

PAY EQUITY ISSUES AND PROSPECTS

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KEY POINTS

The central issue for pay equity is work value. The ability to examine historically based undervaluation (the continuing effects of past undervaluation) is critical, including the history of how the traditional criteria of work value, especially skill, qualifications and working conditions have been used in establishing work value.

The International Labour Organisation Equal Remuneration Convention 100 provides a very sound reference point for considering equal remuneration matters because of its focus on assessing the value of work and setting remuneration free of any effects of whether the work is done by men or women, rather than on establishing that past discrimination has caused unequal remuneration of men and women workers for work of comparable value.

Qualifications and competency frameworks can be useful in establishing work value.

The use of points/factor job evaluation for comparing jobs is labour intensive, and they are designed for use within organisations rather than for occupations or industries. The evidence suggests that points/factor systems often do not produce any better result than a comparison based on the work value criteria, skills, qualifications, and responsibility, as well as the range of other working conditions and market forces that may be relevant.

More work is needed on skills-mapping and measuring especially in the area of articulation work and for work that does require skills, knowledge and experience but does not have recognised accredited qualifications and training. It would be desirable to identify the full range of skills and knowledge and develop processes for recognising them perhaps against existing recognised qualifications and competencies.

As skills specification improves, better pathways across professional, para-professional and unqualified occupations can be identified (as has occurred in the pre-school case, the childcare case and the librarians' case). Of course, the skills identification would need to be done consistently with industrial concepts of skills and knowledge in work value.

To deliver equal remuneration, systems must be able to deal with pay equity issues at industry, sector, enterprise, occupational and individual levels. That requires legal provisions and bodies that can apply them.

There is a balance to be struck in the system between having sufficient institutional authority to ensure that appropriate good faith bargaining takes place (and if necessary, that external decision makers can determine outcomes) and having more informal processes that are more accessible and less expensive.

INTRODUCTION

In this paper I will draw on the Australian experience to show that it is possible to make substantial progress toward pay equity. It won't happen by itself or purely through education or through individual or small group action under discrimination law or as a by-product of other processes.

At times it might have seemed that pay equity would result from increased education and workforce experience of women, equal employment opportunity programs and removal of workplace discrimination. While there have been positive results from those factors, Professor Bob Gregory has shown that improvements in women's earnings relative to men's have been greatest for women working full time and earning above the median income¹. In 1973, women working full time for the full year got 64% of men's earnings. In 1985/86 (and in 1989/90), they got 76%. Now full time women workers get 81% of men's weekly earnings and around 89% of men's hourly earnings².

My aim is to draw on the lessons learnt in Australia to distill the key systemic elements needed to pursue pay equity.

The new context for pay equity

Pay equity problems are still with us but they are not all the same problems we had in the past. Some have been solved. In the 1970s, the problems we struggle with now about appropriate and collective strategies across a range of bargaining levels (enterprise, occupation, industry, sector) and for various categories of workers (including casuals and part time workers) were not central.

The across-the-board solutions provided in the 1969 and 1972 Test Cases are no longer available. When the 1969 and 1972 cases were run, there was a well-recognised comparative wage justice framework, with complex relativities across occupations and awards and a history of work value cases setting benchmarks for work value and rates assessments.

The particular pay equity problems of part time workers did not exist in the 1970s. It is only since the early 1990s in Australia that part-time women workers have had relatively worse pay equity than full-time women workers, reflecting the lower levels of effective enterprise bargaining by workers in industries with high levels of part-time employment.

The recognition of skills in service industries has improved significantly since the 1970s, as those occupations account for an increasing proportion of jobs. There was a strong focus on skills identification, competency assessment and training reform in the 1980s and 1990s. Qualifications in women's professions are increasingly likely to be rated equivalent to those in men's professions. It is increasingly uncommon (although not unknown) for women and men to be paid different rates for the same work.

We need an intelligent and flexible appreciation of how ongoing social, political and economic change affects equal remuneration issues and solutions. Justice Gaudron has said in relation to equal pay, "We got it and then we got it again and now we still don't have it". One of the reasons is that the mix of contexts and drivers of remuneration is constantly changing. Wage-fixing is always about, in various measures, needs of employees, productivity and profitability (individual, enterprise, industry, local and national economies), labour market supply and demand, and equity among groups in the workforce. There is always a mix of legislative and institutional mechanisms, collective and individual bargaining. Yet each new development builds on the existing levels and processes of remuneration. The relativities between the building trade level and unskilled building workers remained stable over around 500 years. Workers have referred to a

rough rule of thumb about the relationship between numbers of sheep shorn and the price of beer, and between the price of haircuts and jeans.

The human rights framework for pay equity – that women and men should be paid for the value of the work they do with the value assessed free of any influence of the sex of the people doing the work - is internationally important. Renewed efforts are being made to close the gender gap in some countries (including the United Kingdom, Australia, Canada and New Zealand), including through new legislation and requirements for positive action (such as pay equity audits and pay equity plans) to be taken.

New South Wales has led groundbreaking multi-party and interdisciplinary work on pay equity over the last ten years which has led to new insights into the dynamics of pay equity issues and strategies. It broke through some seemingly unresolvable problems. It changed hearts and minds. The NSW work has led developments in other jurisdictions in Australia and attracted attention in other countries. Most notably, it has led to re-thinking what is really required to secure pay equity, especially to re-fresh our focus on ways of valuing work free of effects of the sex of the workers who do it rather than focusing on requiring proofs of past discrimination. There has been a real increase in industrial parties' and tribunals' familiarity with and understanding of pay equity, why it is still an important issue, and why some of the existing mechanisms need updating. There have been real results and women's pay is better for the NSW government work.

Pay equity increases may bring significant economic, occupational and industrial restructuring, and change opportunities for women in their paid work. They could affect occupation and industrial segregation by sex and influence labour market patterns including workforce participation, part and full time employment, and unemployment, and affect life-time earnings and retirement incomes. Perhaps if pay increases, more men will enter traditionally female occupations.

Pay increases required to achieve pay equity are substantial – probably in aggregate somewhere around 5% of the wages bill. This is impossible to know precisely. It will vary across occupations, industries and workplaces, from small gender pay gaps to large ones. In some areas pay equity probably exists already.

Central issue is work value

The key question is how women's work is to be valued – and that is a social, industrial and political question as well as a technical one. It relates to how work is valued in general and how gender enters into work, work value and institutional and market arrangements. Active participants in the process in Australia include the Australian Council of Trade Unions (ACTU), unions, women's organisations, human rights and anti-discrimination advocates and tribunals, governments, employers and their organisations, and industrial tribunals and industrial relations practitioners.

This paper focuses mainly on the technical aspects of pay equity, specifically how the issues of undervaluation of skills and work value in female dominated occupations and industries have been dealt with in the industrial relations system. At the same time it should be taken as read that levels of logic and consistency in valuing skills vary greatly. These decisions have been made industrially often by consent and women have not done as well as men because of their poorer bargaining positions, partly related to lower unionisation in many areas. The technical task is often to expose the underlying assumptions about work value and skill that have led to pay inequity. This is challenging

to say the least since there is little or no documentation of many of the consent decisions about appropriate rates of pay made by unions and employers.

Relevance of Australian experience to New Zealand?

The Australian system has some distinguishing features from the current New Zealand employment relations context. However, there are sufficient similarities in the issues which need to be addressed to achieve pay equity to make the Australian experience relevant.

The fundamentals of the equal remuneration jurisdiction in Australia are the same as in many countries - equal remuneration legislation and bodies that can make orders to give effect to the legislation if negotiation is unsuccessful.

Some specific features of Australia's system are the award system and legislative provisions for arbitration by industrial tribunals for setting wages and conditions and resolving industrial disputes. Award coverage can be at industry, sector, enterprise or occupation level. In fact most matters are negotiated rather than arbitrated and most awards are made by consent between employers and unions. Most workers do not have their pay set by awards alone but by registered and unregistered individual and collective agreements.

There are many similarities and some differences between the NSW and the federal jurisdiction and distinctions are noted where they are relevant. In NSW, there is a clear two-track system – the bargaining stream and the award stream. Many employers (especially in small business) prefer the award system to direct negotiations and many use the minimum award as the base pay and top it up with discretionary extra payments - overawards. Most of the NSW private sector covered in the NSW industrial jurisdiction is small businesses, with larger businesses more likely to be covered in the federal jurisdiction. While in NSW awards are common rule – that is, they cover everyone working in the occupation or industry as defined by the award, in the federal system award coverage applies only to the parties to the award (the employers, employer organisations and unions). In practice federal awards do have wide coverage and so they often effectively set the rates for the occupations and industries they cover even though some employers are not parties to the awards.

Payments above the award rate may be made on an individual, occupation, industry or enterprise level. Collective and individual agreements often cover only a limited range of matters and are often complementary to the provisions in awards rather than completely replacing the award provisions. Individuals do not have access to industrial tribunals except for unfair dismissals.

The provisions of agreements cannot be arbitrated and the range of allowable matters on which the Australian Industrial Relations Commission can arbitrate has been significantly reduced to a "safety net". There is a regular process for setting wage-fixing principles under which minimum rates (including a federal minimum wage, usually set annually) and minimum conditions are set.

Thus while there are some distinctive features of Australia's system – notably the award system and compulsory arbitration by industrial tribunals - most matters are settled by other processes. However, awards continue to influence rate-setting by providing a legal

minimum rate for particular occupations, industries and enterprises even where agreements significantly increase rates of pay. It is also likely that the way negotiations take place is affected by the recognition that compulsory arbitration can occur.

Appendix one provides details of the main recent developments in Australia in relation to equal remuneration legislation and cases. The cases involve nurses, pre-school teachers, librarians, childcare workers, process workers and packers, telephone sales advisers, psychologists and social and community services managers. It is clear that improvements in equal remuneration legislation and principles have led to more cases and most cases have led to significant pay increases.

What we have learned

Getting over the threshold - how equal remuneration claims fit into the industrial system

There are still some unresolved legal complexities in taking equal pay cases. They relate to how legislative provisions about equal remuneration fit with other provisions in industrial law, how equal remuneration principles interact with other wage-fixing principles, how the legislation and the principles interact and the relationships between discrimination legislation and equal remuneration legislation. Under both the federal and NSW award system, employers and unions can run cases under wage fixing principles set by the relevant Commissions.

In The Age case, Vice-President Ross decided³ that a case could not be taken under two separate equal remuneration sections of the Commonwealth Workplace Relations Act. There was a similar argument in the Victorian childcare case about whether a case could be run under both the equal remuneration sections of the Act and another section.

There was also discussion in the NSW local government case about the interrelationships of the wage-fixing principles (including the equal remuneration principle, the standard hours principle and the special case principle) and legislative provisions (including those relating to equal remuneration, to the Commission setting fair and reasonable conditions of employment and to consideration of public interest and economic impact). In the NSW nurses' case, the relationship between the claim and the overall public sector wages agreement was considered.

These examples show that where an applicant runs a matter under more than one legislative provision or principle to improve the prospects of success, the complexity of the case is likely to increase. This is because of the threshold legal arguments and the need to meet the evidentiary requirements of each section/principle.

Transaction costs

There are still high costs for pay equity cases and the cases require considerable expertise of a kind that is not part of everyday industrial processes. Only industrial parties - unions and employer organisations - can take cases before industrial tribunals while other parties (including women's organisations, governments, and the Human Rights and Equal Opportunity Commission among others) can seek leave to intervene in the cases, which is generally granted. Work value cases (ultimately that is what the

equal pay cases are) have not been widespread in the industrial scene since the 1960s when they had become extremely complex and long-running and increasingly were regarded as problematic in the industrial system.

In itself, the paucity of cases can discourage applicants. Until the jurisdiction is well-established there will be threshold issues to litigate and considerable attention to the cases from a range of parties with an interest in the wider implications of any decisions made and in how the equal remuneration jurisdiction develops. This means that the cases are likely to be complex, lengthy and expensive, requiring substantial evidence, preparation and legal/industrial advocacy.

The cases also often require mobilisation of union members and community recognition and support. There are also significant demands on witnesses in preparing, giving and being cross-examined on their evidence. The Public Service Association has reported that its costs in the librarians' case exceeded \$100 000. The market price of the pro bono legal assistance made available in the Victorian childcare case was considerably higher than that.

In Queensland, some funding (to a total of \$50 000) may be available to industrial parties in equal remuneration cases subject to negotiation of an appropriate and agreed case plan with the Department of Industrial Relations. This may provide an incentive and a mechanism to control costs in the cases. Funding has now been approved for the union in the dental assistants' case and the childcare case.

These difficulties highlight the value of a process to sort out threshold legal principles. The NSW Pay Equity Inquiry went some way to canvassing and deciding issues that could be expected to come up in cases for decision by the Commission. For example, the scope of the term "remuneration", whether a specified level of gender concentration should be set as a threshold for access for equal remuneration claims, whether a previous work value assessment precludes a new one under the equal remuneration provisions, whether there should be a presumption that previous rates were properly set and the relationship between equal remuneration and other wage-fixing principles. These findings are dealt with in Appendix One. There are no equal remuneration principles providing similar guidance in the federal jurisdiction.

Being able to address the legacies of past undervaluation

Historic undervaluation persists in some areas especially in those with a history of settlements of rates by consent among industrial parties. Generally, first awards in currently low paid female dominated occupations would have been on a low base because they were based on the low market rates at the time the award was made, and limited bargaining power.

Often equal pay could have been applied in an inadequate way (the Pay Equity Inquiry found it had for nurses and seafood workers, for example). In some cases equal pay had been implemented but female/male relativities subsequently deteriorated through later award movements and classification changes, enterprise bargaining and differential overawards (as happened at HPM). The rates may still be affected by discrimination that was lawful at the time it occurred.

The new equal remuneration principles can overcome the assumption of earlier rates being correctly set. The Full Bench of the NSW Industrial Relations Commission has said there has to be some positive demonstration of why existing award conditions no longer provide fair and reasonable conditions of employment (in the Pastoral Industry State Award decision (cited by Justice Schmidt in the Pre-school teachers' case decision⁴). The assumption that earlier rates were correctly set, and the work value change principle requirement to show work value changes from a particular date have sometimes been seen as impediments to equal remuneration cases being taken, where the undervaluation preceded that date.

In the NSW equal remuneration principles case it was made clear that equal remuneration claims could be made independently of other wage fixing principles and are not excluded by the operation of other principles.

The new NSW equal remuneration principles clearly provide a more achievable threshold for having an equal remuneration matter heard. The processes leading up to the new principles (inquiries, research, case studies, taskforces, negotiations) have also identified that the industrial system is the best avenue for addressing pay equity and that the discrimination jurisdiction simply cannot address the full range of issues and bring about prospective and collective solutions. While legally there can be group complaints and redress in the discrimination jurisdiction, in practice most complaints relate to individuals, and account can only be taken of discrimination up to the time of the complaint. The discrimination tribunals cannot make awards or set the terms of agreements.

Challenges for tribunals in ensuring pay equity is built into the range of relevant decisions – arbitral rather than investigative role; prevalence of consent arrangements

In the NSW Industrial Relations Act the Commission has responsibility to ensure fair and reasonable conditions of employment including pay equity whenever it makes an award (s.10 NSW Industrial Relations Act 1996). The breadth of this provision could be seen as imposing a heavy burden for the Commission, especially in view of its general operation as a body dealing with matters brought before it rather than itself directing enquiries. The Commission has said that its responsibilities under s.23 are to provide pay equity within the award. Under both sections, it is hard to see that the Commission can engage in detailed scrutiny to see if awards do provide equal remuneration unless the matter is raised by industrial parties.

Ensuring that equal remuneration is provided in consent applications is difficult, especially when consent arrangements are so pervasive. Industrial parties have a clear interest in minimising costs and industrial hostility in not contesting matters that have been or could be agreed. While industrial parties have to provide affidavits to the Commission about how proposed consent applications do provide pay equity, those affidavits have so far had little public examination.

Pay equity is also a relevant consideration in award reviews under s.19 of the Industrial Relations Act. In the review of the Riverina Water County Council Enterprise Award 1998⁵, Justice Walton did ask the parties to provide additional information about the

workforce and industrial history to satisfy himself the requirements to ensure equal remuneration (s.23) were complied with. On the evidence he was satisfied it did.

Cases based on awards, agreements and overawards

Two of the three federal cases have been about pay above the minimum award rate and all three were ultimately settled by consent rather than arbitration. It is hard to know exactly the effect of the additional amounts agreed in the federal cases because of the variation in the pay people were receiving. Each of the cases related to a single employer and two of them to a single workplace. Implementing the agreed settlements involved new classifications and rates at HPM and new overawards at The Age. In part, pursuit of cases in single enterprises was driven by the difficulties of establishing the comparability of value of work across enterprises and demonstrating the operation of sex discrimination on the rates of men and women workers. As discussed further below, the problem of proving discrimination was resolved in NSW in setting the new pay equity principle.

The NSW cases and the Victorian childcare case were award-based and led to award variations. In the Victorian childcare case, there also were extensive enterprise agreement payments and some of the award increases have been absorbed by those payments.

To date, there has not been an arbitrated case in the Commission involving varying overawards and enterprise agreements across a range of workplaces and employers. In a case like that, there would have to be evidence about the distribution and bases of the range of rates paid at comparable levels and on comparable bases in considering whether incorporating them into new award rates could be justified. Issues in ascertaining the appropriate rates to consider where a range of rates is paid were considered at some length in the Canadian public service case⁶. In considering any appropriate award variations in the NSW jurisdiction, the Commission would examine what aspects of the payments reflected work value elements, and how prevalent those elements were across the coverage of the award.

Thus, while award-based cases provide a means of implementing pay equity across the whole area of the award coverage (industry, occupation, sector, enterprise), they also involve consideration of the comparability of work value and the bases and rates of pay across the whole of the award's coverage. The main consideration is where the unequal remuneration is occurring, whether it is the award, agreement or overaward payment or a combination of them. The subsidiarity principle – that matters should be dealt with at the lowest level possible – has as its corollary that matters should be dealt with at higher levels where that is necessary to resolve problems.

Gender-related undervaluation

A careful industrial history of how the work in question has been valued is an important way of establishing undervaluation. The history needs to deal with how the traditional criteria of work value - especially skill, qualifications, and working conditions - have been approached by industrial parties and tribunals. Showing undervaluation requires demonstrating that significant elements of work value have not been taken into account

or given enough weight in evaluating the work. A case cannot proceed without sufficient basis that the existing rates are not appropriate for the value of the work.

Establishing that the undervaluation is gender-related requires connecting important aspects of the work and how it has been valued with the sex of the workers. The NSW Pay Equity Inquiry provided some indicators of likely gender-related undervaluation (including female dominated occupation, low union membership, high part time and casual workforce, and little industrial regulation – more detail is provided in Appendix one). It has to be shown that these (or other) characteristics of the workforce and its industrial history have been related to the undervaluation. The equal remuneration principle requires that the applicant establish that the undervaluation of work is related to the sex of the workers doing it while specifying that this is not a discrimination test. The gender-relatedness test is a weaker one than the relationship that has to be demonstrated in proving discrimination.

An important aspect of showing the connection between the sex of workers and undervaluation of the work is the history of occupational segregation in the award. In the equal remuneration principles case, the Full Bench said it was improbable that could be established where women were less than 60% of the workforce. In the NSW Nurses' case⁷, the Commission said there was not sufficient evidence of how the work of the wards person had been valued and the comparisons presented between that work and the work of Assistants in nursing (AINs) were not adequate to show undervaluation of AINs' work. It was not enough to meet the criterion of gender-relatedness of any potential undervaluation to show that the wards persons were mainly men and the AINs mainly women.

Discrimination issues and cases

The approach taken by Justice Glynn in the NSW Pay Equity Inquiry was that the Commission's responsibility was to ensure that equal remuneration for work of equal value is established for the future, through the valuing the work free of sex discrimination⁸. Justice Glynn held that the central concept in the International Labour Organisation Equal Remuneration Convention 100 was "equal remuneration for work of equal value" rather than discrimination. Discrimination is not defined in the Equal Remuneration Convention, in contrast to the Conventions specifically dealing with discrimination – including the Convention on Elimination of All Forms of Discrimination Against Women, the Convention on Elimination of Race Discrimination and ILO Convention 111 on Discrimination in Employment and Occupation. This view is further bolstered by the absence from the Commonwealth Workplace Relations Act (which references the equal remuneration convention) of remedies for past sex discrimination in remuneration.

The Pay Equity Inquiry clearly found that the discrimination jurisdictions could not address pay equity issues effectively, in particular in being unable to provide adequate collective and prospective solutions. Another common problem was providing the evidence of discrimination in the industrial environment, irrespective of the possible merits of cases, because of the prevalence of consent arrangements and the limited transparency and documentation about rationales for agreements reached.

Justice Glynn also noted that the value of work was the main consideration in the 1969 and 1972 Equal Pay Cases, rather than discrimination⁹. In the HPM decision Justice Munro said that while evidence about past inequity in remuneration may be of some value in establishing current inequality it is unlikely in itself to establish the necessary conditions for equal remuneration orders¹⁰. He also said that only prospective orders can be made in the industrial jurisdiction. Backpay is quite limited in the industrial jurisdiction (and generally only for the period after lodgement of the case) and penalty awards are non-existent.

The few cases related to pay equity in the discrimination jurisdiction illustrate its limitations in Australia. Two examples:

- In *Bonella and Ors v Wollongong City Council*¹¹, four librarians in local government successfully complained that the policy for allocating motor vehicles had not been applied to them in a non-discriminatory way. It was accepted by the tribunal that the possible access to a car was part of remuneration. They were awarded \$7 500 each. An issue in this case was that the discrimination jurisdiction provides no remedy for ongoing discrimination, only that experienced up to when the complaint is made. The discrimination tribunals cannot provide collective remedies by establishing new industrial instruments. There is a \$40 000 cap on the damages that can be awarded in NSW discrimination cases, although that limitation does not apply federally.
- In *AFMEPKIU v Gunn and Taylor (Aust) Pty Ltd*¹², the Full Bench of the Australian Industrial Relations Commission found that neither the Sex Discrimination Act nor the Equal Opportunity Act (Victoria) provided a remedy which would ensure equal remuneration for work of equal value and which would be of general application since the relevant tribunals could not make prospective collective orders. The case involved a claim for a woman graphic reproducer to be paid the same as the highest paid man doing the same work.

The 1969 Equal Pay principle provided equal pay for equal work – a principle very similar to a direct discrimination test. The principle did not apply in occupations mainly done by women. Because of the extent of occupational segregation by sex, only 18% of women workers were able to secure increases, because women were not doing the same work as men.

The difficulties in meeting discrimination tests were demonstrated in both *The Age* case and the HPM case. In both cases it was decided that the applicant had to establish that there was sex discrimination in the setting of the rates. In the HPM case, direct discrimination was not found because the work was sufficiently dissimilar that the remuneration differences between men and women could not be found to exist in the same circumstances. Indirect discrimination was not found because no requirement or condition was found to account for the remuneration disparities between men and women workers.

In The Age case the union had considerable difficulties showing how discrimination had affected the setting of the rates including through the way the equal pay decision had been implemented, the non-inclusion of clerical workers in the enterprise agreement and the allocation of overaward payments.

In light of these arguments and experiences and the difficulties encountered in using discrimination provisions in Australia and other countries to address equal remuneration, it does not seem a very fruitful direction to pursue.

In contrast, the International Labour Organisation Convention 100 provides a very sound reference point for considering equal remuneration matters because of its focus on assessing the value of work and setting remuneration free of any effects of whether the work is done by men or women, rather than on establishing that past discrimination has caused unequal remuneration of men and women workers for work of comparable value.

How can the proper value and rates be established?

Once it is established that there is gender-related undervaluation, it is necessary to work out what the proper evaluation and rates should be. This can proceed by:

- Demonstrating the inadequacies of evaluations carried out in the past and how they can now be avoided.
- Applying a robust preferred alternative method (or combination of methods) of description, analysis and measuring of work value, such as a different way of analysing skills, knowledge or qualifications. It could include recognition of additional demands of the work, including in physical working conditions, job demands involving unsociable hours, or responsibility for vulnerable people.
- Providing evidence covering the nature, breadth and depth of the work. It can be presented in evidence from witnesses (people doing the work, people providing training for it, employers, and other experts, among others).

Evidence from workplace inspections can demonstrate not only typical activities carried out but also the context and conditions in which the work is done, and workplace relations. Development of witness and workplace inspection evidence can be difficult and time-consuming. However workplace inspections can be particularly valuable in establishing for industrial parties what the current work is, especially where they may not have had opportunities for first-hand observation of it and where there is a history of the value of the work and the rates being set by consent.

Qualifications and competency levels

Qualifications have often provided a basis for claiming equivalence of work value in cases involving professional, paraprofessional and trades occupations with recognised degree, diploma and certificate level courses. The criteria of value and rates for professional occupations are well-established industrially (for example in the Engineers' case¹³, as they are for trades (in the metal trades award, using the traditional benchmark occupation of the fitter).

Some undervaluation of work in female-dominated areas has occurred by misalignment of qualifications (for example, for librarians and for childcare workers), where the female-dominated occupations were simply positioned below the comparable male qualification levels.

Improvements in the capacity to recognise and address this issue have been made through the Australian Qualifications Framework, which provides a hierarchy of qualifications equivalences. Recent cases (for example, in the childcare case, the psychologists' case, the pre-school teachers' case and the librarians' case) have seen improvements in the rates of some female-dominated professions relative to rates of other professions, addressing in part the depressing effect for the rates for the whole classification structure if the top rates have been set too low.

In the 1980s and 1990s there were several successful pay equity cases based on establishing equivalences of qualifications. These cases did involve substantial work in preparing and conducting the cases in the federal Commission. In the Therapists' Case¹⁴, physiotherapists, occupational therapists and speech pathologists in the Australian Public Service argued that they should be paid the same rate as male-dominated occupations classed as scientists. The therapists established their qualifications were comparable, that they similarly applied scientific principles, had comparable work environments, levels of autonomy, responsibility, accountability and complexity of work. The Full Bench decision led to reclassification of therapists to the Science Award resulting in substantial salary increases.

In the Social Workers' Case¹⁵, the adequacy of descriptions for "soft" skills (those used in services, especially human services work) was considered. Other cases addressing professional qualifications and work value were the Journalists' (Book Industry) Award¹⁶ and the Family Court Counsellors Cases¹⁷.

Non-accredited skills

In the NSW Pay Equity Inquiry Justice Glynn pointed out that qualifications alone are not a sufficient measure of work value. In the NSW Clerks Case (Clerical and Administrative Employees (Classification Structure) State Award 25 in 1996¹⁸, the role of credentials in establishing work value was considered. It was recognised that women have fewer and less well recognised and accredited training qualifications, and that sometimes training comprises many short courses that are not articulated with recognised qualifications. The relationship between classification structures and competency standards is considered in the decision (at page 46). The undervaluing of interpersonal and communication skills in clerical work was noted (page 85). Justice Glynn found that the rates for clerical workers under this award had been set according to the structural efficiency principle and the minimum rates adjustment process and pay equity had not been taken into account. Substantial increases (\$100 pw for some workers) were awarded at the higher skill levels, taking account of changes in information technology and work organisation. Justice Glynn noted that the key issue in proper classification is the skill the employee is required to use as their principal function rather than specific duties (page 24).

In both the Victorian childcare case and the NSW pre-school case, consideration of the additional responsibilities of Directors resulted in establishing higher levels and rates above those that would be set purely by qualifications.

Work where skills and experience are required but there are not formal accredited and articulated training is more likely to have been undervalued. That may include female dominated skilled occupations in sub-professional areas, including some in education, health, community and welfare work, and some clerical specialisations.

In 2003, 44.9% of men and 33.4% of women 15-64 had post-secondary qualifications so a substantial proportion of the workforce still does not have post secondary qualifications. The differences between men and women are much less among younger workers. In the 15-24 age group, 27% of women and 25% of men have post-school qualifications¹⁹. The greatest difference is in certificate level qualifications (those required in most trade-level occupations).

While 47.9% of women and 61.1% of men work in jobs rated at trades-level (Australian Qualifications Framework level 3 or three years relevant experience) or above, a further 30.1% of women and 21.3% of men work in occupations rated as requiring an AQF level 2 (or one year relevant experience). Twenty two percent of women and 17.6% of men work in occupations requiring AQF 1, equivalent to completing compulsory schooling. Although the qualifications levels are competency based and not time-based, as a rough indication, a motor mechanic would do 864 hours of off-the-job training over three years and 6400 hours on the job training over four years.

It may be relatively straightforward (at least in theory) for the 32.7% of women who work in professional and para-professional occupations and the 10.9% of women working in trades-level jobs (including advanced clerical and service workers) to seek pay equity through recognition of competencies against AQF levels and proper alignment of qualifications levels.

The 30.1% of women with skill levels equivalent to AQF level 2 are likely to face much greater difficulties in using competencies and qualifications as the core of their work value claims and the 22.1% working in jobs with skill level AQF 1 would almost certainly need to rely on other aspects of work value in making pay equity claims. The rates for the skills components of jobs at these levels are likely to be low and increases above the rate the skill component would set are likely to reflect other components of work value, especially working conditions and other job demands (including hours).

Some efforts have been made to draw work value comparisons through competency standards. Competency standards are very rarely incorporated into industrial awards or agreements. Competency standards provided a partial basis for the comparison of childcare workers and fitters in the Pay Equity Inquiry. Commissioner Simmonds found in the HPM²⁰ case that for the lowest level jobs the competency standards had no standing under the award and did not provide an adequate measure of work value, since the standards deal mainly with skills and knowledge and not with other factors of value including conditions and effort.

‘Soft’ skills

Possibly the most difficult area has been the adequacy of skills classifications and measures for describing, analysing and measuring "soft" skills. Recognition that certain types of skills have tended not to be adequately valued is increasingly evident in pay equity and some other cases. The difficulty of describing, analysing and valuing "soft" skills is at its greatest in areas where there are not accredited qualifications or fully specified competencies, and/or where the competencies themselves are inadequately specified. If the skills in those areas are not appropriately recognised, the rates are likely to be set on the basis of the work being unskilled with a levelling-down effect on the rates for the whole classification. Compression of rates – through the top and/or the bottom of the classification being set too low – has been a problem in female-dominated work.

Justice Glynn pointed out that the application of traditional work value criteria (as set by Commissioner Taylor in the Vehicle Industry Case) could result in not fully recognising many skills characteristic of women's work (including flexibility, nurturing, interpersonal skills²¹). In *MEU v Municipal Association of Victoria*²², Deputy President MacBean increased the rates for school crossing supervisors, taking account of the need to establish close relationships with pupils to perform the work effectively, and of the responsibility of the supervisors for the safety of the pupils. He saw the depressed rate under the old award as discriminatory.

There is increased recognition of the need to unpack work into a wider range of classification levels in female-dominated occupations. There have been improvements in identification and specification of skills involved in various kinds of emotional labour that have emerged from the family context into the market environment and been provided for strangers (rather than family) and for larger numbers of people. In teaching, childcare and nursing, increasing recognition of these skills in the market context and in describing and evaluating the performance of the work in the industrial environment have supported ongoing development of the necessary training and qualifications.

Working conditions

In many lower-skilled jobs, remuneration relates more to working conditions and other job demands than to skills and knowledge. The viability of claims for extra allowances to compensate for working conditions can be difficult to assess. In the nurses' case, the claim for an environment allowance and a retention allowance were rejected while a qualifications allowance application was left open.

There is evidence that work disability factors have been better compensated in male dominated work than female dominated work. Although provisions for allowances are addressed in wage-fixing principles, the criteria, principles and measures regarding awarding allowances are embedded in complex ways in industrial and political history and are not always easily discerned.

Points/factor job evaluation

Points/factor job evaluation systems are used in setting rates for employees in some industries (mainly white-collar occupations especially in the public service and finance and property and related industries). Job evaluation systems are rarely used in manufacturing, agriculture, construction, wholesale/retail trade, recreation and personal services, health and community services (including teaching and nursing). They are often used to relate jobs to classification levels in awards or agreements. Historically in Australia, job evaluation has not been accepted by industrial parties or tribunals as a direct method of setting rates and still is not.

One of the Pay Equity Inquiry case studies compared librarians' and geologists' work using points/factor job evaluation. Justice Glynn found that difficulties in using job evaluation for salary setting relate to factors that are not taken into account in a job evaluation process including the following:

- 1 Capacity of an organisation to pay
- 2 Market factors including supply and demand economics of particular jobs
- 3 Individual performance level of the person performing the job
- 4 Physical environment and conditions of the work
- 5 Particular requirements of the work such as travelling away from home
- 6 Manual dexterity
- 7 Physical capacity
- 8 Hours of work
- 9 Particular risks or dangers associated with the work²³.

Dr Clare Burton said in her evidence to the Inquiry:

Although the systems appear through their documentation to be set and to be perhaps consistently applied, I have found in my association with the job consultancy firms that the quality and calibre and professionalism and knowledge base of the individual consultants within each firm varies considerably.

That does need to be taken into account when one is thinking about the implementation of those systems. There are other matters that would need to be considered in the design of the systems themselves as well as the methods that are used to collect information about jobs and the ways in which that information is then dealt with in order to come to a points rating for each of those jobs²⁴.

Dr Burton noted that "the Hay system was developed to be used particularly in relation to technical, professional and management positions and is not well suited to considering "blue collar" jobs". The Employers' Federation/Chamber argued, relying on Dr Burton,

that “problems can arise in an organisation if two systems of job evaluation are used, where the boundary that is put might create inequities in terms of what is valued above and below and across between blue and white collar work²⁵”. Ms Good, the General Secretary of the Public Service Association said that in her experience in the public sector, job evaluation techniques have not been effective in evaluating unskilled and semi-skilled jobs²⁶.

A major difficulty Justice Glynn noted is that while job evaluation systems can produce evaluations of jobs against a points scale, allowing comparisons of dissimilar work, there are great difficulties in settling the appropriate remuneration for the jobs. Jobs of the same value and dissimilar nature could be paid different rates within and across enterprises and employers for reasons including location and market factors which might or might not be valid bases for differences. Market rates may have discriminatory factors embedded in them, in current markets or historically²⁷.

Other evidence before the Pay Equity Inquiry dealt with the very considerable difficulties of obtaining adequate job descriptions on which valid analysis and evaluation could be based. The decision in *Ontario Nurses’ Association v Regional Municipality of Haldimand-Norfolk*²⁸ demonstrated very clearly the complexity of the processes required to ensure that job evaluation is carried out equitably and the very great demands that are placed on organisations in ensuring that.

Ronnie Steinberg (who began her work on developing a gender-neutral job evaluation system that recognises the skills in female-dominated work with the Ontario Nurses’ Case) has pointed out that points/factor job evaluation does not produce pay equity unless it is a specific objective in using the system²⁹.

A further problem in the librarians’ case related to the points to grade translation system, whereby the points allocated to a position are then allocated to a salary point in the relevant industrial classification. A study conducted for Dr Burton, Director of Equal Opportunity in Public Employment when points/factor job evaluation was first introduced into the NSW public sector in 1991, demonstrated a less than 60 per cent fit between points and job levels, leading to the following recommendation:

From the sample of positions analysed in this project, priority should be given to review of the grading structure of Administrative and Clerical Officers; Survey Drafting Officers and Cartographers; and Clerical and Keyboard related instruments particularly with a view to rationalising the classifications³⁰.

Justice Glynn questioned whether the use of points/factor job evaluation for comparing jobs produced any better result than a comparison based on normal work value criteria of skills, qualifications, responsibility, as well as to the range of other working conditions and market forces that may be relevant. Justice Glynn recognised that job evaluation processes are more normally used to develop a hierarchy of jobs within an organisation than to make comparisons across organisations.

A wide range of similar concerns were raised in the US Government's White paper on the classification and pay systems for the US federal government's white collar workers³¹. The system includes around 450 jobs across hundreds of occupations in 15 grades and includes provision for locality adjustments based on an employment cost index. Classification of work includes various narrative and points/factor elements (using a nine factor evaluation system described in the Primary Standard). Some specific concerns related to:

- the adequacy of work-level descriptors
- responsiveness to particular occupational and geographic labour markets
- skill-sets and specialisations
- effectiveness in rewarding organisation and individual performance
- appropriateness of the classification structure (especially for knowledge work)
- the match between organisations' missions and the structure of the classification.

Tension is identified in the White paper between the desire for internal equity within the federal public service (equal pay for equal work) and responsiveness to occupational and skills markets and to recognising individual and organisation performance.

The White paper also notes that in some places the classification is already disintegrating because of misclassification of positions and measures taken by organisations to secure desired outcomes within its parameters and constraints.

The reduced credibility of the system in turn makes it harder to secure adequate resources for job evaluation. The White paper questions whether the classification well serves the purposes of effective recruitment, hiring, retention and performance management. There also are concerns about how it interfaces with executive and blue-collar pay and classification systems. The process of locating each job in a single hierarchy in the interests of internal equity is seen as too inflexible. The White paper concludes that the system cannot be sufficiently responsive to changes in the nature of government work, to the variety of tasks and workloads and the rate of change in industries, occupations, strategies and the broader environment.

Setting up and maintaining well-functioning and credible job evaluation systems can be very resource-intensive and that is sometimes at odds with organisation pressures for "lean" administrative processes especially in human resources management and particularly in contexts where a lot of organisational change is occurring. Where the processes involved in describing, analysing, and evaluating jobs and setting rates are complex and not transparent for many of those covered by them, there can be scepticism about the validity and integrity of the processes. Employees can feel alienated by "black-box" systems where they do not see opportunities to participate effectively in the evaluation process. Greater transparency allows broader involvement, which can support simpler systems as well as improving integrity, accountability and fairness.

An alternative approach based on aligning qualifications, skill mapping and competency standards seems a more fruitful endeavour. More work is needed in measuring skills especially in the area of articulation work (work that integrates and coordinates across functional divisions of labour) and for work that does require skills, knowledge and experience but does not have recognised accredited qualifications and training. It would be desirable to identify the full range of skills and knowledge and develop processes for recognising them perhaps against existing recognised qualifications. It would then be useful to specify agreed processes for placing people in classifications that do recognise the contributions of their skills and knowledge to their jobs.

As skills specification improves, better pathways across professional, para-professional and unqualified occupations can be identified as has occurred in the pre-school case, the childcare case and the librarians' case. Of course, the skills identification would need to be done consistently with industrial concepts of skills and knowledge in work value.

Appendix two briefly outlines some recent work by Dr Ann Junor and others on the concept of articulation work. It includes information work, emotional work and time management.

Comparators

On the one hand, the old concept of comparative wage justice, based on a range of historically established relationships of rates among occupations, is often said to be no longer available for wage fixing. On the other hand references are still made to historic occupational nexuses between occupations - for example, in the pre-school teachers' case, the nexus between pre-school and school teachers; in the psychologists' case, the relationship of the psychology profession to other professions; in the librarians' case, the relationship between librarians and teachers.

While the 1972 principles recognised that it may be necessary to look for comparators outside the award, this was rarely done in implementation of the 1972 decision. Comparisons within awards can constrain rates for undervalued occupations especially where there may be compression of rates (as in the Victorian childcare case, in a local government award where professional jobs were not as highly paid as in some other awards).

Comparisons of unlike occupations can be difficult. It may be harder to show more than comparability of job level across disparate occupations. However, the comparison of dissimilar work is quite familiar in the industrial jurisdiction generally as the Full Bench pointed out in the Equal Remuneration and Other Conditions case (para 138). Many comparisons of dissimilar work were accepted during the restructuring of the award system in the 1980s and early 1990s (under the structural efficiency principle and the minimum rates adjustment process- for example, the childcare/fitter comparison). Skills identification and classification structures were integral to the structural efficiency principle. The minimum rates principle related to adjusting the relationships across the awards.

An important issue is what is claimed to follow from the comparison - whether it is to establish specific rates or to show comparable levels in classification/s for occupations, where work value and rates may be affected by a range of other factors as well as those affecting classification level. Tribunals have been resistant to any proposition that there

can be a precise points-based equivalence established that drives rates. It is worth noting that in the US cases where points/factor evaluations have been used to establish comparable worth, they rarely directly determined the rates.

The new equal remuneration principles do not require the use of comparators at all, recognising that it can be difficult to find comparable occupations for some of the most female-dominated occupations (other than similarly devalued female dominated occupations). In the NSW Pay Equity Inquiry, considerable weight was put on the importance of the history of how work had been valued as well as on external comparisons. The applicant can choose any comparator and can use a range of them as comparisons for different aspects of work value.

In the librarians' case, comparators were used but there was little evidence about the nature of the comparators' work. The main use made of the comparators was as evidence of other professions in the public sector with higher rates of pay. In the Victorian childcare case, comparators were referred to mainly in relation to their relative position in the award classification and their rates of pay. In the dental technicians case study in the Queensland Pay Equity Inquiry, the main focus was on award history and on how the work had been undervalued rather than on comparisons outside the award. In the NSW Pay Equity Inquiry, Justice Glynn did not accept the comparison between geoscientists and librarians. Although comparability of qualifications had been established, differences in pay might still legitimately be ascribed to the influence of private-sector based market loadings, to differences in job demands or other factors.

In ascertaining appropriate rates of pay, regard generally must be paid to the (properly fixed) rates of other occupations with comparable work value, once the level of the work is established. It was confirmed in the pay equity inquiries that the value of work relates to demands on the worker as assessed by industrial tribunals and not worth to the employer³².

Economic issues and impacts

The results sought in equal remuneration claims also have to be situated in the economic context of the occupation, industry, enterprise, sector and/or the economy in general. A particularly important issue has been labour market shortages which have been taken as an indication that rates are too low to attract or retain adequately skilled workers in particular occupations (for example, childcare, pre-school teachers, nursing). The simple fact of shortages is not necessarily accepted as complete evidence that rates are too low. In the nurses' case there was considerable disagreement about the exact level and location of shortages, and about the contribution of factors other than rates (including hours). Labour market shortages in some occupations can be expected to increase with the ageing of the population and the workforce.

In some cases, employers have raised concerns about the impact on the industry of increases (for example, in the pre-school teachers' case). To date there has not been a case where those arguments have been accepted as sufficient to constrain the Commission from awarding increases. The Commission generally requires quite specific and detailed evidence in support of arguments about incapacity to pay and economic impact of proposed pay increases. The NSW Treasury has provided evidence in several

cases about the overall impact of increases on the NSW economy. In its recent decision on the teachers' case, the Commission did indicate that the level of increases had been influenced by the NSW Government's submissions about its budgetary position.

Transparency

There are some general difficulties in identifying the bases of remuneration, and in apportioning remuneration across work value, productivity, and labour market factors. There also are significant methodological difficulties in conducting and validating regular high quality labour market and market rates surveys, and disaggregating data so account can be taken of factors such as location. Overall there is a lack of transparency about rates and the bases for them, associated with a tradition of industrial negotiation in which consent and dispute-resolution have often been more important than specifying and articulating the bases of decisions agreed.

The European Court of Justice, in the Danfoss case in 1989, decided that where there was not transparency and there was a gender-related pay difference for apparently comparable work, the onus should pass to the employer to provide the reasons for it³³. Recently provisions have been introduced in the UK that allow a person to request information about the amount and basis on which another person is paid.

Productivity

In Australia, productivity-related elements of pay are often said to be found mainly in overaward payments and enterprise agreements rather than in awards, while awards are often said mainly to reflect work value. However, in the Pay Equity Inquiry Justice Glynn noted that under the restructuring and efficiency process in the late 1980s productivity-based increases were specifically included in awards and there are many examples of productivity elements in remuneration in awards³⁴.

In the Pay Equity Inquiry case studies, the Commission did take account of overaward payments based on market factors (for example, the general lack of overawards in hairdressing and their pervasive availability for motor mechanics; the skills and other bases of overawards for mechanics; the lack of overawards in childcare; the finding that market factors had been taken into account historically in setting rates for geologists but not for librarians (despite shortages of librarians in the 1940s)³⁵. The Commission specifically points to the inclusion of clerks in productivity based overawards at Maintrain as a "good practice" example, as it recognises that all the employees contribute to the organisation's performance, not just those directly involved in industrial production. The real difficulty is in identifying productivity components and assessing how much they contribute to pay differences.

It is also clear that in the past the Commission has had to come to grips with overaward payments on the bases of industry or occupation – for example, in the supplementary payments cases in the 1980s. In those cases and on many other occasions, an industry or occupation overaward level has been established and that amount has provided the basis for incorporating the overaward into award minimum rates. While there often is considerable variation in overawards across (and within) enterprises and locations, these

are issues the industrial system and the industrial parties have managed on many occasions. Methods of estimating overawards across industries and occupations have included employer association/union surveys (often jointly done), witness evidence, Australian Bureau of Statistics data and so on. There is no reason to expect any greater level of unreliability or other problems in the equal remuneration context than in the previous or other industrial environments.

Where productivity is cited as an explanation for pay disparities, the factors and measures may have to be scrutinised. Industrially, there is very limited use of value chain analysis or other techniques linking specific aspects and stages of production, job inputs and market outcomes. There are particular difficulties in establishing productivity measures for service occupations and in the public sector.

The NSW Commission says direct discrimination in market setting is unacceptable³⁶. On that basis, market factors identified as the bases for overaward payments would have to be free of discrimination. It would therefore be necessary, as the Commission points out, to consider the bases on which the overawards are paid. Since first awards are based on current rates and conditions, first award rates may well have captured rates incorporating gender-related undervaluation including sex-based discrimination that may have been lawful at the time.

Reversing the onus of proof so that employers have to provide reasons for male/female pay disparities for work of apparently comparable value would improve transparency. Clearly employers are best placed to provide the reasons for their pay practices. Further disclosure requirements might also improve transparency. Equal remuneration audits (as variously developed in the UK and Canada, for example) offer ways of better understanding the bases of pay and possible pay equity problems. The Equal Opportunity for Women in the Workplace Agency has been working on web-based resources (including software packages for payroll analysis) for employers for undertaking pay equity audits.

Ongoing education of industrial relations participants can develop and sustain awareness of possible sources and residues of gender biases. Further research on some of the areas outlined above including the adequacy of legislation and policy will inform that process.

What does the future hold?

Cases are likely to arise in areas that are female-dominated, where there has been little industrial consideration of work value (and having many of the other characteristics identified in the NSW Pay Equity Inquiry). Nearly 1/3 of women workers in NSW work in occupations that are 80% or more female-dominated, and that proportion is increasing³⁷. Nearly 43% of women working in NSW work part time³⁸. Around three in four working women earn under average weekly earnings³⁹.

It may be difficult to pursue pay equity for groups of women working under unregistered arrangements. There would be considerable work involved in discovering the rates and the bases of them and in securing sufficiently representative evidence. Fifteen percent of men and 26.1% of women have their pay set by awards only and 34.7% of men and 37.5% of women have their pay set by registered collective agreements. Just over 2% of men and 1.8% of women have their pay set by registered individual agreements. The remainder (34.7% of women and 48% of men) work under unregistered individual and collective agreements. For both women and men, rates are lower under unregistered collective agreements and individual agreements than for registered ones.

Women whose pay is set by awards only earn 66% of what all women workers earn, and men whose pay is set by award alone earn 60% of all men's earnings. However, available data does not indicate what proportion of pay is set by the various methods and the proportion accounted for by the award can range from most of the pay to a small proportion. For non-managerial workers whose pay is set by awards alone, the female/male pay ratio is 96%. For those whose pay is set by registered agreements the ratio is 89.5%; for those whose pay is set by unregistered agreements 89%; 87.3% for those whose pay is set by unregistered individual agreements the ratio is 89.6%⁴⁰.

Thus, in the award system, which sets the rates for a higher proportion of women workers than men, female/male pay gaps are less. The rates of pay are lower in the award-only system, reflecting in part lower capability for effective bargaining in female dominated areas especially those with a high concentration of part time work.

The industries with the highest level of award-only pay-setting are the female-dominated ones – retail, hospitality and health and education. For professionals, the earnings of those paid by award alone are 72% of the total earnings for the occupation group. For labourers the proportion is 71.6%, for trades 71.2%, 84.7% for elementary clerical and service, 57% for managers and administrators and 70.6% for intermediate clerical and service. Part timers are much more likely (35.4%) than full timers (13%) to have their rates set by awards alone.

As the number of arbitrated cases increases, a set of principles is developed to guide industrial negotiations and to embed pay equity in awards and other industrial instruments, so further arbitrated cases are not needed. The principles could provide a basis for prospective actions like pay equity audits and pay equity plans, negotiated by industrial parties. Ultimately pay equity would be part of industrial commonsense. There is a balance to be struck in the system between having sufficient institutional authority to ensure that appropriate good faith bargaining takes place (and if necessary, that external decision makers can determine outcomes) and having more informal processes that are more accessible and less expensive.

Conclusions

This paper has dealt with recent developments on pay equity in Australia – inquiries, legislation, principles and cases. That consideration leads to these conclusions:

- Clear legislation guaranteeing equal remuneration and specified processes for seeking it, with bodies that can make orders to give effect to the requirements if necessary, is fundamental.
- There must be ways of identifying and overcoming past undervaluation, at all the levels where pay inequity occurs – industry, sector, occupation, enterprise and individual.
- The key equal remuneration concept is rates of pay based on assessments of the value of work that are not affected by the sex of the people doing the work - rather than male/female comparisons and/or proof of discrimination.
- A range of ways of approaching identification, description, analysis and evaluation of work and pay-setting, appropriate for the type of work and circumstances of industries and enterprises is critical. This is especially important in service industries and occupations.
- The work value criteria of skill, qualifications and working conditions can be identified and measured through qualifications, classification standards, competency standards and various job evaluation systems. No system is perfect and none is appropriate for every kind of work. Better outcomes are likely to be produced by consideration of the work value criteria, often using more than one method.
- A balance must be found between simple inexpensive processes for investigating issues and negotiating responses and institutional mechanisms for determining equal remuneration matters where necessary.

APPENDIX ONE RECENT EQUAL REMUNERATION DEVELOPMENTS IN AUSTRALIA

After the equal pay cases of 1969 and 1972, the next major equal pay development was the 1986 comparable worth case⁴¹. It had been noted by Edna Ryan in the 1983 National Wage Case for the Women's Electoral Lobby that equal pay had not in fact been won through the cases that had worked their way through industrial tribunals during the 1970s, largely by consent and almost entirely without a full examination of work value. The Australian Industrial Relations Commission rejected the concept of comparable worth in the nurses' case, as being at odds with the Commission's traditional approaches to valuing work.

The next pay equity developments were professional rates-based equal pay cases, mainly in the public sector (family court counsellors, and therapists). Some efforts were made to address pay equity issues under the award restructuring process. The Australian Council of Trade Unions and the metalworkers' union successfully negotiated equal remuneration increases in a range of manufacturing companies in the early 1990s. There was also increasing attention to equal pay by women's organisations and the Human Rights and Equal Opportunity Commission including in submissions in the Australian Industrial Relations Commission National Wage Cases.

Legislation

In 1993, the Commonwealth *Industrial Relations Act* 1988 was amended to include equal remuneration provisions in federal industrial legislation for the first time, based on the International Labour Organisation's 1951 *Convention Concerning Remuneration for Men and Women Workers for Work of Equal Value (Convention 100) (Equal Remuneration Convention)*, which was referenced in the Act. Until then equal pay provisions were based on the equal pay principles set in the test case decisions of 1969 and 1972. The equal remuneration provisions of the Workplace Relations Act have been amended since they were introduced but they are still based on the Convention.

In 1996 the NSW *Industrial Relations Act* was amended to include new pay equity provisions. Before then, the *Industrial Relations Act* provisions still applied only to equal pay for work of equal value and similar nature, under the 1991 provisions, which had replaced the 1973 provisions under which all NSW equal pay cases had been dealt with until the Librarians' case in 2002. Further to the legislated provisions, the equal pay principle established in the 1973 Test Case did permit cross-award comparisons including comparison of dissimilar work⁴². While the 1973 legislation did not permit comparisons of dissimilar work, the equal pay principle did permit them. The report of the NSW Pay Equity Inquiry includes a history of NSW and federal legislative developments and cases.

NSW, Queensland, Tasmanian and West Australian pay equity inquiries

The NSW Pay Equity Inquiry was conducted by Justice Glynn in 1998 on a reference from the Minister for Industrial Relations, the Honourable Jeff Shaw. The Inquiry followed recommendations in 1997 from a Taskforce comprising representatives of employer

organisations, unions, government agencies, women's organisations, and academic experts in discrimination and industrial relations. Some case studies developed to assist the Taskforce in understanding pay equity issues subsequently became the basis for most of the case studies used in the Pay Equity Inquiry (childcare, hairdressing, fish processing, sewing machinists, librarians and to a lesser extent nurses and clerks). There also have been case studies on pay equity in red meat/white meat processing and on ethnicity and pay equity, which were not part of the Pay Equity Inquiry. The investigation of ethnicity and pay equity did not find any evidence of pay being affected by ethnicity.

The Pay Equity Inquiry was an intensive and extended investigation in an institutional setting of a wide range of pay equity issues, involving industrial advocates, legal practitioners, tribunal decisionmakers, experts and advocates. The conduct of the Inquiry by a judicial member of the NSW Industrial Relations Commission successfully involved participants in the Inquiry and required their involvement in collecting, examining, cross-examining and analysing evidence from very diverse sources. The Pay Equity Inquiry raised the work that had already been undertaken by the Pay Equity Taskforce to a new level of serious engagement. The Pay Equity Inquiry organisation was strongly supported by the role of Counsel Assisting, carried out by (now) Deputy President Walton, who facilitated organisation of witnesses, inspection and other evidence. Several of the judges, commissioners, advocates and other participants in the Pay Equity Inquiry and the equal remuneration test case have subsequently drawn on their experience in the Inquiry in other pay equity proceedings.

The Pay Equity Inquiry had over 40 hearing days between February and July 1998, heard 102 witnesses, received 459 exhibits and ran to around 3000 pages of transcript. Major parties in the Inquiry were the Labor Council, Employers' Federation, Australian Business, Australian Industry Group (on behalf of the Chamber of Manufactures, the Metal Trades Industry Association, the Local Government and Shires Association, the Catholic Employment Office), the Crown Parties, and women's groups (the National Pay Equity Coalition, the Australian Federation of Business and Professional Women (NSW Division) and the Women's Electoral Lobby).

Two particularly important findings of the Pay Equity Inquiry were that gender-related undervaluation persists and that the key concept in the ILO Convention 100 and in Australia's pay equity provisions relates to proper valuation of work, free of any effect of the sex of the workers. Justice Glynn found that the ILO Convention 100 did not require proof of a discriminatory cause of a sex-related pay disparity where work of men and women workers is of comparable value. A related finding was that the operation of the requirements is prospective, requiring that rates be properly established for the future rather than focused on establishing causes of sex-correlated pay differentials for work of equal value.

The indicators of likely undervaluation were summarised in the Pay Equity Inquiry Report (vol 1 under Term of reference 1):

- female dominated occupation
- female characterisation of work
- often no work value exercise by the Commission

- inadequate equal pay application
- weak union, few union members
- consent award/agreements
- inadequate recognition of qualifications (including misalignment of qualifications)
- little access to training or career paths
- large component of casuals
- small workplaces
- new industry or occupation
- service industry
- home based occupations

The Inquiry carried out workplace inspections (in libraries, fish processing factories, childcare centres, and clothing machinist outworkers' homes among others), and heard expert witnesses (regarding job and work evaluation, discrimination, economic issues, industrial law, international conventions and other matters) and witnesses regarding the nature of work and training in the various industries and occupations examined. The direct inspections of work were especially significant in view of the evidence presented at the Pay Equity Inquiry that there had not been full investigations of work value as part of implementation of the 1972 equal pay principle. Direct inspection of work being undertaken has been a feature of some of the subsequent equal remuneration cases (including The Age case, the Librarians' case and the Victorian childcare case).

The NSW Treasury provided extensive evidence on the cost and economic impacts of pay equity including modelling of the short and long term employment impacts of each 1% of pay increases in female-dominated occupations. The Pay Equity Inquiry accepted Treasury evidence that the economic impacts were in a range that could be accommodated and accepted argument that economic benefit could also flow from equal remuneration increases.

While the findings of the NSW Pay Equity Inquiry have been introduced in the federal jurisdiction (in the Victorian childcare case), there is no federal decision dealing with the weight that would be accorded it. Representatives of the company in the Age case did question the relevance of the Pay Equity Inquiry to The Age case but there was no decision on that point. Employer organisations did object to the Pay Equity Inquiry report being introduced in the *Equal Remuneration and Other Conditions Test Case* in the NSW Industrial Relations Commission, on the basis that it had not been conducted in the same way as other adversarial proceedings in the Commission. The Full Bench decided that the material could be introduced, that it was entitled to have regard to the Pay Equity Inquiry Report and its findings and that it was not bound by the Report or its findings. The Full Bench noted that the Pay Equity Inquiry reflected a comprehensive and diverse range of informed evidence and collected data⁴³.

A Pay Equity Task Force established by the Tasmanian Government in 2000 accepted the same finding as in the New South Wales Pay Equity Inquiry - that the existing industrial system, modified to allow the identification and rectification of undervaluation, would provide the most effective means of rectifying pay inequity. The Task Force agreed that the Tasmanian Industrial Commission should issue an Equal Remuneration Principle to provide a mechanism for working women to find adequate remedy for the undervaluation of their work.

A Pay Equity Inquiry was conducted in Queensland by Commissioner Glenys Fisher in 2000. The Inquiry took account of the NSW and Tasmanian findings. The Inquiry included evidence about the applicability of those findings in the Queensland jurisdiction and included a work value case study on dental technicians. That occupation is almost entirely women and is present in both public and private sectors. A significant feature of the case study was the detailed award history and no comparators were used. The Inquiry found that pay inequity was directly related to the undervaluation of work that has been traditionally performed by women. Dental assistants' work requires highly skilled and qualified employees but the Inquiry found that the wages and conditions do not equate to similarly qualified or skilled traditionally male occupations.

The Liquor Hospitality and Miscellaneous Workers' Union (LHMU) lodged an Equal Remuneration Application in the Queensland Industrial Relations Commission in December 2003 to assess the work, pay and conditions of dental assistants against similarly qualified male dominated occupations and the case has commenced⁴⁴. The case builds on the findings on the case study undertaken in the Queensland Pay Equity Inquiry in 2000 and is being heard under the new equal remuneration principle set by the Commission following the Inquiry. A claim is also underway for childcare workers. Queensland Unions will focus on equal pay cases for the next five years.

The West Australian Minister for Employment Protection the Hon John Kobelke announced on 8 March 2004 that a Pay Equity inquiry would be held by Dr Trish Todd and Dr Joan Eveline of the University of West Australia. Relevant organisations and individuals will be consulted during the review, including representatives of employer and employee organisations, Unions WA, academics and researchers.

The review is to include consideration of:

- recent research dealing with the gender pay gap
- the extent to which principles of pay equity could be enhanced, using the State Wage Fixing Principles as determined by the WA Industrial Relations Commission, or the extent to which the current State Wage Fixing Principles were considered to be a barrier to progressing the issue of pay equity
- strategies to address the gender pay gap, which could be developed on a voluntary basis by key industrial parties
- possible enhancements to the Minimum Conditions of Employment Act 1993, which would have a significant impact on the gender pay gap; and
- training which could help address the gender pay gap issues, including access to training and management of work and family issues.

- The report is to be provided to the Minister by mid-September⁴⁵.

Equal remuneration principles

The NSW Equal Remuneration and Other Conditions Principle 2000

The NSW equal remuneration principle:

- allows for fresh assessments of the value of work and the rates of pay in an award where the current rate is undervalued on a gender basis
- does not require applicants to prove discrimination
- ensures that the reassessment of the value of work is gender-neutral
- allows comparisons to be made across dissimilar work, industries and industry sectors, employers, and across enterprises
- is limited to awards, although account can be taken of actual rates paid (including overaward payments and payments under enterprise agreements and contracts) where they reflect the value of work
- provides a range of measures to remedy gender-related undervaluation; and
- includes a range of economic safeguards.

The NSW principles were informed by analysis of the factors contributing to failure of pay equity cases in the past, in other jurisdictions and other countries. The Principle does not:

- require a specific gender proportion in the occupation or group making the claim
- require a male (or any) comparator
- require the use of any particular method of evaluating work (job evaluations, independent experts etc.)
- require proof that discrimination was/is the cause of a gender-related pay disparity
- require the case to be made out within a particular enterprise, occupation, industry, or single employer
- exempt any bases of gender-related pay disparity (for example, seniority, market factors, job evaluation schemes)

Applications made under s10 of the NSW Industrial Relations Act (which requires the Commission to set fair and reasonable conditions) can deal with gender-related undervaluation including comparisons with other occupations, industries and workplaces and in other industrial instruments. Under ss19, 21 and 23 applications can deal with equal remuneration for men and women workers covered by a particular award. Claims are to be heard by a Full Bench unless otherwise allocated by the President.

The Commission can take account of overaward payments by considering the part of them relating to work value considerations (such as skill, responsibility, qualifications and conditions). It cannot take account of remuneration related to factors such as labour market attraction and retention, or productivity payments. It can take account of the actual rates paid (irrespective of whether the payment is made under an registered or unregistered individual or collective agreement, or as an overaward payment), for the purpose of properly fixing an award rate reflecting equal remuneration and other conditions of employment for men and women workers for work of comparable value. There may well be some considerable legal complexity in cases where there are highly variable overawards and comparators external to the award that is the subject of the application.

The Commission has issued a Practice Direction⁴⁶ requiring parties seeking consent awards to file with their application an affidavit setting out how the proposed award provides for equal remuneration.

The new principle means that it does not have to be established that there is a Special Case (that is, there are unique circumstances), nor that there has been a change in work value from a specified point in time. The existing work value change principle does not permit comparison to be made directly as a way of establishing the value of work, as was noted in the Pay Equity Inquiry findings and conclusions regarding librarians (conclusion 9). The equal remuneration principle also specifically provides that cases can be taken on a comparator basis or on the basis of undervaluation in itself (including by reference to the award history).

The principle was developed over about a year, including extended periods of conciliation and negotiation among industrial parties, chaired by Justice Schmidt, as well as formal hearings before the Full Bench. During this process, industrial parties reached significant common ground and the application ultimately made was jointly made by Labor Council of NSW, the Crown and two of the three employer organisations involved in the case. Women's organisations contended for a different principle. The principle the Full Bench made differed in some respects from that in the joint application and there was a dissenting opinion from Commissioner McKenna in support of some of the contentions of the women's organisations.

The Tasmanian Industrial Relations Commission established a similar pay equity principle in 2000⁴⁷. The Queensland Industrial Relations Commission has set broadly similar principles⁴⁸. The Queensland principles cover making of orders and arbitrating disputes as well as making, amending and reviewing awards.

Federal cases

There have been only a few equal remuneration cases after the bulk of cases were dealt with during the 1970s under the 1972 equal pay principle (although the federal Commission confirmed in its decision in the 1988 National Wage Case that access to the 1972 principle was still available⁴⁹). Justice Munro noted in his decision in the second

HPM case that there is considerable uncertainty about the elements necessary to make out an equal remuneration case under s 170BC of the Workplace Relations Act⁵⁰. Dr Hanscombe pointed out in the Victorian childcare case that there is little jurisprudence regarding the WRA equal remuneration provisions.

It has often been pointed out that in many awards there has never been a full consideration of work value by the Commission. Justice Glynn said that common characteristics of female dominated work include a high incidence of consent award wage movements⁵¹. The Pay Equity Inquiry found that the work of librarians had not been examined since the 1973 award and that the work of beauty therapists and the work of childcare workers (among others) had not been examined. In the pre-school teachers' case, it was established that the work of pre-school teachers had never been examined.

In many cases there is very little documentation of the bases of decisions made about rates. Records about who made decisions and why often are very poor. In some cases what has been recorded as the basis of a decision might be incomplete or even misleading. In the HPM case, for example, the company acknowledged that its records of who was paid what overaward pay, and why, were very poor.

The first two federal cases (HPM and The Age) involved extended proceedings in the federal Commission including several appeals to deal with the scope and meaning of the legislation and the nature of and discovery process for the necessary evidence.

HPM

This case involved general hands (men), storemen (men) and process workers (women) and packers (women) in an electronics manufacturing company. The pay was set by award, enterprise agreement and overaward payments. An important issue in the case was how the value of work should be ascertained. The union argued that the metals competency framework was the appropriate measure. The Commission decided that the competencies reflected mainly skills and knowledge, not the nature of work and conditions and were not the only means of assessing factors that can attract overawards (other factors included timekeeping, productivity, work conditions and demands, and individual merit).

The Commission decided that the award classification process does not provide a presumption of equal value, especially if the relativities in question were established a long time ago. Commissioner Simmonds decided that factors in overaward payments must not be discriminatory (in keeping with ILO 100). While agreement about the bases for the overawards would be highly persuasive, in the absence of any agreement to use the competency framework for assessing the whole pay rate including the overaward, it was not a suitable basis especially for the lower classification level where a greater proportion of the work value was accounted for by factors other than skills and knowledge.

The case was settled late in 1998 by a new enterprise agreement (after more than three years before the AIRC). Over 2.5 years the 44 women got the same rate of pay as applied to their male colleagues employed as General Hands and Storemen. The case

also abolished the previously discriminatory wages system (in which a three level performance based wage system in effect applied to male jobs only and discretionary overaward payments to individual employees were paid almost exclusively to men).

In the HPM cases⁵², the Australian Industrial Relations Commission⁵³ used a definition of discrimination that includes both direct and indirect discrimination (using the Sex Discrimination Act formulation of indirect discrimination prior to the 1995 SDA amendments). Under that definition, a requirement or condition has to be established as bringing about the sex-differential impact. Commissioner Simmonds noted that any argument in favour of the SDA definition as amended in 1995 (as submitted by the AMWU/ACTU) would need to be advanced and determined in a (higher level) forum where if adopted it would be generally be applied by the Commission. That has not occurred so the definition stands.

Commissioner Simmonds said that the first step was ascertaining whether rates had been established without discrimination based on sex. He said the necessary **precursor** was to establish that the work was of equal value. He said this was essential as direct discrimination only arises where treatment is different and circumstances the same, and that required establishing equivalence of the work being compared.

Commissioner Simmonds found that there was different remuneration of the male and female comparators but the circumstances were not sufficiently similar for that to amount to direct discrimination. He did not consider that s.93 of the WRA imported the SDA's reversal of the onus of proof but nonetheless saw good reason for the person or institution imposing indirectly discriminatory requirements to establish their reasonableness. He found that no requirement or condition had been established so it was not necessary to consider "reasonableness" of the requirement or condition. He noted that gender segmentation of workforce does not amount to a requirement or condition.

The basis of overaward payments was a major consideration in the HPM Case. HPM claimed that payments above the award and the enterprise agreements were made to workers on a variety of bases, including firm specific knowledge, long service (although several women process workers who had been with the company for more than 20 years did not receive overawards), physical effort (although not the physical effort in the fine dextrous process work), particular work disability (sweeping up syringes, buying the lunches), and the need to pay a specific rate to attract the required labour in some classifications. The union claimed that the payments (which went almost entirely to men and not to women) were sex discriminatory. While there were many bases on which men might be paid overawards, there appeared to be none for payments for women.

The union claimed that the 1986 market survey on which ostensibly the overawards for general hands were paid was not a valid basis for payments. The survey was some ten years old, very small scale (only five other companies) and informal and had applied to only one classification (the general hands) and not the process workers or packers. Turnover data showed that the purpose for the payment, attracting and retaining suitable labour apparently had not been achieved by making the payments. The market loading paid to general hands subsequently was also successfully claimed by storemen but was

not extended to the process workers and packers. In this situation, the fact that the female dominated classifications were prepared to work for the lower rates meant their eligibility for extra payments on the same basis as the male dominated classifications was not examined.

The factors valued were not all demonstrably related to the productivity of the company or workers while other factors which demonstrably did contribute to productivity (such as the dexterity of process workers, the sole selection test criterion for their classification) were not rewarded. Knowledge of the company's components and products was rewarded in some classifications and not in others. In any case, the evidence about how knowledge was assessed showed the process was inconsistent and incomplete. The union claimed that firm specific knowledge was significant in classifications which did not get the overawards as well as those which did, that there was no consistent application of the criteria of payments for experience and so on.

In general measurement of the factors ostensibly providing the basis for extra payments was very limited, inconsistent across classifications, partial and of quite doubtful validity. The company pointed out in its submissions that it might have been demonstrated that the company's human resources management practices were not sophisticated, it had not been proven they were discriminatory.

Justice Munro said in HPM⁵⁴:

Where the reason for a level of remuneration, or for an enterprise level classification practice becomes relevant, it should be remembered that generally such evidence and information about such matters tends to be peculiarly within the knowledge and control of the respondent employer. It follows that evidence about those matters will often be weighed in a manner that takes account of that relative capacity to produce relevant evidence on the point. That principle gives additional weight to the desirability of the respondent employer being required to make adequate disclosure of records pertaining to the history, duties and remuneration practices relating to the work in issue.

During the case in 1998, the company abolished the position "general hand" absorbing it into the storeman classification (which further increased the gap between the earnings of the former general hands and the process workers) and then claimed that the case should fail since there no longer was a comparator for the process workers and packers. The Commission found that the case could be heard based on the facts as they had been when the case commenced.

This decision was considered at some length in the NSW Pay Equity Inquiry. Justice Glynn found that Convention 100 requires that rates be established that are free of discrimination for work of equal value done by men and women workers. This did not require proving that existing rates had a discriminatory cause.

The Age

This case involved comparing the work value of Tele Sales Advisers and male print production employees (publishing grade 4 and press grade 3 employees) at The Age newspaper. Pay was set by an enterprise agreement and overaward payments. An increase of \$117.85 pw was sought.

The Commission found that the 1974 equal pay for work of equal value settlement had been a compromise and did not result in the transfer of female clerical employees to the male rates at the time. Subsequently the lowest clerical rate at the Age was lower than the award rate for clerical employees (although rates actually paid were generally above minimum rates). There had been no evaluation of work performed by male and female workers, no comparison of the relevant male and female classifications and no consideration by the Commission of how the equal pay principle had been applied.

In the enterprise bargaining process, clerical workers had not been able to secure inclusion in the enterprise agreement on equitable terms and were not included in the agreement. They were receiving lower amounts than printing workers and more of their pay was as overawards

In the first decision in this case⁵⁵ Vice President Ross noted the Workplace Relations Act (WRA) requirement to identify the employees covered by the equal remuneration application, and noted that there is no power to cure a defect for a class of employees such as female clerical employees. The AMWU/ACTU had said that the claim could not cover all clerical employees as no gender discrimination could be shown between male clerical and male production employees, and the basis of the claim was discrimination against female clerks by comparison with trade-level male production workers.

Vice President Ross said that, first, the Commission must be satisfied that there is not equal remuneration for work of equal value. The first step in doing that is to ascertain whether rates have been established without discrimination based on sex. Therefore the AMWU would need to show that the rates of pay of clerical employees had been established having regard to the gender of employees (or of a large proportion of them). Vice President Ross noted that this approach had been adopted by Commissioner Simmonds in the AFMEPKIU v HPM⁵⁶ and he adopted it in The Age case in the absence of any argument to the contrary. Vice President Ross said that there was no impediment to the application covering all clerical employees as the central issue is not the gender of the particular current employees but whether remuneration for the work they do had been established without discrimination based on sex.

Another issue in the case was whether a case can be taken under both the s.170BC provision (for making equal remuneration orders) and under s.170BI (for preventing an industrial dispute about equal remuneration). Vice President Ross says that the Full Bench in AFMEPKIU v HPM Industries Pty Ltd had expressed support for the view that cases could not be taken under both the primary and secondary operations of Division 2 of the Act although the Full Bench had not determined the question. Vice President Ross noted the amendments to the Act (s 170BHA) since that decision and found that the

application could not be determined simultaneously under the primary and secondary provisions of the Division 2. He dismissed the application.

The case was lodged again and Commissioner Whelan rejected the company's challenge to the Commission's jurisdiction⁵⁷. Commissioner Whelan said:

The words of the Convention do not suggest that the only comparisons acceptable are those which compare the work being performed by males with those being performed by females. Indeed it is clear that the issue is not who performs the work but the basis on which the rates have been established.

Commissioner Whelan also said:

As noted by both Commissioner Simmonds (*AMWU v HPM Industries (No.1)* [Print P9210]) and Munro J (*AMWU v HPM Industries (No.2)* [Print QQ1002]), the Commission's principles and practice related to work value comparison and changes are a primary source of guidance about what factors and considerations are of accepted relevance to evaluating whether the relevant work is of equivalent value.

The company's appeal against Whelan's decision to the Federal Court failed and the case was heard later in 1999 and settled by consent.

Another important matter decided in this case related to the permissible scope of the applicant's request for documents. Commissioner Whelan found that relevant evidence included a five year period of records of employment, positions advertised, pattern of duties undertaken, and practice as to fixing remuneration.

The skills of the clerical workers were identified as including: interpersonal, computer, accuracy, good command of English, spelling, and customer focus (building relationships, the ability to sell, and to upsell, need for a good personality, even temper, patience, dealing with angry or upset customers), communication skills, and fixing mistakes and errors. The economic value of their work to the business was established as significant.

The outcome of the case was that the 170 clerical workers ultimately were paid the equivalent of the tradesperson rate by increase in overaward payments.

Childcare

The case was taken under the Victorian Local Authorities Award by the local government branch of the Australian Services Union, with pro bono legal assistance. Negotiations were conducted over 12 months and the case was heard by the Full Bench including the President Giudice. The federal government intervened in the case as did women's organisations. The case involved direct inspections of work at several locations. It was settled by consent June 13 2003. While the case commenced under the equal remuneration provisions as well as an application for an award variation under the Workplace Relations Act, the equal remuneration aspect of the claim was ultimately vacated. There was argument about whether a claim can be taken under both the equal

remuneration provisions (division 2 Part VIA) and the provisions for award variation (s113) especially in light of s88 (3)(d) which requires the Commission to apply the principle of equal pay for work of equal value without discrimination based on sex. Reference was made to the decision of Vice President Ross in *The Age* case, that an application could not be pursued under two sections of the Act providing for equal remuneration. The Commission reserved its decision on this matter.

The new award covers 1400 childcare workers in 138 centres in services provided by 55 councils. The consent settlement was for \$46-\$154 pw increase (10%-25% increase). Since the claim was not arbitrated, and the matter had only a very brief time in hearings in the Commission, the extensive material put forward by the applicant mostly was not put into evidence and tested in the Commission and the particular grounds of the settlement are not specified. The Commission ultimately agreed that the award rates set by consent were consistent with pay equity. There was very little consideration of cost impact and cost and funding implications in the brief period the hearings ran.

The core of the claim related to increased work value and workplace inspections were made by the AIRC. There were many extensive statements from witnesses about their work, covering factors such as the size of centres, complexity of regulations, increased expectations of parents, education and training undertaken. Some recurring work value criteria addressed in statements were: accountability, the extent of authority, judgement and decision-making, specialist knowledge and skills, interpersonal skills, qualifications and experience, and management skills (directors).

The comparators used in the claim, taken from within the award, were domestic waste disposal officer (then claimed to be paid \$100 a week more than childcare workers), asphalt drivers (\$140 a week more), librarians, town planners, arborists (\$90 more), street cleaners (\$112 more), Comparators outside the award included ambulance paramedics (\$120 more), Division two nurses (\$80 more) and human resources management professionals. It was claimed by the union that a factor contributing to these differences was the common practice of placing men without qualifications in higher bands. It is also likely that rates for professional occupations in this local government award were not as high as professional rates under some other awards.

Other comparators were referred to, including social workers under the Social and Community Services Award (Queensland) 1996 who, with a three year degree were awarded 125% of the fitter's rate. Comparators within the award would generally be regarded as more apposite than comparators outside. The 1972 Equal Pay Case principles⁵⁸ provided that work value comparisons should where possible be made between female and male classifications in the award in question. However, recourse could be had to comparisons outside the award where comparisons within it were not available or were inconclusive. No decision was made by the Commission about the comparator evidence because the case was settled.

The settlement incorporates child carers into bands in the award for equivalent skills and qualifications. The rates set were: certificate level \$542-\$595 (equivalent to a fitter); degree level \$602-\$755; director level \$786-\$961 (top rate for directors of centres with 45+ children). In Victoria, 2/3 had already been put on a banded salary structure so they could be paid higher rates sufficient to attract appropriate people. Some workers were paid more under enterprise agreements so part or all of the award increases would be

absorbed. The new award structure was also to provide rewards for increased education, training and experience, and so promote recruitment and retention.

Other childcare cases are in train for the Australia-wide 45 000 child carers, in the private and community sectors. The LHMU is taking cases in the ACT, Qld, NSW, SA, and Victoria (covering 12 000 private sector childcare workers). The NSW case has just begun and hearings are underway in the Victorian and ACT cases.

An important aspect of the context of the case was the shortages of skills and labour and the lack of incentives in the award rates for people to stay in the occupation or improve their qualifications.

Reference was made in the materials submitted in the case to the case study of childcare in the Pay Equity Inquiry although the material was ultimately not introduced in evidence because the case was settled. In the Pay Equity Inquiry, Justice Glynn found that childcare had been undervalued, that the gender basis of initial assessment of rates had never been identified and removed, there had not been a proper assessment of qualifications and work value and the minimum rates adjustment process had been inadequate and settled by consent (page 273, Vol 1). The work had been undervalued in itself and by reference to comparators. Commissioner Manuel said in making the first award in 1970 that he set the rates on the basis that the women who did childcare work were not entirely dependent on their earnings and that the women who needed childcare would not be able to afford rates set according to the value of the work⁵⁹. In NSW until the 1973 Equal Pay Case, equal pay provisions did not apply in relation to work usually done by women.

When the first awards were made for childcare workers, training was quite limited and there was considerable reliance on informal before the job and on the job learning. In the 1990 federal award a 3 year degree level was not set - degree, diploma, and advanced diploma were all included in one level and director relativities lagged behind. The Queensland Industrial Relations Commission described the work as "reasonably simple" in its 1991 decision and considered that the qualifications-based structure put to it was unnecessarily complex⁶⁰. The Queensland Commission awarded almost \$100 a week less to two year trained childcare workers than the federal Commission.

Childcare emerged in the market context in the 1960s and expanded considerably in the 1980s. There is an ongoing process of identifying as skills aspects of performance of the work that had previously been considered simply as personal attributes and as naturally held ones. Both the Victorian childcare case and the NSW pre-school Teachers Case show an increasing appreciation of the value of the work as well as reflecting the increasing value of the work.

The NSW cases

There were only a few equal remuneration cases after the cases dealt with during the 1970s. Justice Glynn said in the Pay Equity Inquiry that a common characteristic of female dominated work is a high incidence of consent award wage movements (vol 1 p46). The Pay Equity Inquiry found that the work of librarians had not been examined since the 1973 award and that the work of beauty therapists and the work of childcare

workers (among others) had not been examined at all. In the pre-school teachers' case, it was established that the work of pre-school teachers had never been examined by the Commission.

There has only been one arbitrated decision (for librarians and information workers) under the new equal remuneration principle. However pay equity issues have been canvassed and considered in several other cases including for nurses, psychologists and pre-school teachers. This shows how heightened awareness of equal remuneration issues is spreading in the industrial system.

Nurses' case 2002 ⁶¹

The Nurses' Association launched an award claim for nurses in NSW in 2002 based on high levels of stress for nurses; recurrent and widespread shortages; increased skill, responsibility and work value; and undervaluation of nurses' work compared to other health professionals (for example physiotherapists, who, it was claimed, were paid 8.2% more). There was some disagreement about whether the claim was permissible in view of the public sector Memorandum of Understanding, under which increases (16% over 4 years) had been agreed across the public sector. The Commission decided that there could be increases outside the Memorandum of Understanding, under exceptional circumstances, and that the Commission would guard against contrived ways of seeking increases outside MOU agreements.

The pay equity part of the claim compared the rates for wards persons and assistants in nursing (AINs). It was argued that the duties of the two classifications were comparable, that the assistants in nursing have more responsibility, that wards persons are remunerated significantly better, and that the wards person classification is mainly men and the AIN classification mainly women. Annexure A of the decision details the award rates of pay for both classifications from 1968. It was also claimed that AINs have more education and training. The Commission found a clear disparity between the wages of AINs and wards persons but the evidence was not sufficient to make a proper comparison of work value, nor to establish that the disparity is or historically has been gender-related (which the equal remuneration principle requires).

The respondent noted that the rates for wards persons have not been the subject of any work value arbitration in recent years and so cannot be said to be properly fixed rates that are appropriate to be used as a comparator. Indeed there had not been an arbitrated rate for wards persons since 1959. This situation is contrasted with the use of comparators in the librarians' case, where the professional classifications relied on had rates set on the basis of proper work value reviews in the relatively recent past. The respondent raised the possibility that the wards person rate might incorporate factors other than work value, including attraction or retention or productivity. Leave was reserved for a further claim for pay equity for AINs (as well as for a qualifications allowance).

The Nurses' Association claimed that low rates contribute to shortages with the number of registered nurses being recruited doubling 1996/7-2001/02. They claimed that shortages were especially acute in some specialisations – intensive care units, operating theatres, emergency, mental health, aged care, midwifery, medical ward and aged care wards. Beds were having to be closed; and extra pressure and responsibility was in turn

contributing to more turnover. Some staff were moving to agency and casual employment to avoid unwanted shifts, while being confident of ongoing employment because of shortages. An interim 6% increase was awarded from October 1 2003 and a further 3.5% increase awarded for registered nurses and enrolled nurses in public hospitals from 1 January 2004 on work value change grounds. Around 35 000 equivalent full time staff were covered by the award. The Commission rejected claims for a retention allowance (para 3), and an environment allowance for community nurses (para 4). The Commission considered the economic impact of its decision taking account of evidence from the NSW Treasury. The equal remuneration principle and the Industrial Relations Act require the Commission to consider economic impacts.

The case was mainly focused on work value, and consistent with the work value change principle, related to changes in work value since July 1 1996 for registered nurses and AINs and January 1 1993 for enrolled nurses. The Commission accepted that work value had increased through changes to the nature of the work and skill requirements. It did not accept that increased occupational health and safety responsibilities (para 94), ageing population (para 78), child protection legislation (para 97), and increased use of computers (para 105) had increased work value. The Commission said that additional duties did not necessarily result in increased work value. The evidence that work value was equal or greater to that of physiotherapists and other health care professionals was not found to be sufficient (para 135). Work value of enrolled nurses had increased as their work had expanded into areas traditionally done by Registered Nurses (para 156). The increases awarded in the case subsequently were also won for private hospitals and aged care facilities.

Justice Glynn said in the Pay Equity Inquiry that there was insufficient evidence to make a finding in relation to the case study evidence on nursing. However, following her analysis of the 1987 Nurses' case Justice Glynn concluded that the original sex bias caused by assessment on the basis of a predominantly female rate remained⁶².

It was in the comparable worth case for nursing that the Commission had rejected a comparable worth approach, finding it at odds with the Commission concepts and techniques of assessing work value. The stringent conditions attached to establishing anomalies and inequities were demonstrated in the 1986 Nurses Case⁶³. To have the equal pay matter heard, it had to be established that the case satisfied the requirements for finding an anomaly, that the work value arguments could be developed within the "change in work value" principle and that the inequities claimed fell within the stringent requirement of that principle (that people doing the same work received different pay). The case may well have been structured differently in the absence of the requirement for it to fit within the then current principles. It is impossible to know whether cases in other areas did not proceed because they could not satisfy those requirements despite there being valid equal pay arguments based on historic undervaluation.

Teachers (Non-Government Pre Schools) (State) Award ⁶⁴

This case resulted in a 20% pay increase and a 30% increase in directors' allowances (both phased in over three years), and improved overtime and public holiday provisions for 600 teachers employed in preschools and 2000 in long day care centres (both

privately owned and not-for-profit centres). An appeal against the decision was rejected in May 2002. This was the first arbitrated award for these workers.

The case was taken under the special case principle, and on the basis of work value changes. The union relied on the requirements of s10 and s 23 of the Act, confirming that the pay equity principle was not relied on. Section 10 allows the Commission to make an award providing for fair and reasonable conditions of employment, and s23 requires the Commission to ensure that the award provides equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. Justice Schmidt commented that the case might have been taken under the equal remuneration principle. The union pointed out that it is almost entirely women who are pre-school teachers. While it did not rely on the equal remuneration principle, the union noted that the pre-school teachers, the most female-dominated group of teachers, are the lowest-paid. Justice Schmidt indicated that the composition of the workforce was a relevant consideration in ensuring that the s23 requirement regarding equal remuneration was met (paras 348-351).

The increases were argued for in part by comparison with school teachers. A relevant consideration was the long-standing relativity between pre-school and school teachers. Specific matters included new risk assessment procedures, increased child protection responsibilities, increased numbers of children with special needs, increased emphasis on transition to school, increased propensity of parents to complain and increased sensitivity of care providers to litigation, higher expectations of parents in relation to child development, greater expectations regarding curriculum (for example, in learning to use computers, and in literacy) and an increased family support role (paras 48 and 117). Parents now want more information about their children (para 116). Increased liaison with schools is needed in integrating children with disabilities into school life (para 119). Increased cost of childcare itself has increased expectations and demands (para 127).

Justice Schmidt found that the federal government had introduced best practice and quality improvement accreditation requirements in 52 areas, requiring current philosophies and research about early childhood education to be reflected in programs and curricula (para 142). On the evidence of these substantial changes in demands and the related increased work value, Justice Schmidt awarded substantial increases to the pre-school teachers. Since these factors reflect broad social changes and trends and government activity in relation to childcare services, they are common across industrial jurisdictions and so affected workers in NSW. Justice Schmidt recognised that while all workers were affected by the increased demands, directors were especially affected (paras 49 and 419). Justice Schmidt found that the work had been significantly undervalued

Justice Schmidt did not accept claims that increases could not be paid, commenting that the evidence about economic impact was inadequate and she considered the costs of increases were overstated (para 315). Justice Schmidt said that while employers generally want to contain the operational costs of employee expenses, cost increases in themselves are not a reason to reject a claim (para 315-326). A similar point was made at para 52 in the psychologists' case (discussed below). A significant aspect of this case and of the Victorian childcare case was that there are significant shortages of childcare workers.

Crown librarians, library officers and archivists award proceedings – Applications under the equal remuneration principle ⁶⁵

The case was taken under both the equal remuneration principle and the Special Case principle (principle 10) of the wage fixing principles, and s10 of the IRA. The case was about the design of classification and grading structures as well as about gender-related undervaluation. The case was built on the findings of the case study developed for the NSW Pay Equity Inquiry by the Office of the Director of Equal Opportunity in Public Employment, in which two points/factor job evaluation systems were applied in comparing the work of librarians and geoscientists. The case study also related to award structures and histories, career paths and remuneration. The study found a difference of nearly 20% between rates for a Senior Librarian Grade 2 and a Senior Geologist year 4; and that geologists had less hard barriers to progressing through the pay steps in their award.

The Pay Equity Inquiry found clear evidence of undervaluation of the work of female librarians and resistance to full recognition of librarianship as a profession. The Pay Equity Inquiry said rates for librarians had initially been set on the basis that librarians were not professionally qualified (although many of the women did hold degrees, the men holding most senior positions generally did not). The value of the work had not been assessed by the Commission for a very long time and there had been changes (of the highest order) in the value of the work. The Pay Equity Inquiry noted that the historic nexus between librarians and teachers had been broken and a full work value assessment would be needed to establish the appropriate relationship.

Justice Glynn questioned the appropriateness of the comparisons between librarians and geologists, and the appropriateness of job evaluation for the fixation of salaries. Job evaluation was found not to include factors such as market factors, performance, physical environment and conditions, requirements such as working away from home, manual dexterity, physical capacity, hours of work and particular risks and dangers (each of which on occasion can legitimately account for some part of remuneration). The varying relationships between job evaluation points and pay within and across agencies and occupations were also questioned.

The Pay Equity Inquiry case study and the Pay Equity Inquiry findings about undervaluation of librarians' work provided a partial basis for agreement between industrial parties that there was gender-related undervaluation of librarians' work, and that was not contested in the case. Therefore, there was no arbitrated decision on what is required to establish "gender-related undervaluation". It was accepted that it was appropriate to compare the work of librarians with other public sector-based professions and it was relevant that librarians were paid less than other professions where work value had been assessed by the Commission in setting rates. Relevant factors in the comparison were the requirement for a bachelor's degree or equivalent for entry; career progression based on experience and merit-based appointment for promotion. The Commission noted that evidence had not been provided that the work of librarians was of equal value to the comparators. The case involved direct inspections by the Commission at several worksites.

Substantial increases were awarded (on average 16%, up to 25% for some classifications). The increases applied to several thousand NSW library and information

workers. The Full Bench found that library and information professions were comparable to other professions including scientific officers, psychologists, and lawyers. Professional associations were recognised as the key authorities regarding qualification levels and work standards for the profession. Relationships between the profession and technician occupations also were considered. The case had a significant focus on how the value of the work was to be assessed. Evidence dealt with the use of qualifications, points/factor job evaluation schemes and position level descriptors.

The Commission accepted that there was sufficient commonality in the professional and technical work across several worksites and several employers for one award to be made to cover the work despite submissions to the contrary. Librarians at the Environment Protection Authority have subsequently negotiated increases based on the case, achieved through job regradings onto the incremental classification scale in the new award, resulting in job grades two or three levels higher and significant pay rises.

Health and Community Employees Psychologists (State) Award⁶⁶

In its submissions in the Health and Community Employees Psychologists (State) Award case⁶⁷, the Health and Research Employees' Association referred to concepts of work value (specifically relating to "soft" skills) as outlined in the report of the Pay Equity Inquiry. The applicant claimed that while the application was not being processed under the Equal Remuneration and Other Conditions Principle, the pay equity considerations cited from the Inquiry "should assist the Commission in coming to the conclusion that the current classification structure and salary rates for psychologists do not reflect the level of skill and responsibility exercised by them" (page 52, submissions). It was argued that the Commission was entitled to take account of pay equity in the context of the Special Case Principle (para 45).

The Commission said it approached its task "by reference to s 23 of the statute so as to ensure that the award to be made provides equal remuneration and other conditions of employment for men and women performing work in the classifications concerned". The case proceeded under the Special Case principle of the *State Wage Case 2001*⁶⁸. The Commission noted that the rates for psychologists had not previously been arbitrated, but had been settled by consent and that it could not simply be assumed that fair and reasonable rates were in effect because parties had negotiated pay outcomes by consent. The Commission determined a new classification structure corresponding to work value, changes in the nature and value of the work over the preceding 30 years, and qualifications.

Local Government (State) Award 2004⁶⁹

The Full Bench of the New South Wales Industrial Relations Commission approved on 16 February 2004 a reduction of hours for local government community services professional and specialist workers, from 38 to 35 hours per week on 16 February 2004. Male dominated professions such as engineers, health and building surveyors and town planners have enjoyed the 35-hour week for many years. The positions in question had

been evaluated under the award using a common set of skill descriptors and were placed within the same professional band of the award.

The variation affects some 500 workers in senior community services positions in the Professional/Specialists Band of the Local Government (State) Award, including child care centre directors, early childhood educators, children's services managers and a diverse range of professional and specialist workers in areas of youth, age, disability, multicultural and Aboriginal services as well as social planning and other areas. The improved working conditions will also mean an increase in the hourly rate of pay for those employees working on a part-time basis.

The case was taken under the equal remuneration principle which provides that equal remuneration and other conditions of employment cannot be implemented by reducing anyone's working conditions or remuneration (as might have been a possible remedy in a discrimination-based case). It was also taken under the provisions of the IRA that require the Commission to ensure awards it makes provide equal remuneration. This case also shows the use of a remedy other than direct pay increases, as is envisaged in the range of remedies contemplated in the equal remuneration principle. The application was by consent following conciliation and other proceedings in the Commission and will take effect from February 2005 (although Councils are not precluded from implementing the agreement earlier and some Councils already had moved senior community services employees to a 35 hour week). The Commission considered that the application could be granted notwithstanding principle 7 (which deals with reduction of Standard Hours) of the State Wage Case.

The case also involved evidence and agreement about economic impact and public interest considerations.

APPENDIX TWO ARTICULATION WORK VALUE

Ann Junor⁷⁰ has explained the concept of articulation work as work that integrates and coordinates various kinds of work across functional divisions of labour. It is an essential aspect of putting together the various activities required for organisations to function effectively. The work includes information work, emotional labour and time management. The skills used are often poorly identified and not accorded appropriate value. The organisational skills involved include anticipating problems, repairing gaps in procedures and responses, managing interruptions and multi-tasking, maintaining service continuity by recalling personal details and case histories, following-up transactions and loose ends. She points out that articulation work occurs in all industries. The skills are likely to be acquired in post-compulsory education and training by young people and in mature-aged people in juggling work and family commitments.

Junor provides an outline of articulation work skills (p.321):

Coordination work

- developing abstract understanding of organisational networks and information flows and of one's own activities in relation to the big picture
- linking new and existing tasks to create an integrated workflow
- rapidly processing and assimilating abstract information
- accepting responsibility for quality for data issued
- accepting responsibility for follow-through, follow-up
- combining technology use with quality personal interaction
- managing delays in information flow and pressures from waiting queues
- Mediation workcross-selling, persuasion
- tactful managing-up, managing out (management of customer behaviour), managing in (managing one's own behaviour)
- responsiveness, including instantaneous response to succession of clients
- responsivity, balancing client needs with organisational requirements such as speed, efficiency
- mollifying anger while remaining detached
- reconciling needs of employer, government and clients
- balancing conflicting demands including those of work and family

Contingency management work

- trouble-shooting, turning contingency management into routine procedures
- making ethical judgements, using discretion
- paying simultaneous attention to detail and context
- handling interruptions and multiple tasks whilst prioritising and keeping track
- exercising responsibility without formal authority
- responding calmly to emergencies.

Both task performance and its context need to be understood to recognise how things work⁷¹. Williams similarly points out that extra-role behaviours are critically important in the organisational citizenship needed to make things work. Williams points to a range of contextual performance and organisational spontaneity factors (Table 5.1 p.96).

Contextual performance

- Volunteering to carry out task activities that are not formally part of the job
- Persisting with extra enthusiasm or effort when necessary to complete own task activities successfully
- Helping and cooperating with others
- Following organisational rules and procedures even when personally inconvenient
- Endorsing, supporting and defending organisational objectives

Organisational spontaneity

- Helping co-workers
- Protecting the organisation
- Making constructive suggestions
- Developing oneself
- Spreading goodwill

Williams provides a taxonomy of major performance components (Table 5.2 p 98)

- Job-specific task proficiency
- Non-specific job proficiency
- Written and oral communication task proficiency

- Demonstrating effort
- Maintaining personal discipline
- Facilitating peer and team performance
- Supervision/leadership
- Management/administration

He explores the ways in which these performance components go very much broader than competencies and how both role and context must be understood to recognise the capacities and capabilities relevant to good performance. He also outlines generic competencies for helping and human service workers and requirements for good performance criteria (Tables 5.5 and 5.6).

Emotional labour similar to domestic and family work is likely to be undervalued. Junor and Hampson⁷² point out that service sector work has been invisible and emotional work unrewarded. Competency assessments are behaviour-based and hence are not attuned to relationship-based capabilities where the quality of the relationship is in itself at least in part the service being delivered. Competency-based assessment is also not well attuned to episodic and fragmented events that occur and pass rapidly in a context of competing demands. Yet the capacity to manage these demands well when they do occur can be critical in some environments. The importance of emotional labour has increasingly been recognised in the context of the contribution of emotional intelligence to high level high performance management occupations.

ENDNOTES

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- ³ Automotive and Metal Workers Union and David Syme & Co Limited Print R3273
- ⁴ Teachers (Non-Government Pre-schools) (State) Award [2001] NSWIRComm 335 para 114
- ⁵ Riverina Water County Council Enterprise Award 1998 Matter IRC 6761/98 15 Feb 1999
- ⁶ Public Service Alliance of Canada (PSAC) v Canada (Treasury Board) (1991] 14 CHRR D/341 at D349
- ⁷ Public Hospitals Nurses State Award (No4) 2003 NSWIRComm 442 11 Dec 2003
- ⁸ Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 December 1998 Vol 2 pp114-21.
- ⁹ As above Vol 2 pp14-15
- ¹⁰ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries Print Q1002 para 15
- ¹¹ Bonella & Ors v Wollongong City Council 2001, NSW Administrative Decisions Tribunal 29 November 2001 184
- ¹² (2002) EOC 93-225; Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and Gunn and Taylor C 2002/1491 AIRC decision 4 June 2002
- ¹³ Re Base Grade Professional Engineers (1961) 97 CAR 233
- ¹⁴ Science (Australian Government Employment) Award 1985, 23 December 1985, 299 CAR 533, Print G1499, December 1985
- ¹⁵ Re Professional Officers Association Australian Government Employment, Professional and Executive Salaries Award 1990 27 June 1997 Print P2275
- ¹⁶ Journalists (Book Industry) Award 1990 28 August 1992 Print K4339
- ¹⁷ Family Court Counsellors' Case 25 August 1993, Print No. K8931; Family Court Counsellors' Case 25 November 1992, Print No. K5613
- ¹⁸ NSW Clerical and Administrative Employees (Classification Structure) State Award Matter No IRC2335 of 1992
- ¹⁹ Australian Bureau of Statistics *Education and Work*, May 2003 Cat. No. 6227
- ²⁰ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries Print Q1002
- ²¹ These issues were also covered in Pay Equity Inquiry exhibits 360 Kelly and 233 Bennett.
- ²² MEU and Municipal Association of Victoria (1992) 44 IR 373, 377-78
- ²³ Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 December Vol 1 pp.507-508
- ²⁴ as above Vol 1 p.433
- ²⁵ Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 Ex 446 p 90
- ²⁶ Pay Equity Inquiry Matter no. IRC 6320 of 1997 Vol 1 p.511
- ²⁷ Pay Equity Inquiry Matter no. IRC 6320 of 1997
- ²⁸ Ontario Nurses Association v Regional Municipality of Haldimand-Norfolk No. 6 (1991) 2 PER 105, Pay Equity Hearings Tribunal, Ontario, Canada 1997
- ²⁹ Steinberg R Social construction of skill – Gender, power and comparable worth, *Work and Occupations* Vol 17 No 4 November 1990
- ³⁰ Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 Ex 158 p 137
- ³¹ United States Office of Personnel Management, *A White paper - A fresh start for federal pay: the case for modernization*, April 2002
- ³² National wage and equal pay cases (1972) 147 CAR 172

- ³³ Handels-og Kontorfunktionaerernes Forbund i Danmark v Dansk Arbejdsgiverforening (acting for Danfoss), [1989] IRLR 532, European Court of Justice
- ³⁴ Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 December 1998 Vol 2 p226
- ³⁵ as above Vol 1 p485
- ³⁶ as above Vol 2 p310
- ³⁷ Australian Bureau of Statistics, *Census 2001*
- ³⁸ Australian Bureau of Statistics, *Labour Force Australia, January 2004*, Cat. No. 6202
- ³⁹ Australian Bureau of Statistics *Employee earnings and hours* May 2002 Cat No. 6306
- ⁴⁰ as above
- ⁴¹ Re Private Hospitals' and Doctors' Nurses (ACT) Award 1972 [1986] 13 IR 108
- ⁴² In re State Equal Pay Case 1973 [1973] AR (NSW) 425)
- ⁴³ More detail on the NSW Pay Equity Inquiry and findings is in The NSW Pay Equity Inquiry: A new approach for a new century, P Hall, *Labour and Industry*, v 2 No 2 Dec 1999 pp 33-52. Pay Equity Inquiry documents are published on the internet at www.industrialrelations.nsw.gov.au/action/policy/equity/index.html
- ⁴⁴ *WorkplaceInfo* 19/2/2004
- ⁴⁵ Media statement by the Minister, the Honourable John Kobelke, Consumer and Employment Protection Portfolio, 8 March 2004. This work builds on previous research undertaken by Crockett, G. and Preston, A. *Pay Equity for Women in Western Australia: Research Report* (Perth: Department of Economics, Curtin University of Technology, April 1999
- ⁴⁶ No.6 14 July 2000
- ⁴⁷ In its Review of Wage Fixing Principles July 2002
- ⁴⁸ Queensland Council of Unions and Others AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (No. B450 of 2002)
- ⁴⁹ An excellent and comprehensive history of industrial jurisprudence and legislation relating to equal pay in Australia is provided in Appendix 8 of the Pay Equity inquiry Report (exhibit 32 in the Inquiry).
- ⁵⁰ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries Print Q1002
- ⁵¹ Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 December 1998 Vol 1 p46
- ⁵² No.1 Automotive and Metal Workers Union and HPM Industries Print P9210 and No.2 Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries Print Q1002
- ⁵³ Third Safety Net Adjustment and Section 150A Decision Print M5600
- ⁵⁴ Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and HPM Industries Print Q1002
- ⁵⁵ Automotive and Metal Workers Union and David Syme & Co Limited Print R3273
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- ⁵⁷ Automotive, Food, Metals, Engineering, printing and Kindred Industries Union and David Syme & Co Limited C No.32261 of 1999
- ⁵⁸ National wage and equal pay cases (1972) 147 CAR 172
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- ⁶⁰ Queensland Industrial Relations Commission, Re Child Care and Kindergarten Employees' Award - State Nos R54-0, B162 and B134 of 1990, Decision 15 July 1991
- ⁶¹ Public Hospitals Nurses State Award (No4) 11 Dec 2003 NSWIRComm 442
- ⁶² Pay Equity Inquiry Matter no. IRC 6320 of 1997 14 December 1998 Vol 1 p66
- ⁶³ Re Private Hospitals and Doctors Nurses (ACT) Award 1971 (1987) 20 IR
- ⁶⁴ [2001] NSWIRComm 335

⁶⁵ Crown librarians, library officers and archivists award proceedings – applications under the Equal Remuneration Principle, Re [2002] NSW IRComm 55

⁶⁶ Health and Community Employees Psychologists (State) Award IRC No 3376/1998

⁶⁷ State Wage Case 2001 104 IR at p 480

⁶⁸ Local government (State) award 2001, Re [2004] NSW IRComm 24

⁶⁹ Restructuring women's work 1987-1998: Flexible skills and polarised diversity, in *Workplace reform and enterprise bargaining* (ed) R Morris, D Mortimer and P Leece, Harcourt Brace 1999 Sydney

⁷⁰ as above p.321

⁷¹ Williams R, *Performance management – perspectives on employee performance*, International Thomson Business Press, London 1998

⁷² abstract of paper presented to the 21st Annual Labour Process Conference April 2003