

**PAY EQUITY CONFERENCE PROCEEDINGS
1989**

**Papers presented
at a conference
convened by the
National Pay Equity Coalition
Y.W.C.A.
SYDNEY
21 May 1989**

**National Pay Equity Coalition
Sydney 1990
ISBN No. 1 875487 00X**

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FOREWORD

These papers were transcribed from a conference organised by the National Pay Equity Coalition (NPEC) in May 1989. NPEC is a coalition of organisations and women trade unionists committed to pursuing pay equity for women workers.

The aim of the conference was somewhat ambitious - to come up with a clear strategy and focus for the work of the Coalition into the 1990's. As many women who have at some point in time been active in the equal pay movement can attest, there is a great diversity of opinion as to how women will achieve pay equity with male workers. The Coalition has focused on working in the industrial arena in pursuit of this claim. Within the industrial arena, there is also difference of opinion about the best course of action.

These Pay Equity Conference Papers 1989 are significant for the way in which they draw together so many of these different opinions and debates. Should women's organisations bother making submissions to national wage cases? What about pursuing a legislative approach (that is an equal pay act) rather than working through the industrial processes, as women in the UK, and now Canada and New Zealand have done? Is it better to work for pay equity by stealth or by direct confrontation with governments and the ACTU in public arenas?

The Papers don't lay claim to resolving these questions but make a significant contribution to the debate. If anything they point to the need for a range of strategies which acknowledge the complexity of the issues, and the different points, particularly within governments and unions, where pressure should be applied.

The Coalition thanks all those women who gave generously of their time and energy to present a paper at the Conference.

National Pay Equity Coalition

August 1990

PAY EQUITY AND THE A.C.T.U.

**Helen Twohill
Secretary of P.S.A. of N.S.W.,
ACTU Executive Member and
Convenor, ACTU Womens' Committee**

I wish to talk about some of the political problems associated with the pursuit of pay equity, both through the Commission and within the Australian Council of Trade Unions (ACTU). I believe, especially after the comparable worth test case - the Nurses' Case - is a time to review our progress and assess carefully our next move.

The Nurses' Test Case

In September 1984, the ACTU adopted an Action Programme for Women Workers, based on its policy developments of the previous year, and in it set out strategies for the next two years to improve the position of females in the labour market. The strategies included the intention to pursue a comparable worth claim before the Arbitration Commission. It was intended to examine the feasibility of applying the comparable worth principle by first testing it with an occupation such as nursing and if necessary seeking changes in the wage fixing principles.

The test case was lodged in October 1985 on behalf of the Royal Australian Nurses' Federation and the Health Employees' Federation, in relation to the Private Hospitals and Doctors Nurses (A.C.T.) Award 1972. The ACTU argues that the 1972 Equal Pay Case embraced the concept of comparable worth through the acceptance of the principle of equal pay for work of equal value. It was argued that the 1972 decision was still applicable and that in implementing the decision, the Commission should not be constrained by the then current wage fixing principles.

While upholding that the 1972 decision was still applicable, both further arguments were rejected. The Commission ruled that the 1972 decision is still available to be implemented, the assessment of equal value would be made through the customary methods applied to determine work value, and cases could be brought under the Anomalies and Inequities Principle. The Commission expressly discarded the concept of comparable worth, as being incompatible with, and potentially threatening to, the centralised wage fixing system.

The Commission's determination that any claims for equal pay would be processed under the current wage fixing principles means that equal pay must be dealt with as an anomaly in the strict sense of the guidelines imposed by the 1983 National Wage Case.

The 1983 Guidelines were framed within the context of the Prices and Incomes Accord between the Labor Government and the ACTU. The Guidelines required that any wage increase granted didn't become a vehicle for improvements in pay and conditions to employees generally. A vicious circle was established. In exchange for social wage improvements and improvements to the equitable base of Australia's society, the union movement was required to hold down wages. In hindsight wages were held down, resulting in a decline in real wages over time with very little compensation in terms of the social wage. Equal pay in reality, could not fit under such guidelines because it would cost money.

During the nurses' test case, women in unions found it extremely difficult to get information from the ACTU, including what was in the ACTU submissions, whether the case would allow for a broad application etc. This was in spite of

affiliates meeting around the nurses' case and expressing legitimate concerns. I now wish to focus on this issue of information and consultation by looking at the role of the ACTU's Women's Committee.

The ACTU Women's Committee

In 1987, Bill Kelty, Secretary of the ACTU, appointed me as convenor of the Women's Committee, and I have used the position as a vehicle to try and ensure that women in unions have a bit more information. In concert with the other women on the Committee I have also tried to get action on issues, as well as develop policy.

The ACTU had so many issues and policies on its books, that one of the first things the Committee did with me as convenor, was establish a set of priorities for the forthcoming two years. We decided on three priorities; child care, representation of women in unions (which took up matters concerning women's participation raised in the ACTU Future Strategies document), and equal pay. Three sub-committees were established to look into these matters.

One of the first things the Women in Unions sub-committee did was to survey unions. The sub-committee found, to its horror, that many unions did not even collect statistics on male and female membership. Why would unions do anything about equal pay if it was not concerned with how many female members it had, or where its female membership was concentrated?

The three sub-committees reported to the Women's Committee, and the Equal Pay sub-committee took some initiative and attempted to provide some positive input.

As chair of the Women's Committee, quite early on I had to demonstrate that it wasn't just a rubber stamp for ACTU agendas elsewhere. The ACTU had developed, without the Committee's consent, a document entitled "Women Workers and the Effect of the Two Tier Wage System". On the day of the Committee meeting this document was tabled for approval, and as convenor I was expected to launch it the following week.

The document was supposedly setting out the benefits of the two tier system for women. It claimed that the relative position of women workers had been protected over the course of the previous two tier wages system, and that there had been significantly larger wage increases for women gained under that system. This interpretation was open to debate, and myself, and other women on the Committee had real difficulties with its content. In the public sector, the industry where I come from, the two tier system did not deliver for women workers, nor for male workers for that matter, and this was the experience of a number of other unions.

Certainly, the supplementary payments principle led to greater increases for some women workers in industries where there were very low wages. However, that was the effect of the supplementary payment strategy, and had nothing to do with the claims of the two tier system to deliver broadly for all workers.

I believe I learnt a few lessons from this first strategic "exchange of views" and I am sure the ACTU powers did also!

The Committee moved on from the two tier system and concentrated on the current wages strategy of the ACTU based on award restructuring. At the moment, the ACTU refuses to adopt any wages strategy that tries to compensate for regular increases in the cost of living. So instead of Consumer Price Index (CPI) related increases, unions must face new terms and new wages strategies every two years. Award restructuring is the most recent.¹

The Women's Committee has succeeded in putting on the agenda the importance of equal employment opportunity and the implications for women of award restructuring. An initiative of the Committee was the publication of a booklet called Restructuring Awards: Issues for Women Workers. The document took up a number of issues, such as the special characteristics of women within the workforce including where they work, their responsibilities and characteristics which need to be taken into account across various occupations and industries, valuation of existing jobs, recognition of work experience, new classifications, redesign of jobs and access to training and career paths.

This document was followed up with a further publication Restructuring Awards: Further Issues for Women Workers. Both have been widely distributed to affiliates so the issue now is whether union officials are going to read the material and then to apply it to restructuring awards in their industries.

The Committee asked the ACTU to ensure that all general material distributed on award restructuring should include the identification of issues for women. We also put forward a proposal for a TUTA course on award restructuring and affirmative action issues, which I know some of you have attended.

The Committee has urged the ACTU to promote the attendance at these courses of senior male trade union officials, but whether this has in fact happened or not is another question.

The most recent skirmish with the ACTU Executive has been the Committee's proposal for a two day forum on women, education, training and award restructuring. The forum was in principle approved by the ACTU Executive subject to sorting out the detail.

When the detail came back, it was transformed into a one day talk at the women about how wonderful award restructuring is, rather than an organisational forum around what has to be done and how women can get input.

¹ Editor's Note: In February 1990, the ACTU reached agreement with the Commonwealth Government on the next wage system. This system will, in summary, have 2 levels - the first increase based on CPI and the second on restructuring.

The Women's Committee has persisted with the forum proposal, and re-submitted it to the Executive. It should be held before the closing date for items for the ACTU Congress around the 23 June so there will not be much time. As we talk about strategies, this conference might consider participating in the forum as it will provide women with the opportunity to get together and put pay equity issues on the agenda.

The Women's Committee has further put forward to the ACTU that they publish information on skills assessment to ensure that women's skills are recognised. Unless examples are actually specified and indications given of how skills audits should be done, there is a danger that women's worth and women's skills will not be recognised at all.

While the Women's Committee may not be a vehicle for achieving equal pay, and I have tried to indicate some of the frustrations involved in dealing with issues, it is nonetheless a voice that can be used to put issues on the agenda for the ACTU. I am concerned that while the ACTU produces documents around women and award restructuring, runs seminars with TUTA and perhaps agrees to a two day forum, women's issues still have to become part of the real agenda; the issues actually have to be dealt with.

Strategies

The ACTU sent around a circular in 1988 calling upon unions involved in award restructuring to submit their proposals to the ACTU's Wages Committee. If this Committee is still meeting, it might be useful to put forward that there be a woman on the Committee to monitor award restructuring proposals so that affirmative action and pay equity issues are taken into account.

Secondly, the ACTU Congress will be held in Sydney in September 1989. We should seek real commitment to addressing women's pay and equity. Unless we keep up the pressure around award restructuring and equal employment opportunity issues we have lost an opportunity which is quite valuable.

In summary, I have tried to point out some of the constraints imposed within the ACTU by its own politics. Women haven't had a voice there for a long time and we need to constantly apply pressure for real participation. Pay equity for women will cost, and in the politics of the Accord the ACTU is pre-occupied with how it might affect the economy and the Federal Labor Government's prospects. These issues need to be understood and addressed, as they constantly confront us in the struggle for equal pay.

**THE UNITED KINGDOM
EQUAL PAY ACT**

**Kate MacNeill
Former researcher, Equal Pay
Unit. London**

When I was approached to speak at this pay equity conference, I felt that sense of despair that most of us felt after the Nurses' case result - can I say anything inspiring about equal pay at all? As I reflected more on my recent experience in England, the legislation that worked there, and the widespread acceptance of the notion of equal pay for work of equal value in that country I actually felt quite inspired. It is, in fact, one of the few inspiring things that one can say about the UK at the moment although it too is now under attack. Whilst we in Australia were still grappling with what we chose to call equal pay for equal work value, and how we were going to disguise in such a way that we could sneak it in to our industrial relations system, in the U.K. equal pay was a legitimate part of the wages system.

I would like to now explain how the UK legislation works, its impact on wage relativities between men and women, to discuss some of the limitations of the legislation, and then to consider the implications of the UK legislation for equal pay strategies here in Australia.

Equal Pay Act, 1970

The Equal Pay Act was actually introduced in 1970 although prior to that there were, particularly within the Civil Service, principles of equal pay for equal work value accepted as long back as 1955. The key impetus for the introduction of the Equal Pay Act was the ILO Convention No. 100, on equal pay for work of equal value and also the fact that the convention was incorporated into the Treaty of Rome which is the founding document for the European Economic Community. The United Kingdom had actual obligations to introduce legislation in the area of equal pay. So the first act was introduced in 1970 with an incredibly long lead time, recognising that it would have widespread implications. It did not actually come into force until 1975.

The Act provides that it is a term of your contract of employment that women be given equal treatment with men in the same employment. The same employment in that context actually means employed by the same employer. This is something that needs to be borne in mind when thinking about the UK experience. It applies only to comparisons made between workers working for the same employer or for an associated employer. This latter point tries to address the situation of convoluted corporate structures. Initially within the 1970 legislation it was a requirement that a woman had to establish that there was a man doing the same or broadly similar work to her within the same employment. The work was rated as equivalent if there had been a job evaluation process which found that the demands made on the employees, under headings such as efforts, skills and decision making, were equal. Those terms were actually embodied within the legislation as examples. So if a job evaluation process determined that the two jobs under scrutiny were equal in terms of efforts, skills and decision making and so on, then a claim was made out for equal pay. Another limitation of the legislation was that it only came into force if the job evaluation study had been carried out and the employer had failed to implement its recommendation where findings of equal value had been made in respect of male and female.

occupations within that employment. The positive thing about the 1970 Act was that there was scope to vary collective agreements which were contrary to the Equal Pay Act. In other words, there was the possibility of actually extending the implications of the Act to a body of women employees as opposed to just the individual applicant in any case.

The major limitation was that the legislation referred to like work so you could not make the sort of broad comparisons that we in Australia had been anticipating would flow from the comparable worth case. In addition, the enforcement process is quite protracted through a very legalistic framework.

1983 Amendments

In 1983 there were very significant amendments made to the Act, again in response to pressures on the UK as part of the European Economic Community. A case had been taken to the European Court of Justice which determined that the original legislation had actually failed to comply with requirements of the Directive, as incorporated in the Treaty of Rome, in that its definition of equal pay for work of equal value did not go far enough. The restrictions that comparisons only be made between people doing like or broadly similar work was rejected by the European Court and there was then pressure put on the UK to extend the scope of the Act. The case also addressed the problem that the earlier Act only applied where a job evaluation scheme had already been undertaken. It was now possible to take cases to demand that the job evaluation process be carried out.

Another issue that was taken up in these later amendments was to allow for a challenge to a job evaluation scheme on the grounds that it was discriminatory in the application of criteria such as efforts, skills and decision making.

The new law extended the meaning of equal pay for work of equal value. The expression was that equal pay was due where a woman was employed in work which is, in terms of demands made on her, e.g. efforts, skills and decision-making, of equal value to a man in the same employment. Again the same employment restriction applied.

This, I think, is as far as we in Australia thought we would go in making the comparable worth demands. In the UK the initiatives have been taken as a direct result of being signatories to the ILO Convention and also a member of the European Economic Community. I suspect that it is the latter factor that is the most significant, in that it provides a course of action to any woman to appeal to the European Court. It also has an enforcement process which a number of international treaties do not.

One of the negative things about the new amendments is that they also extended a defence that had been available beforehand but had not really been interpreted and widely used, which is called genuine material factor defence. It is still unclear as to how wide this defence is. When the amending legislation was going

through Parliament, the Minister presenting the legislation was asked to explain what it meant. He referred to factors such as 'personal factors'. For example, if there was a particularly slow worker and this affected the performance of the job, and market forces. Whilst the defence hasn't actually been widely used, I suspect that it's likely to be relied upon more in the next few years. Employers appear to be getting a bit toey about the legislation generally.

I have other information on the procedural aspects of the legislation, which we might look at later if we start considering legislation as a way of moving forward in Australia. It is hard to assess the full impact of the UK legislation. When the legislation first came into effect, there was a significant decrease in the differential between male and female earnings. The increase in women's earnings as a percentage of male gross earnings excluding overtime and also corrected for hours, (to remove any problem with the concentration of women in part time work) increased from 63.7% to 72.2% in the first eight years of the Act, from 1975-1983. All the increase cannot, however, be attributed to the legislation because incomes policies were in place at the time in a number of industries, and in particular, industries where low-paid women tend to be employed. There is a process for wage setting through the Wages Councils which are there specifically to protect the wages of low-paid workers. These factors may have contributed to the closing of the differential. Some studies have been done to try to determine how much of that closing of the gap could be attributed to the equal pay legislation and how much was due to income policies upping the wages of low-paid workers generally. The findings are really unreliable and I think you can only really conclude that some of that closing was due to the broad incomes policy.

The closing of the differential also was not standard for all workers. The most pronounced improvement was for female manual workers, and the least pronounced for non-manual workers. And again, I suspect that the difference in effect was due mainly to incomes policy than because of the equal pay legislation.

Since the amendments in 1983, there has been a significant slowing down in the contraction of that differential, and the situation has been virtually static over the last 5 years. When the amendments came through in 1983, there was a significant increase in the number of cases that were being taken under the legislation, but, partly because the legislation was very complex and poorly drafted, there have been few decisions. It has only been in the last year in the UK that a number of test cases have been taken and the decisions handed down. Some of the cases have been going on for the full five years since the amendments were made. Now that there's greater clarity about the interpretation of the legislation, it may well be that more cases will be going through, and we will see again another closing of the differential between male and female earnings.

Acting against that is the fact that there has been a great deal of reaction to the legislation in the last year. The whole trend is, as I am sure people are aware, towards total deregulation of employment law in the United Kingdom.

I think the equal pay legislation will be one of the last areas to be attacked. It may not be attacked head-on. Instead, employers are trying to extend the scope of defences available and are becoming increasingly concerned about the thought of the monetary impacts of the decisions that have been made against them. There is hysterical coverage in the press quoting huge sums of money as if women had just won Lotto! Really nasty stuff, without any genuine assessment as to really what they are being compensated for. Employers are also trying to set a ceiling on awards that can be made. It might sound absolutely bizarre, but it may well be that the genuine material defence is used to argue that market forces allowed them to set wages for women lower, because of issues such as demand and supply. This sounds lunatic but not in England, where it is quite legitimate, in terms of much of the thinking there.

At the same time as employers are jumping up and down wanting to restrict the legislation, the Equal Opportunity Commission has come up with proposals for reforming the Act. These are quite important because they address some of its limitations. They acknowledge that in its present form the legislation is not having the impact that they might have first anticipated. One of the most significant factors is that the legislation is limited to the parties to the action. It is based on individual rights where a finding is made which is in respect of that particular claimant. There isn't any scope for findings to be made across the board. The earlier power to make recommendations in relation to discriminatory pay structures through collective agreement was actually found to be outside the power of the Act, so that avenue was closed. In some areas where trade unions were strong, there have been flow-on effects from equal pay decisions, but clearly with women concentrated in particular industries, where often trade union organisation is not strong, the scope for flow-on is pretty limited. The Commission proposes that a mechanism be found to permit class actions by groups of women, again within the same employment. Another recommendation deals with the fact that the procedures are incredibly complex and need to be sharpened up so that cases can be dealt with more rapidly. It is acknowledged that there is a problem with confining the scope of the Act to women in the same employment as men, and I think this is a problem that may need to be considered generally in relation to the impact of people using the legislation. It may be that it is an inherent limitation in terms of a legislative solution based on individual rights. That is, you can't sue an employer for something that some other employers are doing. Your right against your employer may well be restricted to equal treatment of that employer's own workforce. Further thought needs to be given to this question.

The Equal Opportunities Commission's response to this was to propose that an employee should be able to argue that if she had been a man, she would have received a higher rate of pay. I do not think that this is a totally satisfactory solution to the problem. It just acknowledges that there is a problem due to the concentration of women in particular industries and that often there is not an appropriate comparator to be found within the same employment. The proposal that if the woman were a man she would be paid more is problematic, because in many industries there is often a man, or two men who

are actually doing the same work that a woman is doing with the same lousy rates of pay! That was another problem with the Act - you can't take a case at all if there is even one man doing the work that a woman is doing. This is your comparator before you look to any broader comparison with people doing unlike work. Recently, there was a decision in the House of Lords on this which says that would render the legislation an absolute nonsense. It appears that there will be an amendment to the Act which will clarify that whole area of the token man. The issue also remains of bias in job evaluation schemes, and I think this is one of the most critical issues that we keep coming back to in relation to equal pay for equal work value. It is the hardest one to deal with because we are not really sure that we can trust a commission or a judge or anyone to actually implement this. It is the same in the UK. There's an acknowledgement that there is still bias inherent in job evaluation studies, and the Tribunal has power to say that a job evaluation scheme is discriminatory. But the subtleties of discrimination have not been explored thoroughly enough to be confident about codifying what constitutes a bias-free scheme. This is an area which needs further work.

Before we consider the implications for Australia of the equal pay legislation in the UK, I want to make a few comments about the difference between the systems which might inform our discussions later. In the UK employment law is very much based on individual contractual rights. There is also a concept of minimum legal rights. I think that the problem that we have come up against in Australia of relativities and comparative wage justice is not as developed in the UK as it is here. The issue of relativity does not seem to be as strong. In the UK, if there are collective agreements they are enterprise based, which is consistent with a notion of individual rights within the same employment.

In closing and looking towards this afternoon's discussions of future strategies, I think that the biggest lesson we can learn from the United Kingdom experience is not so much whether pay equity legislation is the way to go or not, but that what we have failed to do yet is to actually get widespread acceptance of the notion of equal pay for work of equal value as an absolute right, and as an obligation that Australia carries under the ILO Convention. Once this is established, we can then look to the sort of process that we want. I don't think we want to be too bogged down about process at this stage when in fact the principle of equal pay for work of equal value hasn't been properly articulated here in Australia at all.

Perhaps we should do further research on what equal pay for work of equal value has been understood as meaning in countries with which the ACTU and the government would be quite happy to draw comparisons. I feel cautious about looking for solutions to the issue of equal pay, almost by stealth, through award restructuring and other possibilities that might present themselves. Certainly we have to look at those and what implications they have for equal pay, but I feel happier with a type of campaign that would lead to a general understanding that the system here does not fulfil the standards that have been set more widely in the world for equal pay for work of equal value.

Looking at current trends, we have to be wary of the shift to enterprise-based negotiations and implementation processes because of the problems that come up in the UK with restricting the scope of comparisons to the same employer. That really is an inhibiting factor in extending the principles of equal pay for work of equal value across industries. Also, the issue I raised before about whether legislation is an inherent problem because one is limited to individual rights needs further thought. We want to be sure that we have the potential for class actions for equal pay for work of equal value in any process that we establish. Bias-free job evaluation schemes is another area we have to look at in more detail.

Generally I felt really quite encouraged when I look back on the UK experience and what is happening in Europe, and feel that we really need to stop being defensive about our claims for equal pay. Stop trying to think of different things to call it that might be palatable at any particular time and fit in with what is going down at the ACTU. But to get back to the basic principles and look to the international obligations that Australia has committed itself to and get it widely accepted that Australia is not fulfilling its obligations under those conventions.

**COMPARABLE WORTH
IN AUSTRALIA**

**CLARE BURTON
NSW DIRECTOR OF EQUAL OPPORTUNITY
IN PUBLIC EMPLOYMENT**

NOTE: The views expressed herein are those of the author and not necessarily those of the NSW Government.

I've been asked to talk about comparable worth - what happened to it? Does it have any future? The starting point for my discussion will be the submission from the National Pay Equity Coalition (N.P.E.C.) to the National Wage Case in August 1988.

Basically I'll be addressing the question, "Why did the (N.P.E.C.) not support the comparable worth argument in that submission?" In order to answer that question we need to look to the comments made in the Nurses' test case for the Arbitration Commission's understanding of what comparable worth is.

It seems to me there are three component to this:

One is that comparable worth leads to a situation of open slather. The Commission said, "At its widest comparable worth is capable of being applied to any classification regarded as being improperly valued, with argumentation on the kind of classification to which it is applied with no requirement that the work performed is related or similar. It is capable of being applied to work which is essentially or usually performed by males as well as to work which is usually or essentially performed by females". That is one view of the Commission.

Secondly, the Commission objected to what was being measured under comparable worth, that is worth to the employer, a notion it specifically rejected in the 1972 Equal Pay principle.

Thirdly, the Commission believed that comparable worth would involve the imposition of an inflexible system of measurement of work value, through a formal job evaluation system, where factors and weightings are set, fixed, in contrast to their own practice of case by case determination of the relevant criteria for relative work value.

We need also to ask how this understanding of the Commission compares with the actual circumstances of the application of comparable worth in other countries. The Commission's second and third objections, that is, that what was being measured is worth to the employer, and that this would be done by a formal job evaluation system, is on the whole what is meant by comparable worth elsewhere. We have to remember here that when the Commission was referring to practices elsewhere, as comparable worth practice, it did refer to those situations that we are more likely to call equal pay for work of equal value practices.

But comparable worth is not always open slather. Where equal pay for work of equal value legislation exists, and where this legislation requires such a form of measurement through a formal job evaluation system, it is often applied as a measure to address the relatively lower rates of pay of female dominated occupations, and in some instances where factors of ethnicity or race have been factors in lower rates of pay. The pay equity initiatives in other places have been explicitly designed to address the issue of lower rates of pay of female workers rather than being situations where adjustments can be made to male dominated occupations to achieve a pay equity measure.

Moreover, the Commission in its open slather comment implied that what should be measured is work that is similar or related, and that comparable worth elsewhere allowed for wider comparisons. I will go back to this point because the implication that the Commission in its own practice only compared related or similar occupations for work value purposes has been true for female dominated occupations but not always for male dominated occupations and classifications. So while those three points indicate the Commission's understanding of comparable worth - open slather, inflexibility, and restrictions in criteria chosen to determine relative work value - we didn't want to use the concept. N.P.E.C. did not want to endorse a concept that seemed to introduce an entirely new set of principles as the basis for the Commission's practice. What N.P.E.C. wanted was the flexibility of the current set of principles, but stripped of the gender bias which exists in the Commission's interpretation of them.

Gender Bias and Work Value

The next question is what evidence did N.P.E.C. present of the Commission's own gender bias? First it was pointed out that the Commission's choice of comparators was narrower for female classifications than it was for male classifications. For example, the phrasing of paragraph 5B in the 1972 Equal Pay principles is designed as far as possible to restrict the range of jobs which can be drawn on for comparative purposes to those which are closely related or similar. Preference was to be given to other female classifications, and preference to the same award rather than to male classifications in other awards. That is, male classifications which might be dissimilar in the nature of the work but similar in the level of skill, effort, and responsibility. But in actual practice the Commission makes comparisons when dealing with a male classification, with male classifications in other awards in other industries, straight off. Not often, but nevertheless. The Journalists' Case of 1967 provides an example where the journalists were compared with public servants and teachers. The Commission stated, "It cannot be disputed that journalism differs from other occupations or avocations, nevertheless we do not think we should attempt to consider salaries for journalists in an industrial or social vacuum. We think it proper in this case to look both at present salaries and at past movements in salaries of employees with comparable educational qualifications who are called upon to display similar qualities in their work, even though the work itself is dissimilar."

In a Commission hearing regarding pay for bank officers in 1975 the submission from the Australian Bank Officials' Association drew comparisons between the 21 year old bank officer and a base grade clerk in the Australian Public Service. It also compared officers at higher levels with those at Class 8 administrative and clerical officer level in the Australian Public Service, while acknowledging the difficulties in making comparisons given the special nature of banking work. Its decision and agreement included reference to the work performed in the Australian Public Service. The emphasis in the application of the equal pay principles has been on related or similar jobs, even though the definition of work value stated from time to time within the Commission includes such things as length of training, level of responsibility and so on which would allow for the comparison of dissimilar jobs.

This is the second way in which the N.P.E.C. submission pointed out to the Commission the gender bias in its own practices: it pointed to the different standards used by the Commission to determine the work value of female classifications in comparison to the standards used by the Commission to determine the work value of male classifications. To illustrate this point, the submission referred as part of the case made for the previous non-application of the 1972 Equal Pay principle, to the ACTU and the Royal Australian Nursing Federation position that nurses should now be accorded professional status. The Commission regarded this as going well beyond the application of the 1972 decision, both because they were not convinced by the ACTU and the RANF of the need to move to professional rates, whatever that term may mean, and because it questioned whether such a move could be justified during the transitional period of the change to fulltime College of Advanced Education nurse education, "And particularly", said the Commission, "while we have no means of comparing the worth of the diploma with the qualifications obtained by other professional employees in the health care industry."

Yet in the Professional Engineers Case, when referring to the fixing of salary rates for a Grade 1 engineer, the Commission said, "We think that the work is truly professional, that whether the position is entered by way of a degree course of diploma course, intensive study is required, that this study must be such as will enable an employee to acquire the knowledge of higher mathematics necessary for dealing with complex engineering problems, that notwithstanding the existence of supervision the Grade 1 engineer carried the responsibilities of professional duties, and that in practice he performs useful and essential work as a member of a team." So in 1961 a diploma wasn't a barrier to professional rates for engineers, but in 1987 it was for nurses.

Thirdly, as emerged in the discussion of the Commissioners during the National Wage Case of 1988, they operate with a very narrow definition of skill when it pleases them, and this discussion missed the point of the N.P.E.C. submission, to which N.P.E.C. responded. Maddern said in the discussion and questioning which took place after the submission was put, that he was sceptical that there was a problem of wage discrimination in this country, as far as women were concerned. He cited the situation where non-tradespersons, such as secretaries or stenosecretaries received more pay than tradespersons such as fitters, and he thought that this indicated that women might be favoured, where a non-tradesperson receives a higher rate of pay than a person with a trade. N.P.E.C. responded, in a further written submission, "We cannot of course assume anything about the relative value of the work of a fitter and a secretary, simply on the basis that one is a skilled trade and the other is not. A work value assessment would take a range of factors into account. One might be the length of time taken in training on and off the job, although this is only one factor to be taken into account, and there are others such as level of responsibility, and the question of responsibility for what, machines, safety of others, complexity of tasks to be performed, number of tasks to be performed, conditions under which they are performed, confidentiality of information, the co-ordination of the activities of another person, speed and accuracy and so on. Despite all of these other factors, by looking just at length of training we might arrive at ambiguous results. That would partly be because of the range of institutional settings within which people train as secretaries, and the range of on the job circumstances through which a person gains proficiency to be a tradesperson or

a secretary, and the different levels of secretarial work to which we might be referring. In other words we cannot assume that if a secretary receives more pay than a tradesperson that she is favoured, until we have carried out the relative work value study of the classifications involved in the situation. The concept of skill refers not just to the skilled trades. Fast and accurate keyboard work needs to be learned and is undeniably a skill, as is stenography, and these are by no means the only skills exercised by a competent secretary in a range of different work circumstances. The title stenosecretary might direct people's attention to the more obvious tasks performed in the position, such as keyboarding and taking dictation, both of which require skills developed through training and experience, yet in many classifications of secretarial work the positions require the performance of many other kinds of duties such as clerical, personnel and public relations work. Again, the research evidence is consistent in its emphasis on, for example, the ways in which clerk typists are regarded as engaged in largely mechanical operations, yet when you have the work evaluated, mental and interpersonal considerations emerge, such as the ability to handle a number of tasks at the one time, ability to proofread on one's own, ability to keep information confidential, and so on. It was acknowledged in the 1972 Equal Pay principle, that the job title may be misleading, and that one needs to look at the actual work performed, at the demands of the jobs and the requirements of the person to perform effectively in the job. We submit that it should not surprise us one way or the other, what a fitter and a secretary are paid; we have yet to compare their jobs in work value terms."

A Future for Comparable Worth?

Now the next question we have to address is, is the situation changing so that comparable worth is becoming a more relevant concept? For example, there are at least three processes that are occurring as part of award restructuring that point in that direction. One, there is an increase in the use of formal job evaluation systems in the public and the private sectors, for classification and pay purposes. We know these measure relative worth to the employer, and measure such worth against a pre-determined set of factors where the weightings accorded to them are also set. In other words the very thing the Commission was wary of has been introduced within enterprises, was the subject of endorsement of the Commission, and has been incorporated into the award restructuring process.

Second, with restructuring, new classifications are being set up, and in the process of starting again with relative work value of the new classifications, one could conduct a skills audit free of gender bias, so that the new classifications are aligned with one another in a fair and equitable way, whether this is done through a formal job evaluation system or through other means.

Third, with a greater emphasis on enterprise bargaining, you would think we were moving towards a situation where comparable worth would be a useful concept, given that in the United States, the combination of collective bargaining at enterprise level and the use of job evaluation schemes to demonstrate pay inequities is the common set of circumstances used to define what equal pay is all about.

But we have to take a couple of factors into account before we jump to that conclusions. First, one of the features of the early equal pay claims in the United States was that job evaluations were asked for by unions as a means of demonstrating the worth of the classifications on which the claims they were making were based. That is, the job evaluation scheme was brought in to provide evidence of a pay inequity. Now that is a different industrial climate than that which is encouraging the use of job evaluation systems as part of award restructuring in Australia today, and affects the outcome of the job evaluation process. Economic, political and industrial factors, as we all know from Commission decisions, are relevant to the determination of work value, even when a formal job evaluation system has been applied. Second, but related, we would not expect the application of a job evaluation system to significantly alter internal wage hierarchies, or more particularly the relative value of female dominated classifications, if the pressure were not there to do so, if the pay equity issue were not an explicit concern of the process. I have dealt with the reasons for this in the monograph: GENDER BIAS IN JOB EVALUATION.

Besides, the connotations that the term comparable worth has in this country would not lend it to easy acceptance. There is no particular reason to use it when the concept of pay equity establishes the same principles; that is, regardless of the system used, the skills, responsibilities, qualities and so on required in predominantly female classifications have to be adequately acknowledged in work value terms and in the restructuring process; and that the methods used must be cleared of, and seen to be cleared of, the gender bias that has been identified in them.

Strategies

Finally, what are some practical measures that can be taken to deal with the issue of relative work value, determined free of gender bias?

First, greater awareness of gender bias in job evaluation systems. Union activity around it, as well as pressures from agencies such as the Affirmative Action Agency and my own agency to get employers to develop strategies to eliminate gender bias in job evaluation, and to get job evaluation consulting firms to establish their guidelines indicating that they have taken on that issue are important. Secondly, we propose an independent assessment process of Commission decisions on relative work value cases from a pay equity point of view. Thirdly, paragraph 5B of the Equal Pay Principles should be amended, so that the emphasis is where it should be, on comparisons of female dominated with male dominated classifications. This move is insufficient on its own, because while there is a gender bias in the decision making of the Commission itself, in assessing relative work value, simply extending the range of classifications to be used for comparison won't bring about pay equity. Fourth, equal pay cases should be re-opened where it is believed that the Principles were not properly applied, and under a revised paragraph 5B. Finally, equity assessments of any new structures for classifications that are devised as part of the award restructuring process by an independent and expert body.

**EQUAL PAY - PAST EXPERIENCE,
FUTURE DIRECTIONS
A PRACTITIONERS PERSPECTIVE**

**Felicity Rafferty
Senior Federal Industrial Officer
Professional Officers' Association
of Australia**

ABSTRACT

It has been POA's experience that the Industrial Relations Commission has not been the major stumbling block to the implementation of the principle of 'equal pay for work of equal value'. Since POA entered the field in 1985 the Association has found that avenues have been made available for the pursuit of such claims, whether by covert or more direct means, provided the parties to the claim are able to show the Commission the way through the constraints which bind it. In order to protect those avenues, the pay equity lobby must exercise caution when pursuing matters of general principle before the Commission to ensure that existing constraints are not extended. In POA's sphere of operations, the Commonwealth Government has been the greatest obstacle in the path of implementation of equal pay in the predominantly female professions in its own area of employment, in spite of its stated commitment to the Commission's 1972 Equal Pay Decision. However, where it becomes clear that such claims will succeed on their merits, the Commonwealth has shown itself willing to become a reluctant partner to the resolution of equal pay claims by agreement between the parties in the anomalies process in preference to a public airing of the issued by a Full Bench of the Commission. In recent years the pay equity lobby has tended to underestimate the influence of the Commonwealth Government with regard to the application of equal pay. To increase the responsiveness of the system to demands for pay equity for women, greater pressure needs to be brought to bear on the Government of the day at the national level by a well-organised women's lobby capable of ensuring that the Government's policy commitment in this area is genuine, active and on-going.

"the Commission shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms."

S.110(2)(c) Industrial Relations Act 1988

The Professional Officers Association (POA) has an Australia-wide membership of approximately 7,000 Commonwealth public servants, roughly one-quarter of whom are employed in the predominantly female professions of:

Librarian
Social Worker
Occupational Therapist
Speech Pathologist
Audiologist
Dental Therapist

In 1985, POA's Federal Council adopted a resolution recognising that those professions were the lowest paid of all professional designations in Commonwealth employment and that unlike traditional male or non-gender segregated occupations, the majority of positions in the predominantly female professions were at the bottom two levels of the professional career structures. Further it was only in the predominantly female occupations that the top or fifth level of the available career structure was no longer being utilised.

Federal Council then determined that the Association would allocate resources on a priority basis to ensure that the female dominated professions were accorded equality with other professional designations in Commonwealth employment both in terms of salary and career opportunities.

Adoption of this resolution by Federal Council authorised POA to adopt a two-pronged approach to the rectification of the inequalities suffered by women employed in the predominantly female professions; firstly through the formal arbitration process as a means of achieving pay equity, and secondly, through the Commonwealth's internal classification system as a means of upgrading existing classifications, making better use of available career structures and creating additional levels of work where existing career structures were inadequate or non-existent.

The focus of this paper is on POA's experiences in undertaking the first part of that process, namely the achievement of pay equity through the formal arbitral process.

Since the adoption of the Federal Council resolution in 1985, the POA has dedicated resources on a priority basis to the lodgement of claims, and the preparation and processing of cases aimed at achieving 'equal pay for work of equal value' for women employed in the predominantly female professions. All cases have been, or are being, processed through the Australian Conciliation and Arbitration Commission, now known as the Australian Industrial Relations Commission.

The first case to be successfully take up by the Association was the APS Therapists' Anomalies Case in 1985 which resulted in the inclusion of Occupational Therapists, Physiotherapists and Speech Pathologists (the therapist professions) in an employment category known as the APS Science Group. This category contains 52 different science qualified professions which share a common salary and classification structure, including a common criteria for the evaluation and classification of work within the various occupations.

Prior to the case, the three therapist professions were the only science qualified professions to be excluded from the Science Group, despite the fact that their professional qualifications were recognised as meeting the criteria for inclusion.

The impact of the case was significant. For the first time in the history of the therapist professions full recognition in terms of salary and status as health scientists was achieved. The decision has benefitted therapist professionals employed in all State public services, although not always as favourably as in Commonwealth employment and not necessarily through reliance on the Commonwealth case in arbitral proceedings, although it has been influential.

In retrospect, this case was the easiest to progress in terms of arbitral proceedings, requiring only one hearing day before a Full Bench of the Australian Conciliation and Arbitration Commission. It was also significant because it was the last, if not the only case to succeed using what is now known as 'comparable worth' criteria.

The APS Social Workers' Anomalies and Inequities Case 1988 was the second major 'equal pay' achievement by the POA. In that case the POA succeeded in securing pay parity for social workers employed under the Social Workers, Professional Officers Association Australian Public Service Award 1985 and the POA General Conditions of Employment, ACT Health Authority Award 1986 with counsellors employed under the Counsellors, Professional Officers Association Australian Public Service Award 1985.

The counsellor classification in Commonwealth employment is a unified Social Worker/Psychologist structure utilised in the Family Court of Australia, the Vietnam Veterans' Counselling Services, and the Commonwealth Rehabilitation Service. Rates payable to counsellors are common to those payable to psychologists at the first three levels of the career structure. Historically, the gender composition of the previously more highly paid psychologist profession has been predominantly male, although this appears to be changing.

The Social Workers' Case was more difficult to progress owing to extensive opposition from the employer, the Commonwealth Government. In excess of 1,000 pages of transcript were generated in arbitral proceedings spanning a period of six months. The matter was finally resolved by agreement between the parties which was ratified by the Commission at Anomalies Conference level, thereby negating the need for arbitration by the Full Bench which had been convened to deal with the case on the same day.

The claim which POA currently has before the Australian Industrial Relations Commission is for 'equal pay for work of equal value' for dental therapists. The matter involves thirty positions, less than half of which are occupied. This is POA's smallest, weakest and therefore most powerless predominantly female professions - undoubtedly the most exploited.

Creation of the dental therapist category on an Australia-wide basis was the brain-child of the Federal Labor government in 1973, as a means of providing a free dental service to children at half the cost of an equivalent service staffed by dentists. The Commonwealth-employed category is exclusively female by dint of public policy, and has been 'vocationally constrained' by legislation to employment in the public sector, thereby preventing the development of a private sector market to drive up wage rates. As stocks of qualified dental therapists have built up, dentist positions have been withdrawn, leaving the dental therapists as the primary dental practitioners in Commonwealth primary schools. Yet, prior to the POA's claim for application of the Commission's 1972 'equal pay for work of equal value' principle, the work of the lowly paid dental therapists had never been evaluated against that of the more highly paid dentists despite the similarity of work between the two categories.

The Dental Therapists' Anomalies Case is, without question, the most complex case to be dealt with by the POA to date, with the total absence of support and co-operation from the Commonwealth Government being the major impediment to progress.

In pursuing pay equity cases for women employed in the predominantly female professions, it has been the POA's experience that the Australian Industrial Relations Commission has moved away from its earlier preparedness to rectify such claims by covert means to a more overt response to demands for resolution of pay inequalities.

The 1985 claim for the therapist professions was fought largely in the political arena with POA capitalising on the fact that discrimination and equal employment opportunity were very much high profile issues at the time. POA's objective was to secure an agreement with the Commonwealth to resolve the dispute in such a way as to require minimal involvement of the Commission. Extensive use was made of the media to emphasise the discriminatory practices of the Commonwealth as an employer of women and political pressure was maintained in the Parliament with the assistance of the Opposition parties.

In July 1985, in response to the pressure being generated by the POA's activities, the Commonwealth employer entered into an agreement with the Association on the joint conduct of a comparative evaluation of the work of the therapist professions against that of other science qualified professions included in the APS Science Group. The work of science professionals from a diversity of professions ranging from meteorologist to dietician and pharmacist was measured against that of physiotherapists, occupational therapists and speech pathologists. The only common factors linking those professionals were the mandatory qualification of a degree in Science and the application of scientific principles in the everyday practice of the professions.

The work was measured against ostensibly objective work value criteria such as work environment, level of autonomy, responsibility, accountability, complexity of work, etc. No attempt was made to establish similarity of work because of the diverse mix of professions which make up the Science Group. The results obtained from the evaluation supported the POA's claim.

The Therapists' Case was heard by a Full Bench of the Commission on 19 December 1985 and a decision in favour of the POA's claim handed down on 23 December. By agreement between the parties, the matter had been presented in such a way as to satisfy the Commission's wage-fixing principles, without reference to 'equal pay for work of equal value'. It had been clearly understood between the parties that any submissions made to the Full Bench by the POA concerning equal pay would be countered by an employer's submission that the matter be set aside pending the outcome of the Nurses' Comparable Worth Test Case which was being run concurrently by the ACTU. Had this occurred, the POA's claim would have had no prospect of succeeding owing to the Commission's rejection of the concept of comparable worth which it considered "would strike at the very heart of long-accepted methods of pay fixation" in Australia.

The Social Workers' Case which commenced 12 months after the Nurses' Test Case, placed greater reliance on the non-implementation of the 1972 Equal Pay Decision. The POA submitted the claim to the Anomalies Conference in August 1987 on the grounds that Commonwealth-employed social workers had never had application of the 1972 'equal pay for work of equal value' principle, and that an inequity existed between rates payable to social workers and counsellors. However, the Conference was unwilling to deal with the equal pay aspect, preferring instead to investigate the work on the basis of POA's inequities claim. This approach was reflected in the President's decision to refer the matter to a single Commissioner to investigate and report, with particular emphasis on an investigation of the relationship between social workers, psychologists and counsellors. In this case it was the Commissioner's report of 10 December 1987 to the President which decided the merits of the claim in POA's favour by reporting a finding of 'like-with-like' between social workers and counsellors. However, employer co-operation was lacking and technicalities were raised before the Anomalies Conference on 10 December 1987 in an attempt to frustrate the claim's capacity to satisfy the Anomalies and Inequities Principles. In the final analysis, it was the President's decision to convene a Full Bench to deal with the matter without further delay which forced the Commonwealth Department of Industrial Relations back to the negotiating table.

At the time of writing, POA's third equal pay case, the Dental Therapists' Anomalies Case, had not been finalised. The Association's claim for Dental Therapists was taken to the Anomalies Conference in August 1988 under the March 1987 National Wage Guidelines which provided an avenue for resolution by agreement at Anomalies Conference level in the event that an anomaly or inequity is found to exist. POA submitted, among other things, that the work of dental therapists had not been evaluated in accordance with objective work value criteria at the time of creation of the category in 1968-70, and that there was gender bias inherent in the pay rates as a result of the employer's initial fixation which had not been rectified by proper application of the Commission's 1972 'equal pay for work of equal value' principle.

Contrary to the Association's experience in the Social Workers' Case, where the Commission chose not to investigate the POA's claim in respect of the Commission's 1972 Equal Pay Decision, the Commissioner appointed to investigate the dental therapists claim has made POA's claim of non-implementation of the 1972 Equal Pay Decision the primary focus of his investigation and this can be dealt with as the major threshold issue in the case.

In summary, from 1985 to 1989 POA has experienced an evolution in the Commission's thinking away from sweeping the entire equal pay issue under the carpet, while at the same time showing a willingness to rectify an obvious gender bias in the rates, to a willingness to address the issue of equal pay in a more overt fashion.

On a more cautionary note, however, it is not yet clear whether the evidence of the Commission's willingness to overtly address the issue of equal pay in cases coming before it signals a more positive or negative change of direction in the handling of pay equity issues. In forcing the system to be more openly responsive, there is a distinct danger that we may be making it more difficult to achieve pay equity outcomes of direct financial benefit to women. For example, the POA's therapists claim succeeded without reference to equal pay. In the Social Workers' Case, the question of equal pay was raised but was set aside by the Commission. Nonetheless, the Commission conducted an evaluation of the work and the claim succeeded. In the Dental Therapists' Case the question of equal pay has been identified as the threshold issue. Yet if the Commission finds against the POA on the threshold issue, the profession may be denied the right of evaluation as provided by the 1972 'equal pay for work of equal value' principle as a means of removing the obvious gender bias inherent in the existing rates of pay. It may well be that the Commission's willingness to conduct a more overt examination of claims for application of the 1972 equal pay principle, in fact, foreshadows the application of more stringent tests than those previously applied, before such claims are able to proceed to the evaluation stage.

In preparing any matter for processing through the Australian Industrial Relations Commission, it is essential to bear in mind that the Commission is a prisoner of its legislation and of its own wage fixing principles. However, in POA's experience the Commission has shown itself willing to resolve problems of pay equity provided the parties show it the way through the constraints imposed upon it by those external and internal factors. The Commission is required by legislation to have regard to the public interest including the state of the economy, for example. Thus the Commission must have regard to the flow-on implications of its decisions which have the potential to impact adversely on the economy. Arguably, this would act against the public interest, although it is difficult to conceive how the retention of rates of pay where they have been found to discriminate against women employed in particular female-dominated occupations could be justified on public interest grounds, particularly in the light of S.93 which requires the Commission to take account of the Sex Discrimination Act. Nonetheless, the containment of flow-on is the largest single factor of concern to the Commission, especially in pay equity cases. Indeed, this was emphasised by

the Full Bench in the Nurses' Test Case as being the primary reason for its decision that equal pay cases should be progressed through the Anomalies process.

Sometimes, as a committed pay equity advocate before the Industrial Relations Commission, it is tempting to argue the social desirability of flow-on of equal pay decisions. However, the reality is that such a submission could only work against the interests of the claim, i.e. principle must be subjugated to reality by virtue of necessity.

Despite its concern to contain flow-on, the Commission has shown itself to be sympathetic to the difficulties faced by parties to proceedings in dealing with that issue - especially where the potential for flow resides in jurisdictions over which the Commission has no control. In the Therapists' Case, for example, the Bench concluded that the possibility that the decision may be the subject of reference elsewhere was not sufficient to outweigh the need to resolve the anomaly. In the POA's Dental Therapists' Case the Commission has indicated a willingness to hear argument to the effect that the economic impact of any potential flow-on to the States would be so slight in terms of nett addition to overall health salaries expenditure that it would not be sufficient to justify rejection of the claim on flow-on grounds alone. Whether the submission succeeds, of course, remains to be seen.

In view of the constraints which already bind the Commission, it should be a matter of the utmost concern to the pay equity lobby to ensure that no additional constraints are introduced which may have the potential to place the attainment of equal pay even further beyond reach. Care should be taken to safeguard unions which are in the front line in presenting equal pay cases to the Commission from adverse decisions deriving from submissions made by applicants or intervenors in test cases or before National Wage Benches on the basis of general principle but without prior regard to the implications of adverse outcomes.

By way of specific example, the ACTU's achievement in obtaining from the Commission as affirmation that the 1972 'equal pay for work of equal value' principle is still available for implementation should not be under-rated. However, in introducing a new concept which, as Laura Bennett in her article 'Equal Pay and Comparable Worth and the Australian Conciliation and Arbitration Commission' has argued is more rigid according to the definition submitted to the Bench by the intervening Council of Action for Equal Pay than the constraints under which the Commission actually operates, a gross disservice was done to the unions operating in this field because it led to the closing of a door which had previously been open, as POA learned to its detriment in proceedings in the Dental Therapists' Case.

It was submitted to the Commission by the POA that gender bias in dental therapist pay rates could be removed by inclusion of the category in the APS Technical Officer structure. This was a similar approach to that adopted in respect of the therapist professions in the Therapists' Case, which is now regarded (by the employers, at least) as a successful 'comparable worth' case. The Technical Officer structure resembles that of the Science Group in that it is a common salary structure applying to a diverse range of

occupations bound together by a common conceptual framework. This approach was opposed in the Commission by the Commonwealth Department of Industrial Relations on the grounds that it was a comparable worth argument. Thus, POA's submission was rejected by the Commission as being fraught with hazards and the Association was forced to re-define the claim before the matter was able to proceed. In 1985 the claim would have been capable of achievement - now it is not and there is one less avenue available for utilisation in the pursuit of equal pay for women. The pay equity lobby cannot afford any further narrowing of available options in an area which is already tightly controlled. Due regard must be had before the event to the implications for unions operating in the field which have to work within the constraints imposed by the outcomes of other arbitrations.

The Commonwealth as an Employer

The greatest difficulty for the POA in the pursuit of pay equity for its predominantly female professions has been in attempting to equate the Commonwealth Labor Government's policy of support for the principle of 'equal pay for work of equal value' with its practice as an employer of women. Despite its stated policy to the contrary, the Government has shown itself to be clearly lacking in enthusiasm for, or commitment to, the implementation of equal pay in respect of its own employees. The inherent contradiction between policy and practice derives from a number of sources, not the least of which are fear of attracting criticism for pace-setting at a time when the economic arm of the Government is preaching wage restraint, and fear of generating claims for flow-on.

In the Therapists' Case in 1985, the Government tried to insulate itself from any such criticism deriving from agreement reached with the POA by attempting to transfer responsibility for resolution of the claim to a Full Bench of the Commission. However, the strategy rebounded against the Government with the handing down of a reasoned decision which gave rise to general principles capable of application elsewhere, thereby attracting widespread criticism from employer organisations including State Governments. In short, the decision in the Therapists' Case is now regarded as a source of embarrassment by the Commission and the Government alike.

Following its experience in the Therapists' Case, the Government has shown a reluctance to have equal pay matters proceed to full arbitration. Thus, where it is clear that an equal pay claim in respect of its own employees cannot be defeated on its merits or on the basis of a technicality, as in the case of the social workers, and where an avenue exists for resolution of agreement at anomalies conference level (an option which is no longer available under the wage-fixing principles), the Government has shown a clear preference for this option, albeit somewhat grudgingly.

In POA's experience, the Government uses the requirements of the National Wage Case Principles as justification for its lack of co-operation in the processing of claims for equal pay in respect of its own employees. Thus, in response to POA's criticism that the Government, through the Department of Industrial Relations, was attempting to frustrate progress in the Dental

Therapists' Case, the Minister referred to the necessity for such claims to be tested in accordance with the National Wage Case Principles. In point of fact, this necessity has never been disputed by the Association. What is in dispute, however, is the extent to which the Government deems it necessary to raise obstacles which have the potential to impede the Commission's capacity to arrive at a finding that the claim is capable of satisfying the requirements of the Principles. Chief among these is the issue of flow-on, with the Commonwealth's position being that it will not enter into an agreement on resolution of an anomaly or inequity involving equal pay until it has satisfied itself that the resolution will not generate claims for flow-on. In adopting such a position, the Commonwealth leaves itself open to accusations of improper conduct in attempting to pre-empt the role of the Commission which has a specific charter as watchdog on this issue.

Of greater concern to the Association, however, is the Commonwealth's pre-occupation with what is essentially a matter for speculation, capable of being neither proved nor disproved without the benefit of hindsight. In view of the constraints which bind the President in anomalies conference proceedings, whereby an anomaly or inequity can only be resolved in that forum where all parties to the proceedings are in complete agreement, concerns voiced by the Commonwealth in relation to the issue of flow-on merely disempower the President from resolving the problem other than by way of referral to a Full Bench. It is the Association's view that, having satisfied the Commission as to the merits of a claim, the Government should be demonstrating its commitment to its policy of support for the principle of 'equal pay for work of equal value', as espoused by the Commonwealth in Nurses' Comparable Worth Test Case that the 1972 Equal Pay Principle is still available for implementation in awards which have never been adjusted in the light of that decision, by working with the Association in attempting to find ways and means by which the claim will be capable of meeting the remaining criteria included in the Anomalies and Inequities Principle in order to assist the Conference to arrive at an agreed position that the anomaly or inequity is capable of resolution in the Anomalies proceedings by agreement between the parties.

It is apparent that governments have enormous power to influence the progress of equal pay and, through that, the gender composition of the various occupational groups. A clear example of the, perhaps unintentional, exercise of this power lies with the physiotherapy profession in Commonwealth employment which, in 1969, was an 80% male occupation. However, following the handing down of the 1969 Equal Pay Decision, the Commonwealth Public Service Board determined that physiotherapists would be excluded from application of the decision on the grounds that the profession was outside the terms of the Commission's decision. In July 1970 separate male and female rates were replaced by a single "rate for the job" based on the assumption of a predominantly female workforce. This combination of events led to an exodus of male physiotherapists from the employment of the Commonwealth until, by the end of 1970, the gender composition was completely reversed, with women accounting for nearly 80% of the profession.

The percentage of women employed in the profession had increased to 95% by the time of the Therapists' Case in 1985. It is only in recent years that the number of males seeking entry to the profession has started to increase and this trend should continue with the increase in status which has accompanied recognition of the profession as a fully-fledged health science.

History has shown that even those governments with a clear women's policy commitment are ambivalent towards application of equal pay in their own area of employment where the cost implications have the potential to impact adversely on the implementation of other policy commitments. Thus in December 1972 the Whitlam Labor Government swept into office with the office with the full support of the organised women's movement in Australia. One of the first steps taken by the newly-elected Government to implement its policies in relation to women was to make a late intervention in the December 1972 National Wage Case to "positively support" adoption by the Commission of the concept of 'equal pay for work of equal value', and to request that implementation occur "as quickly as possible". Yet, within months the Government had traded-off the application of this element of its women's policy commitment to the dental therapist profession in an attempt to duplicate the New Zealand experience where it had been found that the annual cost of its dental service staffed by female school dental therapists was approximately half that of an equivalent scheme staffed by (male) dentists. In determining the staffing policies of the new school dental service, the Government decided to restrict entry to the dental therapist professions to women because of 'the relatively low salary.... and limited promotional prospects (which were) unlikely to be particularly attractive to a man wishing to pursue a career' and for other blatantly sexist reasons. The Government then initiated agreement with the States to introduce legislation which would prevent dental therapists from being employed anywhere other than in school dental services, and to standardise salaries across Australia to prevent competition between the States whilst stocks of the profession were building up.

The Government's actions were defended in the recent dental therapist arbitral proceedings with the Commonwealth presenting argument to the effect that POA's claims of civil conscription and collusion between governments to manipulate a pay market, among other things, were unjustified in the light of the then Government's idealistic and 'worthy' objective of introducing a free dental service to primary school children on an Australia-wide basis. It has taken sixteen years for the climate to be right for the Association to seek redress through the arbitral process of some of the early injustices done to this profession by a Government ostensibly committed to equal pay and equality of opportunity for women, namely the obvious pay inequity which has been compounded over the years owing to the exclusive female composition of the profession and the absence of a competitive labour market for pay fixation purposes.

If the pay equity lobby is to succeed in ensuring that equal pay remains a central issue in the pursuit of equality for women in the paid workforce, it is critical that the Commonwealth Government's power to influence progress in this area be recognised. In recent times the pay equity lobby has directed its attentions towards the Industrial Relations Commission in its endeavours

to force the system to be more responsive to its specific area of interest. Such an approach seriously over-estimates the capacity of the Commission to act as a catalyst for wage reform in isolation from the interests, both economic and political, of other parties to the industrial relations system. Of greater importance, it fails to acknowledge the power of the Government to exert a direct influence on the deliberations of the Industrial Relations Commission both as an intervenor in proceedings in 'the national interest' and as the largest single employer of labour in Australia.

Having acknowledged the influence of the Commonwealth Government in this area, the pay equity lobby should be directing its energies towards the establishment of a more effective national women's lobby capable of wielding sufficient power and electoral influence at the political level to ensure that those governments which come to office with a platform which includes social justice policies for women, continue to maintain a genuine commitment to the implementation of those policies throughout the life of that Government. The most effective means of ensuring such an on-going commitment is by demonstrating both a willingness and a capacity to organise the women's vote as a response to non-performance by the Government. In the absence of an effective threat, successive governments will continue to direct resources towards other, less costly areas of their women's employment policy, while continuing to pay lip service only to policies in support of equal pay for women.

Conclusion

It has been POA's experience that the Industrial Relations Commission has not been the major stumbling block to the implementation of the principle of 'equal pay for work of equal value'. Since POA entered the field in 1985 the Association has found that avenues have been made available for the pursuit of such claims, whether by covert or more direct means, provided the parties to the claim are able to show the Commission the way through the constraints which bind it. In order to protect those avenues the pay equity lobby must exercise caution when pursuing matters of general principle before the Commission to ensure that existing constraints are not extended. In POA's sphere of operations, the Commonwealth Government has been the greatest obstacle in the path of implementation of equal pay in respect of the predominantly female professions in its own area of employment, in spite of its stated commitment to the Commission's 1972 Equal Pay Decision. However, where it becomes clear that such claims will succeed on their merits, the Commonwealth has shown itself willing to become a reluctant partner to the resolution of equal pay claims by agreement between the parties in the anomalies process in preference to a public airing of the issues by a Full Bench of the Commission. In recent times, the pay equity lobby has tended to under-estimate the influence of the Commonwealth Government with regard to the application of equal pay. To increase the responsiveness of the system to demands for pay equity for women, greater pressure needs to be brought to bear on the Government of the day at the national level by a well-organised women's lobby capable of ensuring that the Government's policy commitment in this area is genuine, active and on-going.

**DISCRIMINATION LEGISLATION
AND PAY EQUITY**

Jane Innes

**Former Senior Conciliator,
Human Rights and Equal Opportunity
Commission**

ACKNOWLEDGEMENT

A substantial part of the material I have relied on in my talk has resulted from work undertaken with the support of the Lionel Murphy Foundation, whose encouragement and assistance I would like to acknowledge.

J.I.

In my paper I will give a brief outline of the legislative framework operating in the field of discrimination law relevant to pay equity. I will focus on particular legislative provisions of the Sex Discrimination Act 1984 as it is primarily this Act which has, or may have, the greatest impact on Australia's major wage fixing body, the Australian Industrial Relations Commission.

Under the general provisions of the Sex Discrimination Act 1984, discrimination in the terms and conditions of employment is prohibited in all Australian States and Territories. It is unlawful for non-government and federal government employers to discriminate on the ground of sex in either the terms upon which employment is offered, or in the conditions afforded in the course of employment.

It seems clear that the payment of wages could be interpreted as a term or condition of employment within the meaning of Section 14 of the Sex Discrimination Act. It is arguable that this Section may extend in certain circumstances to prohibit sex discrimination in the determination of wage rates. This indeed was the view reached by the ILO Committee of Experts on the Application of Conventions and Recommendations in the 1986 General Survey of the Reports on the Equal Remuneration Convention ILO Convention 100. It is also an interpretation referred to in the 1988 report prepared for the Department of Employment Education and Training surveying the measures adopted in relation to pay equity in Australia and other OECD countries.

Although the legislative scheme of the Sex Discrimination Act appears to enable the review of wages as a term or condition of employment, the right of an individual or representative complainant to bring an equal pay complaint is largely restricted by a statutory exemption provided under Section 40 of the Act. This Section prohibits the review of wage rates subject to existing orders or awards of industrial tribunals. Similar exemptions also exist under State law in New South Wales and Victoria. In Australia, where over 90% of wage rates are determined under either State or Federal industrial award, the right to seek legal remedies in relation to discrimination in the wage setting process is accordingly limited.

Not surprisingly there are only four reported cases determined under Australian discrimination legislation involving the consideration of wage discrimination issues. Two of these related to a claim brought by a male school cleaner seeking equal wage rates to women school cleaners employed in government schools, and paid pursuant to a Public Service Board Agreement. Following an order by the N.S.W. Equal Opportunity Tribunal that it had jurisdiction to hear the complaint, the case was taken on appeal to the N.S.W. Supreme Court where it was dismissed. During the course of the hearing an amendment was made to the Anti-Discrimination Act 1977 to ensure that the review of payments made in excess of award agreements would be excluded from the N.S.W. Act's provisions.

The only other reported decisions broadly relevant to the issue of wage discrimination involved a complaint relating to an alleged denial of promotional opportunities in employment in which the Hay System of job

evaluation had been conducted. The case was dismissed by the South Australian Sex Discrimination Board, and was again dismissed on appeal by the Industrial Court of South Australia.

None of these reported cases resulted in determinations in favour of the complainant.

It should be pointed out that the general statutory protection provided to employers acting in accordance with industrial awards is not provided under State legislation in the two States of Western Australia and South Australia.

In those States claims of wage discrimination may be resolved under State discrimination laws whether or not an industrial award attaches to the employment contract. Two recent examples of developments in these separate States are worth mentioning.

In the "Take Five" Bulletin of December 1988, published by the South Australian Office of the Commissioner for Equal Opportunity an example is given of a sex discrimination claim which was brought by a female accounting officer who alleged she had been classified within a lower job grade than a male comparator. Her complaint was negotiated through the conciliation procedures under the South Australian Equal Opportunity Commission Act 1984. She was promoted and given back pay for the period since the male comparator had commenced employment.

More recently in Western Australia monetary compensation was paid to a complainant alleging sex discrimination in the payment of wages during her employment in a horticultural nursery. In that complaint the employer had not complied with amendments to the Western Australian Horticultural Nursery Industry Award.

These kinds of examples illustrating the use of discrimination legislation in the determination of wage discrimination claims are however isolated, and dependent on their own particular circumstances.

In most Australian States and Territories the exemption provided to employers acting in accordance with award provisions strictly limits the extent to which the principles and procedures under discrimination legislation can be used in the determination of wage discrimination claims. Although legislation would appear to enable complaints of alleged wage discrimination to be made where no award provisions existed, this situation rarely arises due to the fact that the vast majority of wage rates in Australia are determined by way of industrial award.

One area that has been identified as a possible way in which discrimination legislation may operate to review allegations of wage discrimination is in relation to overaward payments. As these payments are made outside award agreements they are not covered by the exemption protecting employers under Section 40 of the federal legislation. Although identified by the ACTU in its 1985 Equal Pay Manual as a possible area in which the Sex Discrimination Act 1984 might operate to limit discrimination in the payment

of wages, to date no complaints of alleged discrimination in relation to overaward payments have been brought under the Act. One reason may be that clearer evidence may be required regarding the extent to which the differences in overaward rates paid to male and female workers may be attributed to discrimination in the workplace.

Given the broad statutory restrictions that are placed on the review of wage practices within the terms of the Sex Discrimination Act, what role, if any, does the Act have to play in achieving pay equity?

In trying to determine the ways discrimination laws may effect or influence the achievement of greater pay equity, a number of complex questions arise as to how discrimination legislation can, or should operate within the context of the Australian industrial wage fixing system. Quite clearly it is primarily through the process of industrial conciliation and arbitration that women's wages are determined. The extent to which this process may be influenced by the terms of the federal Sex Discrimination Act 1984, or the principles of equal remuneration scheduled to the Act is however, by no means clear.

In coming to any understanding of this issue, it is useful to turn to the general scheme of the legislation, especially in so far as it prohibits unlawful discrimination in the terms and conditions of employment.

Although there is a broad exemption provided to employers acting in accordance with industrial award provisions, it would be difficult to interpret this exemption as authorising new opportunities for discrimination under cover of industrial awards. The provisions of the Sex Discrimination Act 1984 state that discrimination in the terms and conditions of employment is prohibited. In circumstances where no award provisions applied a complaint of sex discrimination in the payment of wages could be brought under the Act.

The legislative intention of the Act also suggests that no new federal orders or awards will be made inconsistently with the terms of the Sex Discrimination Act 1984.² Section 109 provides that the Act is a prescribed Act for the purposes of Section 41A of the Conciliation and Arbitration Act 1904. Section 26 of the Act provides that it is unlawful for a person who performs any functions or exercise any power under a Commonwealth law to discriminate on the ground of sex in the performance of that function. More importantly, Section 93 of the Industrial Relations Commission Act 1989 (which replaced the C & A Act 1904) requires that the principles of the Sex Discrimination Act 1984 be taken into account in the course of the Commission's determinations.

2

The Sex Discrimination Act is now a prescribed Act for the purposes of Section 121 of the Industrial Relations Act.

In addition Article 11 1.(d) of the United Nations Convention Against All Forms of Discrimination Against Women attached to the Sex Discrimination Act, specifically refers to the principle of equal remuneration including benefits and equal treatment in relation to work of equal value.

This Article is relevant to the interpretation of the provisions of the Sex Discrimination Act 1984, and provides a possible focus for the implementation of the principle of equal pay for work of equal value.

Getting back for a moment to earlier discussions today following from Kate McNeill's talk on international developments in the area of equal pay, it might be a good time to mention one recent international development which relates to Article 21, and Article 11 of the Convention referred to above.

The Committee on the Elimination of All Forms of Discrimination Against Women (the CEDAW Committee) is a United Nations Committee set up to monitor the implementation of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. The workings of the CEDAW Committee have a bearing on the interpretation of Australia's domestic discrimination legislation, and on the implementation of Australia's international treaty obligations under the Convention. Ratification of the Convention obliges the Australian Government to report to the CEDAW Committee on the progress made in relation to the Convention's objects and principles. Reports from State Parties to the Convention are made within one year after ratification, and ever four years thereafter. Australia's first Report, submitted in October 1986, was favourably considered by the CEDAW Committee during 1988.

At its Eighth Session in February 1989 the Committee recommended that State Parties to the Convention:

- consider the study, development and adoption of job evaluation systems based on gender neutral criteria that would facilitate comparison of the value of those jobs of a different nature in which women presently predominate, with those jobs in which men predominate, and that they should include the results achieved in their reports to the CEDAW;
- support the creation of implementation machineries and encourage the efforts of the parties to collective agreements, where they apply to ensure the application of the principle of equal pay for work of equal value.

This particular recommendation in relation to pay equity for women workers arose in relation to the provisions of Article 21 of the Convention which requires the CEDAW Committee to report annually to the General Assembly of the United Nations on its activities. Recommendations based on information received from State Parties are included in the Committee's report which is transmitted to the Commission on the Status of Women.

It may also be of interest to you that Australia's representative on the CEDAW Committee, the Honourable Justice Elizabeth Evatt AO, has recently been elected as the Committee's Chairperson.

Returning now to the application of the Sex Discrimination Act 1984 within the domestic context, the equal pay provisions contained within the Sex Discrimination Act 1984, and the CEDAW Convention scheduled to the Act, are arguably of some relevance to Australia's wage fixing processes.

The Industrial Relations Commission Act 1989 expressly provides that in the performance of its functions the Industrial Relations Commission:

"shall take account of the principles embodied in the Sex Discrimination Act 1984 relating to discrimination in employment".

But what mechanisms for review exist to provide for the identification and review of discrimination in the making of awards or other wage fixing determinations?

The short answer to this question appears to be very few, if any. Although legal remedies may be available to review determinations of the Industrial Relations Commission which failed to take into account the provisions of the Sex Discrimination Act 1984, the availability of any such legal remedy is for a number of reasons highly uncertain.

First, the terms of Section 151 of the Industrial Relations Commission Act 1989 (Section 60 of the Conciliation and Arbitration Act 1904) provide that awards made by the Commission are final and conclusive, cannot be challenged and are not subject to prohibition, mandamus or injunction. Although the High Court has been generally reluctant to place full reliance on such private clauses, there is also a judicial reluctance to interfere with a specialist industrial tribunal which is acting within its powers.

Second, there is the legal issue of standing, i.e. who can bring proceedings for the enforcement of a remedy in relation to proceedings before the Industrial Relations Commission. Claims before the Commission can only be brought by interested parties to the proceedings. This will invariably involve a party to an industrial dispute. A "stranger" to any proceeding would not have the requisite standing to apply for any legal remedy unless a "real or substantial" interest in the outcome of the decision could be established. Any application for such a review would generally require strong trade union involvement and support.

Third, there are very real problems of proof in establishing a failure to take into account the principles contained within the Sex Discrimination Act 1984 in the making of industrial orders or awards. Very clear and detailed evidence would be required. Even if discrimination in the determination of wage rates could be established within the definitions contained under the Sex Discrimination Act 1984, the fact that the Act's principles had been taken into account could in itself be sufficient to discharge any statutory obligations under the Industrial Relations Commission Act 1989. It should be noted that differences in the payment of wage rates for women resulting from

discrimination in the wage setting process are not in any event likely to represent a large percentage of the wage gap between male and female workers. Any residual discrimination existing in the payment of award rates of pay could be difficult to trace and identify from the complex mix of factors which comprise the difference in male and female earnings.

Discrimination legislation as it presently stands is on balance unlikely to facilitate the review of alleged discrimination within Australia's wage fixing processes through the application of legal remedies.

Felicity Rafferty has spoken today about the difficulties involved in developing effective strategies for the implementation of equal pay principles within the industrial relations framework. Clearly a range of arguments must be carefully developed to ensure as far as possible a successful outcome to any proceedings commenced.

The Childcare Industry Award case that is presently being run by the Federated Miscellaneous Workers' Union provides a good illustration of the kind of detailed research and presentation required in the negotiation of award agreements for predominantly female workers. It is a claim that has already been several weeks in hearing. Extensive expert evidence has been called, and comprehensive submissions prepared.

The claim was lodged under the anomalies and inequities provision of the 1987 National Wage Fixing Principles. The application to bring the matter before the Commission was based on various grounds. These included:

- the fact that award rates had never been properly determined, and had never received any movement other than National Wage case increases
- significant additions to the work skill and responsibility of child care workers
- the revision of training standards for child care workers
- dissimilar rates of pay to other State awards
- the fact that no second tier wage increase had been provided
- high staff turnover in children's services
- considerable efficiencies achieved by the Restructuring and Efficiency Principle.

Although reference was made to the issue of work value in the course of the FMWU's case before the Commission, the issue of comparative work value in relation to the classifications involving predominantly male workers was not substantively argued. This was no doubt due to the restrictions imposed in relation to such gender comparisons by the 1986 Nurses Case decision.

The restrictions placed by the 1972 Equal Pay Principles, and the current National Wage fixing Principles with regard to the processing of anomalies and inequities claims, have in themselves effectively limited the presentation of argument relating to the comparison of male and female award classifications in the determination of work value. This means that there is no way at present to make effective comparison of work value between the sexes.

How do the provisions of the federal Sex Discrimination Act 1984 operate in this context?

The impact of Australia's sex discrimination legislation is probably limited in the area of industrial relations to that of a policy influence. It is essentially at a policy level that the Act has had its greatest effect in the area of industrial conciliation and arbitration.

A recent example is provided in the negotiations presently underway over the Australian Defence Industries (ADI) Interim Award 1989.

The proposed ADI award provided that the general public sector standard of three months paid maternity leave would no longer be extended to new ADI employees once the organisation became a government business enterprise. Although current employees were entitled to retain three months paid maternity leave benefits, prospective employees were only to have access to the standard 52 weeks unpaid maternity leave. The terms of the proposed award in so far as they related to maternity leave entitlements were strongly opposed by the Clothing and Allied Trade Union of Australia (CATU) which argued that the Maternity Leave (Commonwealth Employees') Act 1973 should be amended to cover government business enterprises of the kind established through the incorporation of Australian Defence Industries Pty Ltd. Submissions were made by CATU to the Sex Discrimination Commissioner, Quentin Bryce, and representations were in turn made by the Commissioner to the federal Attorney-General on the issues raised. In response to these representations the Attorney has advised that he has communicated to all relevant Ministers alerting them to the provisions of the CEDAW Convention scheduled to the Sex Discrimination Act 1984 requiring consideration in determining the scope of paid maternity leave benefits. As a result of these and other submissions, the hearing in relation to the proposed ADI award has now been adjourned.

Another recent example of the way in which sex discrimination legislation may operate within the industrial relations framework is provided with the Parental Leave Test Case now being conducted by the ACTU. The Sex Discrimination Commissioner is presently investigating the possibility of intervening in these proceedings. This would allow for the presentation of legal submissions before the Industrial Relations Commission relating to the principles embodied in the Sex Discrimination Act 1984 relevant to the claim for unpaid maternity leave-type benefits to male employees.

Along with some of today's other speakers it seems, I have been reading with great interest the article of Laura Bennett - "Equal Pay and Comparable Worth and the Australian Conciliation and Arbitration Commission" in the December 1988 issue of the Journal of Industrial Relations.

In it Laura describes the need to examine the role that legal doctrine plays in the wage fixing process, and the need for a closer examination of how wage fixing practices actually reproduce gender inequalities. Understanding the role of legal doctrine in the review of gender inequality must in part involve an understanding of the operation of discrimination laws within the context of the Australia wage-fixing system. This in turn may yet require a greater understanding of the difficulties in identifying wage discrimination, and its relationship with occupational segregation by sex, and the gender wage gap.

INTERVENING IN WAGE CASES:

WHAT'S THE POINT

Philippa Hall

National Pay Equity Coalition

Requirements of an Equal Pay Submission

We need to consider what demands an equal pay submission has to contain, and how that relates to the current operation of the industrial tribunals. Based on pay equity arguments to date, a submission would have to contain most of the following elements:

- . a centralised system, so that rulings apply universally, to both weak and strong areas
- . a cost-of-living parameter, at least to maintain living standards for low paid workers
- . arbitrated and enforced rulings, to ensure that proposals from the parties meet pay equity criteria
- . award by award consideration, to ensure that all areas are reviewed
- . catch-up provisions, to address past inequities
- . work value assessments, based on explicit criteria and procedures
- . a wage-fixing principle specifically directed to pay equity.

The Current Industrial Environment

The wages system developed by the ACTU, the federal government and the (now) Australian Industrial Relations Commission (IRC) has been running directly counter to most of these demands. The system now has the following characteristics:

- . it is increasingly decentralised, within centrally set parameters
- . cost-of-living elements are not explicitly acknowledged
- . wage-fixing is based on agreements between the parties, rather than on determinations by the IRC
- . the IRC's focus is at industry level within a broad framework of national economic considerations, rather than at award level
- . increasingly, wage determination is based on productivity considerations.

A system like this could perhaps deliver a general equal pay principle - but we already have one, and it hasn't really delivered the goods, as will be argued later. It wouldn't do more.

There have been major shifts in assessing work value. For much of Australia's history, work value has been assessed in terms of the history of power in the labour market as recorded by the arbitration system. The assessments have been in terms of the demands of work on the worker, and by comparison with other groups of workers as established by long-standing relativities within the conceptual framework of comparative wage justice and flow-ons, especially from the Metal Trades Award. Work value claims provided the basis for wage fixing above the floor established by the needs-based cost-of-living elements which have been addressed at different times through the basic wage, the minimum wage, the family wage, and total or partial wage indexation.

The current industrial environment conspicuously lacks most of these elements. Work value increasingly is considered in terms of productivity to employers, assessed in terms of international competitiveness, and in comparison with workers overseas, and with machines. Flow-ons are specifically excluded in many cases. There is an uneasy relationship between the ACTU's claims for skills-based wage rates, on the basis of the assumed contribution of higher skill levels to productivity, and the productivity criteria envisaged by the government and employers. Not surprisingly, this relationship confuses many employers, and many unions, who have not found the principles defined by the IRC in the two-tier system, or the structural efficiency principle very helpful in guiding wage negotiations.

The general point here is that, in this environment, claims for across-the-board, mandatory, and systematic implementation of equal pay are not just swimming against the tide, they are whispers in a hurricane. This particular industrial revolution is not a women's revolution.

The ALP-ACTU Accord has brought about tight control of wages policy, making it even less likely that submissions in the IRC could succeed - although it is unclear whether it would have been much different without the Accord. The government has insisted on greater control of national wages outcomes as a central arm of economic policy in its efforts to improve Australia's international trading position. The ACTU has accommodated the government's demands in order to control unemployment. The ACTU makes the decisions about distribution of wages among groups of workers within the overall wage levels set by government. The ACTU's approach to the difficulties faced by low paid workers in the current system has been that supplementary payments would equalise wages upwards for the worst-off, and that top-ups through, for example, the family allowance supplement would take care of the rest. It should be recognised that while supplementary payments can improve wages for the lowest paid within an award by absorbing some part of over award payments, they cannot address relationships between awards across industries.

It could be suggested that the ACTU's acquiescence in an increasingly decentralised wages system is based on its recognition of the reduced relevance of its own role, and reduced capacity to control wages. A declining proportion of workers are unionised, and awards are the effective means of setting wages and conditions for a declining number of workers. The main point is that the game is even more tightly sewn up against outsiders than it usually is.

Experience in Interventions

These points can be illustrated from past experience in putting equal pay submissions in the Commission, concentrating on the 1980's. There is, of course, a much longer history of women pursuing equal pay cases. The first Council of Action for Equal Pay worked on the issue from 1937 to 1948. The ACTU adopted an equal pay platform in 1941, but didn't pursue it. In 1958, the ACTU endorsed ILO Convention 100 on equal remuneration for men and women workers, but it was not until 1969 that the ACTU brought an Equal Pay Case, and it continued to defend the family wage as late as the 1973 Congress. In the Basic Wage and Standard Hours Inquiry in 1952-3, women's groups argued for a reassessment of the basic wage differential between the sexes, but the court judged the material presented as of an "opinionated nature" requiring no particular reply, and maintained the 25% differential. In the 1969 Equal Pay Case, the Australian Federal of Business and Professional Women's Clubs, the Union of Australian Women, the Australian National Council of Women, and the Australian Federal of Women Voters intervened, and were vigorously opposed, especially by employers who thought the invading suffragettes would be better off at home looking after families.

1983

The National Council of Women, the Union of Australian Women, and the Women's Electoral Lobby intervened in the 1983 National Wage Case in support of returning to a centralised system. The submission requested that the centralised system make provision for a new evaluation of work value in traditionally female dominated areas, since the implementation of the 1972 equal pay decision had not been accompanied by proper work value exercises.

The submission was rejected on the basis that:

- . such large work value inquiries would provide an opportunity for additional tiers of wage increases, which would be inconsistent with the centralised system and would be inappropriate in the current state of unemployment, especially among women
- . many of the problems raised were matters for government, unions, and management rather than award provision.

1985

The Council of Action for Equal Pay (CAEP), an umbrella group representing women's organisations, intervened in the 1985 Private Hospitals and Doctors Nurses Award Case (the Nurses' Case). The CAEP argued that female dominated occupations had been under-valued due to the historic dependence of wage fixing on the discriminatory needs concept embodied in the family wage. The CAEP argued that there should be a case-by-case re-evaluation of the comparable worth of women's jobs, using points-based job evaluation schemes to compare skill, responsibility, training, arduousness, speed, etc.

The claim was rejected by the bench, on the basis that comparable worth "would strike at the heart of long accepted methods of wage fixation", pointing out that countries where comparable worth is applied "had very different industrial relations backgrounds to our own". It did confirm that cases could still be taken under the 1972 equal pay principles.

Laura Bennett explains the decision in terms of the CAEP's failure to recognise how wage fixing within the Commission reproduces exogenously generated gender inequalities (e.g. access to training), and failure to recognise how the Commission's practices and doctrines are shaped by its environment, perceptions, and objectives. Central to this explanation is the recognition that the looseness and vagueness of work value principles is functional for the Commission, in permitting it to consider a wide range of economic, political and industrial factors. Work value cases are commonly settled outside the Commission, which then approves consent agreements. This process, however obfuscated by complex rhetoric, ritual and procedure, assists the Commission in adjudicating the tensions in its roles in relation to industrial harmony, economic policy, equity and industrial justice. The Commission's need for room to move has left unclear what is actually being measured in a work value inquiry, and how that is translated into money wages. The doctrine of comparable worth was developed for law courts operating differently from industrial tribunals, and the commission historically has not set absolute principles.

Bennett sees the crucial factor in the failure of the submission as not recognising that the Commission cannot, and does not, carry out systematic case-by-case reviews of awards. For a start, the usual processes for gaining access to the Commission inhibit women taking cases. Leaving the settlement of work value to the parties to come to consent agreements meant that it was likely that the coincidence of interest between employers and male dominated unions would limit consideration of work value and increases for women workers. Thus the Commission could articulate support for non-discriminatory wage fixing, while at the same time providing discriminatory processes as the remedy. The processes provided have been discriminatory in principle, in terms of their reliance on established work value criteria, which have under-valued women's work. In practice, focus on similarity of job content rather than on work value also has perpetuated that under-recognition.

1988

The National Pay Equity Coalition (NPEC), an umbrella group of women's organisations, put forward a submission on pay equity in the 1988 National Wage case, arguing that there was a need for systematic re-evaluation of women's jobs in order for the 1972 equal pay principle to be applied effectively. The NPEC requested the Commission, among other things, to require award restructuring to include an assessment of the equal opportunity impact of restructuring. The assessment was to include skills auditing consistent with the Sex Discrimination Act, and recognising the knowledge, skills and experience required by the job.

The Commission was not convinced that male/female wage disparities in award rates exist; or that if they do, they arise from discrimination. The Commission suggested that if there are wage disparities, and if they arise from the history of wage fixing, the direction of disparities may be as likely to favour females as males and that more probably the differences arise from differences in male/female occupational distribution. The Commission indicated that action on those matters was for other parties, not the Commission. One Commission member gave the example that a secretary might be paid more than a skilled tradesman under some of the Commission's awards.

The NPEC replied that:

- . occupational distribution is a factor in wage differentials, and that it may be addressed by equal employment opportunity measures, but that:
- . wages are on average and in general lower for women than for men, and that
- . the Commission's processes for assessing work value are essentially gender biased, in assumption and in application.

Although the Commission included removal of discriminatory provisions in awards as part of the structural efficiency principal, the substantive issue of the processes by which work value is ascertained and attached to money wages has not yet been addressed.

The whole issue of the Commission's approach to work value has been raised many times. The Commission has been reluctant to utilise systematic job evaluation schemes for fear of upsetting traditional relativities. Short points out that on the only occasion the commission has had to resort to systematic assessment, the Metal Trades Work Value Inquiry 1966-7, attaching money values to the job assessment was still seen as essentially a matter of judgement.

Assessment of Effectiveness

Assessing the effectiveness of the submission depends on what it is hoped will be accomplished - whether the submissions are to have an effect on the government, the unions, the employers, the Commission, or the broader community (however defined). Probably a range of audiences should be considered.

Taking the Commission first:- what was achieved? The Commission still doesn't accept that there is discrimination in award rates. It has rejected arguments based on aggregate wages figures, and required figures only based on award rates, by award, by numbers of males and females covered - those figures do not exist. There are no reliable figures on male/ female coverage by awards, or on the award classifications they are employed in, and there are thousands of awards and agreements. Minimum hourly award wage rates by sex have not been published by ABS for some years now, and in any case some technical considerations about the constitution of samples mean that should equal pay be achieved the figures could not show that.

Convincing the Commission would appear to require:

- . a breakdown of the Australian workforce by award by classification by sex by rates.
- . calculation of male/female differentials in award rates after taking account of all other possible explanations. This is no small back of the envelope job - factors associated with pay differentials have been identified as: age, education, training, job complexity, managerial responsibilities, physical demands, working conditions, work history, seniority, hours, number of children, absenteeism, illness/health, trade union membership, marital status, and region, among others. I have seen pages of equations for assessing the contribution of each, and pages more trying to combine them. The upshot is that discrimination does matter, although estimates of the size of its contribution vary. The best estimates seem to be that award discrimination accounts for around 4% in the 35% male/female earnings gap.
- . establishing that the remaining difference is due to historic award discrimination by tracing award histories back to 1969, when it was agreed that wages were discriminatory, taking account of changes in the nature of the work. Of course, awards do not now provide separate male/female rates, which means that either a female dominated classification has to be traced, without regard to male and female rates, or that sex specific award rates from 1969 have to be compared with actual wages paid now, which involves the assumption that over award payments account for a constant proportion of wages actually paid. That assumption is highly questionable, since over award payments specifically respond to labour market shortages and to changes in the bargaining power of unions. In any case, since 1969, jobs have changed, award classifications have changed, and ABS occupational classifications have changed. Since the 1986 Census, when the ABS adopted the Australian Standard Occupational Classification (ASCO), historic statistical occupational data is very difficult to compare with current data. When the current round of award restructuring is complete, occupations themselves will have changed, and those changes are reflected in award classifications, award histories for particular classifications will be close to impossible.

Some idea of the scope of this task can be gained by looking at the Nurses' Cases. Whatever may be said about the ACTU's conduct of that case, and criticisms that it was run as a work value case rather than a comparable worth case, it is evident that an enormous amount of work went into the claim. Although the Commission has said that cases can still be taken under the 1972 principles, the reality is that the requirements it imposes for arbitrated work value claims are rigorous and time-consuming. The essential flaws in the 1972 principles remain - particularly the at least implicit suggestion that cross-award, cross-occupation, and cross-industry comparisons can only be undertaken if comparisons within classifications are not possible. It is precisely the lack of appropriate comparators which led to comparisons of one female dominated occupation with other similarly devalued female dominated classifications, and so to perpetuating the undervaluing of women's work incorporating the residue of the discriminatory wage rates set under the family wage concept.

It is important to recognise what the Equal Pay Cases did not do. They did not find that sex was an unjust basis for wage determination and act to remove it. Stackpool Moore and Moore have pointed out that the Equal Pay Cases were not argued in terms of "overwhelming industrial justice", as the Aboriginal Stockmen's Case had been in 1966. In that case, it was found that race was an unjust basis for wage differentials, irrespective of work value considerations.

The Equal Pay Cases did not find that the value of women's work was equal to the value of men's, and act to have that reflected in wage rates. They merely established principles under which claims could be pursued, that women's work was similar to men's, and to that extent therefore of similar value, as a basis for changing relativities. The 1972 decision states that the question of work value is decided in terms of the value of the work as work value had been recognised in arbitration, and not in terms of its value to the employer. The decision meant that work in female dominated occupations could only be re-evaluated to the extent that it was similar to work in occupations already recognised as having value (mainly male dominated jobs). Almost by definition, the jobs in the female dominated occupations are differently structured, and often require different skills from those required in the male dominated occupations which had provided the benchmarks for work value.

When these difficulties about defining work value are considered in conjunction with other requirements for restricting flow-ons and for claims to have "negligible cost", and considering the global limits set on wage increases during the 1980's, it is not surprising that unions have voted with their feet on taking equal pay cases, and looked for other ways to increase wages for women members.

"Negligible cost" is an unmeetable requirement if equal pay is to be implemented. Even if consideration is restricted to female dominated occupations, on the basis that they principally are the occupations that have not adequately been considered, a large part of the female workforce is involved. In NSW, 27% of the female workforce is in occupations which are 80% or more female, while nearly half the female workforce is in occupations which are more than 2/3 female. In addition, some groups with lower concentrations of female workers (e.g. shop assistants and filing clerks) may also be seen as groups who missed out on equal pay. Even if the discrimination component is assessed as around 3% (Chapman's estimate), a 3% increase for 27% or half of the female workforce is not "negligible cost". Of course, the cost would vary considerably across industries - in some occupations, equal pay was implemented - and could be expected to fall heavily on the female dominated occupations in service industries.

I think the task as defined by the Commission cannot be achieved - by women's organisations, or anyone else. Granting large wage increases across the board to categories of workers, and adopting a completely new approach to wage determination would be big-ticket items for the Commission at any time. In a period of economic constraint, it just won't happen. And certainly not at the behest of women's organisations in the face of opposition from all other parties. To put it simply, the Commission won't listen if you don't take account of its role and the current economic and political environment. If you do, you can't put the submission.

But perhaps the real object of intervening in wage cases is not to sway the Commission, but to encourage or embarrass the other parties, by exposing inadequacies in their arguments and evidence. Certainly, in the 1988 case, both the ACTU and the Commonwealth Government reacted - negatively - to the NPEC submission. It's difficult to know what that accomplished. It may be that the ACTU's increased attention to developing publications on the effect of wages systems on women (the two-tier system, and the structural efficiency principle) has been a response to persistent irritation at having those issues raised. Again, it's difficult to know what has been achieved - the publications are misleading in many respects, and actually may contribute to a perception by affiliates that there is no substance in arguments raised by pay equity advocates.

It may be that some of the interest being shown in the possibility of government investigation of equal pay is a response to having the issues raised in the Commission. There is some room for concern about what government would actually do with the results of the investigations, in an increasingly decentralised wages system in a period of economic constraint. There is a point at which what is needed is doing rather than investigating.

Another possibility is that the real aim is to keep the issue on the public agenda, with a view to stimulating activity within unions and political parties and women's organisations. This would appear to have been a key objective of the pre-1980's submissions, most of which were given little attention by the parties or the Commission. The various submissions have, not surprisingly, received little media attention. There has been limited circulation of the submissions to interested parties. A major problem is that most of the interested parties do not see equal pay as a key priority, partly because they are under attack on other fronts, and partly because it is seen as unwinnable under the current wages system and in current economic circumstances.

So, in summary, I think the score-card looks like this:

- . influencing the Commission - the Commission sees the orders it has been requested to make as outside its role, and is not yet convinced that its awards are discriminatory
- . influencing the ACTU - perhaps it's made them feel they should look as if they're listening; they think they already fixed it if there was anything wrong; and the real game's somewhere else
- . influencing the Commonwealth Government - see above; and anyway these things are matters for the parties and the Government shouldn't interfere in the market too much
- . showing the flag and not going away - hard to assess, since other things (as above) make it so difficult for action to proceed. If publicity is the goal, perhaps more work should be done on that and less on the submission. It is worth remembering that equal pay campaigners were so outraged with the 1969 case that they took their campaign outside the Commission, with the chaining up of the doors of the Commission, and the equal pay tram-rides. Women's organisations did not appear in the 1972 case. If mobilisation is the key to effective pursuit of equal pay, submissions to the commission are probably fairly low down the list of events to fire women's imagination and commitment.

Why Did We Think It Would Work?

The Commission did award equal pay for work of equal value in 1972, improving on the 1969 award of equal pay for equal work. At last, discriminatory wage fixing was to disappear, and equal pay for work of equal value was to be phased in by 1975. Significant improvements in female/male earnings did occur 1972-5, and in 1978, women earned 94% of the minimum hourly award rates of men. There has been little further improvement, although cases were still being brought in the late 1970's, and half the equal pay cases were taken after the Commission's 1975 deadline. Consent agreements incorporating women's jobs in the lowest award classification resulted in cosmetic changes to job titles without improvements in the rates in many cases. There were only two arbitrated equal work value investigations, and only 35 awards were changed to allow for equal pay for work of equal value, according to Short.

The reasons for the 1969 and 1972 decisions need to be remembered. They included:

- . four States already had equal pay legislation
- . the Commonwealth Government supported equal pay, and improving the position of women
- . the ACTU put an equal pay claim in 1972 National Wage Case
- . Australia's economic position was buoyant, after the long boom of the 1950's and 1960's
- . unemployment was low, and there were labour shortages, both in general and in specific skills
- . the position of women was receiving increased attention, with the resurgence of the women's movement
- . international thinking embodied in ILO Conventions and UN decrees supported equal pay.

These factors simply reflect that the Commission operates in a changing external environment, and has different priorities at different times. The 1960's saw emphasis on increasing workforce participation. The wage indexation period reflected a concern to maintain standards of living in a period of increasing inflation. In 1972, various parties converged in the view that equal pay was an appropriate means of distributing economic surplus, just as the 1986 3% productivity claim was distributed as superannuation.

In Australia, the wages system has been the key distribution system, and welfare and other income support systems poorly developed. As unemployment increased during the 1970's, other distribution systems developed, with an increasing emphasis on welfare. The tendency has often been remarked for men's needs to be met through improvements in the industrial wage while women's were left to the less secure and lower level social wage. With the development of the welfare system, and tighter economic constraints, the industrial system has become progressively less responsive to equity considerations.

Conclusion

The industrial brotherhood shroud their doings in complex rituals and procedures. They have to, to confer legitimacy on deals which are fundamentally about recognising and preserving concentrations of power in the labour market in ways that accommodate the internationalisation of Australian capital, but have very little to do with equity. Although the real game is outside the Commission, the Commission has a crucial role to play as the public face of fair treatment, just outcomes, and openness to argument and reason. To expect it to order government, employers, and unions to change the ways they value and pay for work because the outcomes of their current practices disadvantage a relatively powerless group in the workforce is the triumph of hope over reason, however legitimate the hope.

**AWARD RESTRUCTURING
INTRODUCTORY COMMENTS**

**Anita Devos
National Pay Equity Coalition**

There are two main issues for women's wages in the debate over award restructuring. The first is whether restructuring can deliver by increasing the minimum rates of pay in industries where women predominate, and if so what are the right strategies for achieving this; and the second is whether restructuring under the structural efficiency principle of the current wage principles will lead to any fundamental change in the relativities between male and female dominated occupations.

Award restructuring is a review of the documents which set out the wages and conditions of employment of groups of workers. Most Australian workers are covered by an award. The bulk of workers not covered by an award are women in low paid services jobs.

Award restructuring is a major priority of the Federal Government as part of its plan to restructure Australian industries to make them more competitive in international markets. The industry sector receiving greatest attention is manufacturing, including vehicle, and textile clothing and footwear manufacturing. Award restructuring is part of a broader macro-economic reform program occurring in these industries.

For governments and employers, the main aim of the process is to make industries and individual employers more efficient and productive by doing away with demarcation between occupations, and introducing greater "operational flexibility".

The ACTU was a key player in developing the award restructuring model, which forms the major plank of its overall wages strategy and as Helen Twohill said this morning, Bill Kelty is actively promoting the strategy.

Although not a key objective, the question arises as to whether award restructuring might be used as a vehicle for getting pay equity for women workers, through a re-evaluation of women's skills and work value in comparison to men's. This could be done in a review of relativities between different occupations.

Some of the key concepts associated with restructuring are:

- * broadbanding job classifications. This involves reducing the number of classifications within an award and creating new classifications or skill levels defined according to the skills required to perform at that level.
- * multiskilling, whereby workers perform a larger range of tasks than previously for which they acquire a range of skills. These tasks may be of a higher level (vertical multiskilling) or of a similar level (horizontal multiskilling, or cross-skilling).

The structural efficiency principle also requires unions and employers to develop career paths so that workers can move upwards through the skill levels and thereby increase their wages over time. Workers will be provided with training to enable this progression to occur. This is a major attraction for unions and their members in award restructuring.

Alongside restructuring of awards, unions and employers are expected to introduce changes and reforms to the workplace, for example, in terms of how work is organised and individual jobs are designed. For the first time ever, the principles also require the parties to remove discriminatory provisions from their awards.

Very little attention has yet been given to how these concepts apply to industries with a predominantly female workforce. Restructuring is most advanced in the metal manufacturing, vehicle manufacturing, timber, building, transport, plastics and warehousing industries. Certainly the metal industry has attracted the most attention to date and there is a widely held view that the lessons and strategies for that industry will provide the model for restructuring in all industries. Even within the manufacturing sector, very different issues confront mainly female to mainly male workforces, so is there really such a thing as a generic approach to restructuring?

Comparison of the retail and metals industries highlights some critical differences in industry structure and internal labour markets which suggest that the circumstances of the specific industry sector should inform the strategies and priorities for that industry. The retail industry has few trades workers, a workforce whose skills are not credentialed in any way, is dominated by small business, has a mainly part-time and casual workforce, a high proportion of women and young workers, state rather than federally based industrial relations, and does not compete in international markets.

Demarcation disputes between groups of workers of the kind the metals model is designed to overcome are extremely rare in retail and jobs are already broadbanded. That is, retail workers already perform a range of tasks and there are only a handful of different job classifications in existing awards. The issues for this industry are clearly different from the metal industry and from most others, and therefore require a different response.

For these reasons, the Coalition invited speakers from unions with substantial female memberships to speak on how they are approaching restructuring.

Liz Bishop from the Federal Miscellaneous Workers' Union will start this discussion with a talk about the services sector, in particular, the cleaning and security industries.

**RESTRUCTURING IN THE
SERVICES SECTOR**

Liz Bishop

**Research Officer, Federated
Miscellaneous Workers' Union
(NSW Branch)**

The services area of my union's membership is probably the largest area. Employment in the services area is gradually (and in some instances rapidly) increasing in numbers.

Employment in manufacturing is, on the other hand, shrinking. This is certainly the trend in our union's coverage, and we have an extremely varied constitution and coverage. Not just in N.S.W., right around Australia.

In some industries that increase in number becomes quite critical in terms of wages and conditions of employment as seen by employers. For example, the leisure and tourism industry is rapidly expanding. As an income earner on a national basis, tourism is now rated second. This has considerable implications for employment in that industry, as employers argue "We can't possibly compete to attract the tourist dollars if we have got to pay shift allowances and weekend penalties and so forth." So attacks by employers against shift allowances and weekend penalties are increasing. This is going to be an increasing feature of the service industry.

The service sector in fact consists of distinct elements.

The first is contractors: cleaning contractors, security contractors, and increasingly catering contractors. The whole service sector is moving away from a directly employed base to a contract situation. That has considerable implications for the nature of the employment and also for how one proceeds industrially to best service those particular areas.

When you look at directly engaged areas in the services sector, whether it is an enterprise that is manufacturing - based or an enterprise that is professional or clerical or whatever based, then usually those service areas - be they catering, clerical, cleaning or security - are generally regarded as peripheral to the main occupations or the main enterprise direction. The issue then is to try and link those peripheral service areas in to the main direction of the enterprise so that they become an integral part of the whole, so that people in services may gain access to the opportunities and career paths available in the "mainstream" rather than simply remaining in the service area.

In the contracting area, increasingly you are looking at an area of employment which to many people is simply a second job, or simply a way to bring in a certain additional level of income into the family home. It is not regarded by most as a career option. There are some exceptions to that which I will mention in a moment.

Also in the contracting area, the big problem becomes one of cost competitiveness where you have a multiplicity of employers all competing with each other in the same markets for contracts. The company which is either able to tender for the lowest cost - usually because they do not pay award wages or because they have incredibly high productivity levels accompanied by high burnout - wins the contract. The labour turnover in the cleaning contracting industry is extremely high, with the length of time that one person might be employed in that industry, anything from two or three months to a year. You do find individuals who have been employed by the same company for a number of years, but often when a contract is won/lost, employees get passed from the old contractor to the new contractor.

This means there is a lot of movement with people working for a variety of contractors in any given period of time. These problems are exacerbated because virtually anyone can become a cleaning contractor.

It is a bit harder these days to become a security contractor because of the advent of an act covering the industry. The Security and Protection Industry Act requires those going into the industry to be licensed and undertake training and police checks. Catering is much the same. In a number of those areas your expenditure on equipment is fairly minimal and the largest cost items are the labour costs involved in your particular enterprise.

The problems of competing with other contractors are immense, the reason no doubt why some employers have moved to have awards as simple as possible and in fact to try to find ways of ensuring that all contractors are competing on the same basis. When it comes to award restructuring, we certainly see the need to consider the direct employees and the contractors separately.

Award restructuring for the first time gives us a way of looking at and trying to inject a broader range of skills in the area, and actually identifying the services sector as a skilled area; that there are differential skills involved, that people aren't just doing simple tasks, that some tasks are more complex, require more physical effort, more responsibility and so forth.

The advent of the emphasis on training is another area where we see distinct possibilities. Previously, there has been no training in this sector with one exception, a TAFE course for supervisors. We have been approached by an organisation that is very keen to establish a variety of training modules in that particular area and adapting them for use by private employers and possibly by contractors.

Because of the problems in trying to enforce an award, and observance of award rates of pay amongst contracts, it is very difficult to try and devise an award structure that is going to, in itself, be forceful. The job would not of itself be difficult. We have already come up with a model based on the type of task involved, the level of responsibility and the skill involved. You could then structure upwards from what would be fairly basic work in the cleaning or security areas, to fairly complex areas, for example, in hospital cleaning or cleaning in computer areas which would require higher standards and degrees of skill and experience. The problem we face, however, is the volatile nature of the contracting industry.

Contracts are won and lost if the contractor doesn't perform. Quite often the person who is contracting or is having a service provided through a contractor, isn't too concerned about the standard of work provided because if the standards drop too far, they will get in another contractor who will provide the work to that standard. So standards tend to start off high and then drop off. You often get a turnover amongst the clients with their particular contractors. Because of the volatile nature of contracts changing hands, employees may move from that contractor to a new contractor. They may stay with the next contractor but with reduced hours for example.

Trying to then enforce a new structure in awards, for instance, with the same rate for both males and females would be extremely difficult. We have tried to look at some way to structure it so that it is linked to the type of establishment and therefore to the type of services required, but even then we see problems in gaining acceptance of that not only by contractors, but by the users of that contracting service, because it is going to affect them.

At the moment there is a lot of debate about the type of structure which could readily be established. We've even established training levels within that structure which could be enforced for our members, so that ultimately there is something that can be put into effect.

The cleaning contractors awards and most security contracting awards are paid rates award. The awards that cover directly engaged security employees and cleaners, are minimum rates awards with, in some cases very high levels of supplementary payments.

Over award payments in the security area do not differentiate between males and females. In the cleaning areas there are still some areas of differentiation between males and females mainly based on the fact that in NSW under the state award there have been certain restrictions on the sort of cleaning work that females are allowed to carry out. And that leads me into what we've done in the government area and what we may be able to do under the state awards structure, though we would still say that we could make the most gains with supplementary payments as a way of assisting those in the contracting area.

As some of you will be aware, in state awards covering cleaners there are differential provisions for men and women relating in some cases to hours and rates of pay, allowances and so forth. In the case of hours, adult females have worked a thirty-three and up to a thirty-six hour week since 1916 when males had a 48 hour week. There was a differential weekly rate of pay but with the advent of equal pay in the 1970's we were able to redress some of the differences. The actual hourly rate of pay for females comes out ahead of the males because it is calculated by dividing the weekly rate by 36.

For males, we took the weekly rate and divided it by 40. This of course translated into shift allowances, overtime, and so forth. That gave us a few problems, with some males complaining of discrimination.

Some of the other areas where females were being discriminated against in terms of the sorts of additional allowances that could be available to them we were not able to address because of the restrictions placed on the sort of cleaning areas they could operate in, and an extremely strong resistance from our female workforce. They didn't want any changes whatsoever. They didn't want to give up their 36 hours week; they didn't want to give up that they could only ever clean inside and not outside; they didn't want to give up that they couldn't do any cleaning that wasn't from floor level. Under the award, they couldn't climb a chair or a ladder. There was total resistance to any form of change. We have had to educate our members, and this has been a gradual process. At the same time we had to address the inequality that

extended to males by virtue of the fact that they were getting a lower hourly rate of pay which meant that overtime and shift allowances were worth less to them than they were to females. We did it in the cleaning contracting award in 1982. We couldn't move any lower than the thirty-eight hour week for males but we simply struck a part-time rate of pay that was based on the females' 36 hour weekly rate so that you now have an hourly rate for part-time contract cleaners of \$11.82. We didn't tell the Commission that it was based on the 36 hour rate, and there is no reference as to where in the award the hourly rate comes from.

We have now moved to something similar in our negotiations with the Public Employment Industrial Relations Authority and the Government Cleaning Service over school cleaners. The challenge there had been to keep contractors out of schools, which was certainly on the agenda of the Greiner Government. We were able to very quietly, I suppose, gain the cooperation of the Government Cleaning Service itself who did not want the work to go to other contractors, it wanted to be able to compete with contractors. During these negotiations, we had to face up to the fact that we were going to have to make some radical changes. In the previous structure in this area, we had a male on 38 hours for \$346 a week including a component of a special loading to compensate for lack of over award payments. We had female cleaners working 33 hours but actually on the job for 34 and a half. We got roster days off at the same time as we worked out the 38 hour week but earning \$310 per week. So there was a differential, but then of course the women had an hourly rate of pay based on 33 hours not 38. The women were not going to agree to increase their weekly work hours to 38 not even for the sake of moving up to the higher total of pay. We will always have a big problem in that area. In any case, practically speaking, there is a limit on when you can physically get into schools to do the cleaning. It was a split shift operation - before and after school. Females generally tend to clean inside and one male cleaner generally does large schools, cleaning outside. The females resisted undertaking any cleaning work outside, and refused to allow males to clean inside. Clearly it was a very considerable area of female employment, which suited women from lower socio-economic groups. Many women cleaners worked at schools close to where they lived or where their children were going because it suited them.

As a result of our negotiations we have now agreed that there will be an established position of a full-time cleaner working 38 hours a week. Primary schools still have a full-time cleaner, and that can be filled by either a male or female. The duties will have to be carried out by either. This has done away with all the discriminatory restrictions on females cleaning outside and males going inside. The fact is we don't really see much change in the pattern of employment. There was initially an attempt by the Government to make us look at a 15 hour part-time employment provision but this would have resulted in a weekly wage that would not have been a survival wage for our members.

Given that there was unproductive time that was being worked in schools we managed to negotiate a 30 hour part-time week so that virtually all our full-time 33 hour a week female workers could go to this 30 hour position, but we did some creative accounting with the part-time hourly rate. We did it on the basis that if we are going now to have full-time 38 hour positions, we have to

somehow relate the 33 hour with the 38, and include supporting conditions, such as that no-one had to do overtime. We came up with an increased part-time hourly rate and multiplied it out by the 30 hours, and gave them a wage that is fifteen dollars less than what the current award gives for 34 and a half hours. We still managed to retain all the allowances, in fact we have now got the allowances that were previously paid to men over women, and we have abolished all the discriminatory provisions.

I had hoped to duplicate that strategy in the state award that covers directly employed people but again because the high over award payments, I see that one of the things we will have to address is any differentials in over award payments, because now those restrictions on where the employers could employ females and what work they could employ them on will be gone, the argument that was put before as to why there was a differential over award has vanished. It ceased to be based on a gender but is more related to the task. But we will be able to use that now to eliminate some of the other, more difficult areas. We will also address the differential male/female hourly rate again. We had hoped to make use of supplementary payments principle, but unfortunately the State Wage Case decision in NSW is abysmal so we may not proceed down that track.

In essence, that decision said that supplementary payments are not available in awards where the minimum rate is in excess of \$310 dollars a week. In fact there are very few awards in the State where the minimum wage is less than \$310 per week.

In the security area increasing numbers of women are being employed. Probably a quarter of our members are women. As a long term career option, again because of the problems of the nature of contracting industry, we currently have a structure in the award that recognises the different application based on tasks that are carried out. Again it would be very easy to broaden that structure to take into account the very high level of technological change that is taking place with monitoring and computerisation, and so forth. The problem again is enforcement. The industry would like one rate, no matter what the tasks, the level of responsibility or the level of skills involved.

Training is now being introduced into the industry under the Security Industry and Protection Act. It is a requirement that people are trained before they can start work in the security industry. The next step will be to build on that training, to enable movement within the industry and to create career paths. Private employers are prepared to talk about these questions because they generally recognise the skills of their security staff and usually want to retain their separate function. We don't really see that area as one where people would have a career path to other parts of the company. Contractors are another matter. Supplementary payments in the contracting side may be the answer. Because the level of over award payment payable by private enterprise is very high (anything from \$30 or \$40) a strategy would be to build upon that general entry-level training some differential training and use that to increase over awards.

Whether or not anything can be achieved with supplementary payments in NSW remains to be seen. We found that in low paid services areas the two tier system was extremely beneficial for our women members and gave increases we wouldn't have been able to achieve otherwise. They received percentage increases in excess of the norm at that time, and moved ahead of the rest of our manufacturing areas. We see restructuring as providing an opportunity to gain recognition for the skills that are there and are currently unrecognised, and of gaining training and establishing training in areas where up to now it has just not been regarded by the industry as relevant. There are structural problems we have to address to achieve this but at the end of the day our members should be better off.

PLENARY SESSION
CANVASSING STRATEGIES

Meredith Burgmann,
Senior Lecturer in Politics, Macquarie University

The N.P.E.C. wanted to use this session to canvass suggestions that have been put forward during the seminar and also that have come to me over the past couple of years from other people. When discussing pay equity there are so many different suggestions that one day I wrote down 12 priorities that we could work towards. I realised then that we were never going to be able to say this is the one and then rush off and do it. What any struggle for pay equity is going to be about is using any number of the priorities in a mix and match situation. I thought today at least another five or six strategies came out of discussion. There are now 20 in all.

1) Publicity Campaign:

A series of papers or one publication (with all the papers in it) from this seminar - the distribution of that should probably be discussed. I'm a great believer that you do not win through any of the other strategies unless you continue your publicity campaign.

2) Harassment:

Which I think is closely related to publicity and propaganda but given that the ACTU Congress is in September and it's in Sydney, I think we should think seriously about having a Harassment Campaign during the Congress. It became very clear to me that the only time the ACTU took us very seriously was when we did have a demonstration in 1983 outside the Congress.

3) Submissions to Wage Cases:

We should look at whether we want to continue doing submissions to wage cases. I think the points made by Philippa and Clare were important. We put a lot of time and energy into the submission and if all we get out of it is the publicity then we should put more energy into the publicity and less into the submission. I think we also have to take into account the things that Felicity was saying in her paper, that we have got to be terribly careful that we don't put things into our submissions which the Commission (which I do not believe is a body of men of goodwill) can use against us. So I think we've really got to weigh up what we do with submissions in the future.

4) There have been several suggestions over the past few years that we should look at strengthening the Sex Discrimination Act particularly in terms of being able to use it for class actions. The things Jane talked about in her paper today I thought were very interesting.

5) We can push towards tightening up the Affirmative Action Legislation and continue to use that.

- 6) We can continue in the strategy of trying to encourage young girls and young women to take up non-traditional occupations except we must always be aware that when women take "mens" jobs then we are still leaving "women's" jobs with low pay and bad conditions etc. So we really need to be aware that it doesn't fix up the problem of "lowly paid women's work" it just fixes up the situation of individual women who have gone into "men's jobs" and got better pay.
- 7) We can concentrate on award restructuring - there were various suggestions today that could be very important in Award Restructuring. There has been the belief for some time that may be that's where you do an Equal Pay Case. That is where you run your argument about gender neutral job evaluation schemes for deciding where particular classifications in particular industries slot in with the male metalworker.
- 8) This has always been one of my great beliefs that we should continue to put time and energy into knocking off the old right wing leaderships in the Shop Assistants Union and the Clerks Unions - although the Clerks are doing very well for themselves at the moment thank you very much. But certainly we should still be looking at giving some encouragement to the reform groups in those Unions which cover such vast areas of women's employment.
- 9) We could still continue to look at the possibility of a test case on pay equity either by one union or by a group of unions although I did take on board Felicity's problems with those ideas.
- 10) We can continue to agitate for a pay equity bureau along the lines of the Canadian Pay Equity Bureau or what's envisaged in the New Zealand legislation. This Pay Equity bureau could be set up separately or under the Sex Discrimination Act or as part of the Industrial Relations Commission.
- 11) We can argue for new legislation - totally new legislation, a Federal Equal Pay Act along the lines of the United Kingdom as Kate has outlined. I had to sit and think why we had never argued for a separate equal pay act when I went to Canada in February to talk to the Canadian women about why we have taken the route we have, which is basically an industrial route. It was because we had been successful under the industrial route. We don't think we've been successful but the Canadian women think we're fantastic. We've got a gender wages differential of about 10.9%. They have got a gender wages differential of 37% and you can see why they had to go for a totally separate piece of legislation because they were getting nowhere on their industrial front. They've got a fairly weak and divided trade union movement and they've simply never got anywhere going the industrial route. I think for us to argue for an Equal Pay Act all of its own would have a certain political value. It would raise the issue. I don't actually think it would solve anything and it probably wouldn't give us equal pay. We know nothing is going to give us equal pay, but in terms of keeping up the propaganda value I think agitation for an Equal Pay Act might be a good idea.

- 12) We could charge the Industrial Relations Commission Full Bench with an illegal act under Section 26 of the Sex Discrimination Act which is that Section which talks about Officers of the Crown must not act contrary to the spirit of the Sex Discrimination Act. I'd like the publicity value of that.
- 13) These are the things that came out of the sessions today. We could agitate around expanding clause 5(b) of the 1972 Equal Pay decision, the one that Clare was talking about today where it limited the areas with which you can compare the job classification. We could agitate around expanding that then for the re-opening of cases under the new expanded clause 5(b).
- 14) One of the suggestions that Helen made, and this is any easy one, we can agitate to get good women onto the sub-committee of the wages committee of the ACTU which is looking at Award Restructuring. It is very likely to be full of boys who have actually no idea of what we're talking about. So that's a nice quick one we could do.
- 15) We can agitate around the CEDAW recommendation to which Jane Innes referred. That is recommendation 13 which pushes for gender free criteria in job evaluation systems and it's quite good in various jurisdictions to raise CEDAW as an argument as it has a certain amount of moral force.
- 16) We can make certain that our unions put in submissions to the ACTU Congress. The closing date for resolutions is June 25, so that means if we want to get our unions to do it we've got to start right now. In N.S.W. there's going to be a left women in trade unions caucus fairly soon, but it might not be soon enough to actually go through that process of getting them passed by our unions first.
- 17) Philippa sees a need for higher profile lobbying - I think we all realise that.
- 18) She's also suggested the use of prerogative writs to challenge the industrial commission. I see that as a really good idea. I don't see it as working but my God it would frighten them.
- 19) Those suggestions made by Bernadette that with your Award Restructuring you actually make certain that all your members go to TUTA courses which talk about Award Restructuring, talk about women in Award Restructuring and talk about things like gender neutral job evaluation schemes. Because if the members themselves become aware of the non-gender neutral way in which they are being evaluated it really does help the fight at the shop floor level.
- 20) Finally, there is the point about training and access to training being specified in awards.
