complexity. Specialist advisors are a must.

It is far from easy to decide whether or not to take action when you face discrimination. To do so requires time, funding and coverage. The cross section of services that centres like these provide – to women from a host of walks of life – should not be discounted. For that reason, the importance of these centres in progressing a feminist

approach to gender equality in the workforce is a pivotal one.

Gender equality will not occur simply because we have anti-discrimination laws in place. It requires a commitment from all people in Australia – women and men – to counter the attitudes and assumptions that lead to discriminatory and unequal outcomes. It requires the transformation of workplace cultures, which in turn requires sustained commitment from individuals at all organisational levels, women and men alike.

If gender equality is our birthright why would we settle for anything less.

ⁱ House of Representatives Standing Committee on Employment and Workplace Relations, *Making it Fair: Pay equity and associated issues related to increasing female participation in the workforce* (November 2009) p xi. Available at

<http://www.aph.gov.au/house/committee/ewr/payequity/report.htm> (viewed 12 April 2010).

ⁱⁱ Catherine Albiston, 'Institutional Inequality' (2009) *Wisconsin Law Review* 1093, p 1125.

ⁱⁱⁱ *Fair Work Act 2009* (Cth) s 65(1)(a).

^{iv} *Fair Work Act 2009* (Cth) s 351.

^v *Fair Work Act 2009* (Cth) s 342(1).

^{vi} *Fair Work Act 2009* (Cth) s 361(1).

^{vii} ABS, *Average Weekly Earnings, Data Cube, Australia, February 2009* Catalogue No 6302.0 (2009) cited in R Cassells, Y Vidyattama, R Miranti & J McNamara, *The impact of a sustained gender wage gap on the Australian economy* (2009), National Centre for Social and Economic Modelling, p v. At

www.canberra.edu.au/centres/natsem/publications?sq_content_src=%2BdXJsPWh0dHAIM0EIMkYIMkZ6aWJvLndpbi5jYW5iZXJyYS5iZHUuYXUIMkZuYXRzZW0IMkZpbmRleC5waHAIM0Ztb2RlJTNEcHVibGljYXRpb24IMjZwdWJsaWNhdGlvbiUzRDEyNzAmYWxsPTE%3D

(viewed 6 April 2010).

^{viii} ABS, above.

^{ix} Rebecca Cassells, Riyana Miranti, Binod Nepal and Robert Tanton, *She works hard for the money: Australian women and the gender divide*, AMP NATSEM Income and Wealth Report issue 22 (2009) p 1. Available at <http://www.apo.org.au/research/she-works-hard-money-australian-women-and-gender-divide> (viewed 6 April 2010).

^x Louise Marie Roth, *Selling Women Short* (2006) p 2. Available at <http://press.princeton.edu/titles/8246.html> (viewed 13 July 2010).

^{xi} Avivah Wittenberg-Cox, *Why Focusing on the Gender Pay Gap Misses the Point* (12 April 2010). Available at http://blogs.hbr.org/cs/2010/04/why_focusing_on_the_gender_pay.html (viewed 13 July 2010).

^{xii} EOWA, *Australian Census of Women in Leadership* (2008) p 3. Available at http://www.eowa.gov.au/Australian_Women_In_Leadership_Census.asp (viewed 13 July 2010).

^{xiii} Global Metrics International, *Women on Boards: A Statistical Review by Country, Supersector and Sector* (March 11, 2010).