

SUBMISSION BY THE NATIONAL PAY EQUITY
COALITION TO HUMAN RIGHTS AND EQUAL
OPPORTUNITIES COMMISSION INQUIRY INTO
OVER-AWARD PAYMENTS

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INTRODUCTION

The National Pay Equity Coalition represents a number of women's groups and individuals concerned with pay equity issues. These concerns have been outlined in other submissions, including those to the 1988 National Wage Case, and to the House of Representatives Legal and Constitutional Affairs Standing Committee's Inquiry into the Equal Opportunity and Equal Status of Australian Women.

This submission is concerned with that part of the male/female earnings gap which is related to over-award payments. It should be noted that the sources of discrimination in over award payments have much in common with the sources of discrimination in award payments, particularly in relation to assessments of work and skill value, and the relatively weaker bargaining position of women, whose employment still is concentrated in lower paid industries and occupations.

The submission draws attention to conceptual problems in defining over-award payments. Payments made as allowances in some industries could be paid as over awards in others. Payments which at one time may be paid only to some workers, and only on a particular criterion, may at some later time be paid to all workers, and subsequently absorbed into a higher award rate.

Evidence on the reasons and bases of over-award payments is scanty, and there has been little systematic examination of the

relationship between reasons claimed and the bases for them in the workplace. The distinction between specific allowances, and particular and general over award payments reflects differences in the way particular payments are defined and pursued, and in bargaining position, rather than analytically distinct categories of work and remuneration. Available data are insufficient to distinguish relationships between characteristics of work done and the forms and types of payment for it. It is precisely on the basis on which over awards are paid that the issue of whether the payments are discriminatory turns.

Comparisons of changes in over award payments over time are difficult because of changing relationships between award and over award payments. In recent years, supplementary payments and minimum rates adjustments have altered award and over award proportions of remuneration. The emergence of new classifications through award restructuring will further complicate trend analysis, and in many areas previous over awards have been rolled into new classification rates.

The submission expresses concerns that increasing decentralisation of the industrial system, toward productivity based collective bargaining at enterprise level, will exacerbate existing gender inequities in remuneration. Increasing use of over award payments at the enterprise removes more of the process and basis of wage fixing from the scrutiny of the Australian Industrial Relations Commission (AIRC). Some improvement of male/female earnings relativities has occurred over the last few years, with "no extra claims" wage principles, and absorption of

over awards.

The submission demonstrates that over awards make up a higher proportion of men's earnings than of women's; that over award payments are higher and more pervasive in male dominated industries and occupations; and that over award payments appear to be made on different bases in male and female dominated industries, with a preponderance of individually based over award payments in female dominated industries and collectively based over award payments in male dominated areas. Since over awards are paid in 77% of workplaces, and are paid to over 50% of workers in 46% of workplaces, over awards will continue to affect overall male/female earnings differentials.

Both award and over award payments have tended to move together. This supports other evidence that there are underlying commonalities in how components of value and reward are assessed for award and over award payments.

Both award and over award payments appear to reflect differences in the position of men and women in the labour market, related to:

- .job differences - occupational segregation
- .skill and work value assessment differences

Both award and overaward payments continue to reflect an industrial history of exclusion of women from particular types of work, and from the bargaining structures which have set the value of work and skills. Exclusion has operated by direct

prohibitions on women undertaking some jobs, and by institutionalisation of formal training requirements women were less likely to be able to meet. The process of restricting labour supply by these means facilitated claiming additional payments (both award and over award), which are included in going rates for particular types of work.

Just as women's wages in general bear the imprint of the family wage, women's patterns of employment and related access to over award payments bear the imprint of this history of exclusion.

Definitions ('over-award', 'discrimination'), incidence, reasons and causes

Over-awards

Over-awards are the component of the ordinary time wage rate in an award (or determination or registered agreement) that is in addition to the minimum wage and allowances.

Although the ABS definition includes irregular payments, an over-award payment is normally thought of as a standard, regular, guaranteed amount over and above the minimum rate: the minimum rate and the over-award rate together constitute the 'going rate' in the industry. Thus the term 'over-award' is not usefully applied to the bonus earnings (payment by results) which are a variable component of the incomes of low-wage women workers in the clothing industry, or to the annual bonus that may or may not be paid from year to year to women bank officers. In the case of clothing workers, the bonus helps make up the bare survival wage (and thus meets the definitional criteria for a component of the minimum wage) and in the case of women bank workers, it is a fluctuating, intermittent amount, to which no individual has a guaranteed right. Some awards provide that piece-work payment systems cannot be used to pay less than a set award rate.

Overaward payments need to be distinguished from supplementary payments. Supplementary payments are wage payments, prescribed in minimum rates awards, which form part of the award rate.

Supplementary payments originated as a means of supplementing award minima in sections of the metal industry, so that the going rate was in line with market rates. Thus, supplementary payments were fully-absorbed over-award payments.

Incidence and amounts

The 1985 Hancock Report commented that over-awards have been an important feature of the Australian labour market since the second world war. As a significant component of the private sector wages structure, over-awards have been responsible for 'wages drift', the tendency for the growth in total earnings to exceed the rate prescribed in awards (Callus et al., 1991, p. 42). There has, however, been a marked gender discrepancy in this tendency, because the ratio of female to male over-award payments has been much lower than the ratio of female to male award rates. This discrepancy has contributed significantly to pay inequity.

At the broadest level, it can be noted that Australian Bureau of Statistics (ABS) data for May 1990 indicate that on average, women's over-award payments were 53 per cent of men's. On average, women received \$6.90 per week in over-awards, compared with men's \$13.00. Women's low average over-award rates were the combined result of low over award rates and low incidence (12.7 per cent of women compared with 19.3 per cent of men received over-award payments). The contribution of over-award payments to full-time adult average weekly ordinary time earnings was 2.5

per cent for men, but only 1.5 per cent for women (ABS Cat. No. 6306.0). Over-award payments are less for women systematically; by public and private sector, and by industry as well as occupation.

On average women receive 55% of the over-award payments of men in the private sector, and only 15% of the over-award payments of men in the public sector. (ABS,1988) Part of the reason for this difference is the high incidence of paid rates in the public sector. Therefore this submission will concentrate largely on private sector employment and minimum rates awards.

ABS 1990 statistics for fulltime employees show the industry differentials: women receive 56% of the men's over-award rate in the mining industry, 60% in manufacturing, 42% in electricity, gas & water, 36% in wholesale and retail trade, but 150% in finance, property & business administration. In community services full-time women workers are paid 65% of the male average over-award payment, and 18% in recreation, personal and other services. The overall average across all industries was 53%.

Over award gender relativities vary from state to state. In 1988, the ACT offered the fairest deal, 91.7% of male over-awards for women, compared to the Northern Territory, where women received 13.5% of the men's over-award payments. These differences reflect differences in industry and occupation structure, and in the way industrial tribunals have formulated and applied wage fixing principles.

AWIRS Data

Data on over-award payments obtained in the Australian Workplace Industrial Relations Survey 1990 (AWIRS) allow some interesting observations on gender differences in over-award characteristics across the full range of industries and occupations. It should be noted that the reasons for payment of over awards included in the AWIRS (award too low; union strength; service; merit) may be inter-related rather than distinct. At an extreme case, an over award may be paid because unions have been able to insist that length of service equates with merit and should be rewarded, and are in a sufficiently powerful position to restrict supply of labour at a rate below the over award.

Bargaining strength and industrial history are part of the market, and gender segregation is part of the way the market allocates labour, just as rates of payment are. A claim that a specific rate reflects the market does not prevent the rate from being based on discriminatory considerations.

The AWIRS data reveal that employers are more likely to pay over-awards on the basis of offering market rates to attract employees in male-dominated industries and occupations (skilled and unskilled) than in female-dominated industries and occupations, where the reason is more likely to be to reward individual merit.

It appears that employers are more likely to regard minimum award rates as too low to attract male rather than female employees, especially given the finding that employers at predominantly

female workplaces perceived that they paid lower or average rates in relation to the market in their industry.

Employers also seem more likely to pay over-awards in response to market rates in workplaces with a high level of union membership and activity, which in turn tend to be the male-dominated areas. It appears that women are less likely to be in a position to influence employer perceptions of "market requirements" through union bargaining power.

It is also interesting to speculate on the possible coincidence of employer and union interests in these circumstances leading to the payment of over-awards, and the extent to which it can ever be possible to distinguish pay increases arising from union activity and those arising from employer initiatives based on their perceptions of what is needed to attract and retain labour.

Consistent with the above findings, the AWIRS data reveal that female-dominated industries are more likely than male-dominated industries to feature over-awards which are determined in relation to individuals (e.g. to reward personal merit) rather than determined to apply uniformly to all workers in a particular group, regardless of individual characteristics of performance, productivity, etc. Thus, women are more likely to receive over-awards on a much less secure basis, not least because such over-awards are negotiated individually and do not result from organised bargaining on behalf of a group of workers by a union.

Industries

Chapter 7 of the National Women's Consultative Council's Pay equity for women in Australia surveys the 13 major awards that govern the majority of women workers in Australia, by industry group. The contribution of over-award payments to unequal pay is described in the context of employment in each industry. Highlighted in the NWCC paper are the following industries:

Retail (1988 statistics)

Gender mix in retail: 50:50, but some key jobs are gender segmented: 62% of sales assistants are women, 65% of labourers and shelf fillers are men. In 1988, males received on average \$33 per week in over-award payments while females received just \$4.20.

Differential over-award payments contribute a significant portion of the earnings gap in the retail industry. National, uniform supplementary payments and or comparable minimum rates adjustments can redistribute over-award payments in this industry. There is also scope for using the Industrial Relations Act 1988, which allows for simultaneous Federal and State Commission hearings and for Commissioners to sit on both benches.

Metals (1988 statistics)

The gender mix in the industry is 80%M:20%F. Supplementary

payments and minimum rates adjustments have been used in the restructured metals industry award to improve the relative position of low-paid workers in comparison with skilled tradespeople. Award restructuring is to change the relativity of the Engineering Production Employee to 87.4% of the Engineering Tradesperson's rate. This is an increase of 5% relativity, and with supplementary payments was designed to yield a 41.9% increase for the non-trades worker compared to a 33.4% increase for the tradesperson.

The Amalgamated Metal Workers' Union National Research Centre biennial Wages Survey for 1990 surveyed 6,882 male process workers in 228 shops and 5,357 female process workers in 125 shops. The average Metal Industry Award weekly wage for female process workers was \$348.77, which was 95.9 per cent of the male rate of \$363.75. The \$14.98 differential was entirely accounted for by a \$14.98 gender gap in over-award payments, women receiving an over-award payment of \$26.57 per week, which was 63.9 per cent of the male over-award of \$41.55 per week.

Until the Accord in 1983, after which over-award bargaining by unions was constrained for some years, over-awards in the metal industry were paid by employers in response to vigorous union industrial campaigns based on the political premise that workers should have a greater share of the profits they generated by their labour. The metal industry was, and is, governed by minimum rates awards in the private sector.

Over-award payments were made in the form of "group" payments; that is, once they had been won for a particular classification in a particular workplace, they were paid to all workers in that group, and not selectively on the basis of individual performance or merit. Furthermore, payments were not made on the basis of such considerations as productivity or compensation for particular working conditions, but on the basis of accession to union claims for the payments, which were sought to maintain members' living standards.

However, union achievement of over-awards was uneven, depending on the level of union organisation at a workplace level, where most of the campaigning took place. Strongly organised workplaces led the campaigns and obtained the over-awards first; more weakly organised workplaces obtained the payments either later as flow-ons, or not at all.

In the metal industry, women workers were and are concentrated in the "unskilled" classification of process worker. Female process workers were less organised than the male-dominated trades classifications. The less organised and "unskilled" women process workers were the last to receive over-award payments in the metal industry rounds, if they received them at all.

The pattern was set whereby women workers in the industry were on average paid lower amounts of over-award payments than men, including men in the classification of process worker.

Hospitality

(1988 statistics)

The gender mix in this industry is 55%F:45%M, with significant gender segmentation within occupations. 84% of clerical employees are women, 68% of cooks & chefs are men. The majority of the workforce work part time, and 69% are either part time or casual.

There are low over-award payments in general except chefs & cooks. In 1988, while 24% of male chefs and cooks earned more than \$450.00 per week, only 10% of female chefs and cooks commanded the same over-award rate.

The pay equity rate for this industry is quite high, perhaps because most male and females are only paid the minimum award rate.

Banking

(1988 statistics)

The gender mix of the banking workforce is 45%M:55%F.

Union and employer agreements determine the level of over-awards payments, which range from \$29 to \$38 per week, depending on the employee's classification. Over-award payments are often higher for employees in higher classifications than for those in lower paid classifications. As women are concentrated in the bottom four grades of the industry, a supplementary payment would do much to improve their relative position.

In the restructured private banking sector the introduction of performance based pay through performance appraisal schemes has increased the overaward component of bank workers' pay. The performance payments have to some extent, replaced seniority increments in career grades and have been extended to women, including part-time workers.

Clerical (1988 statistics)

The gender mix of the clerical workforce is 76%F:24%M

There are substantial inequities in the distribution of over-award earnings. According to 1988 ABS figures, a male receptionist information clerk earned \$429.00 per week while an equivalent female earned \$365, a difference of \$69.10; a pay equity rate of 85%, while the difference for data processors was \$111.10 - a pay equity rate of 77.4%.

The NWCC suggests that minimum rates adjustments and supplementary payments are needed to address the gender differentials. This strategy is being used to align the clerical/stenographer/typist classification with the fitter.

Textile, Clothing and Footwear

The textile industry is largely male dominated (62%M, 38%F) Clothing is female dominated (73%F,27%M). Female clothing workers constitute 96% of machinists, but only 14% of the tradespeople in the clothing trade; 51% of machinists but only

1% of tradespeople in textiles are women.

Over-award payments are closely related to the gender differentiation of the workforce. Female machinists are paid on minimum rates awards incorporating payment by results. Tradespeople are paid by time, and generally do receive over-award payments. Substantial numbers of workers in these industry receive only the legal minimum wages, and do not receive over-award payments.

Women in the clothing industry are located primarily in the classification of machinist, traditionally classified as an "unskilled" occupation. This area of the industry has historically operated on a "payment by results" system. Consequently, when machinists receive over-award payments at all (36% did not in the sample covered in a major 1988 Clothing and Allied Trades Union over-awards survey), they are paid on the basis of individual productivity, as defined by various "payment by results" systems operating in workplaces. This means that their over-award payments are, at best, available in fluctuating amounts, depending on their productivity from one day to the next, and on the payment systems made available at various times by their employers.

Men in the clothing and footwear industries are concentrated in trades classifications, such as cutters, pressers, clickers and maintenance workers. For these classifications, over-awards have traditionally taken the form of a standard, guaranteed amount

over and above the minimum award rate, usually expressed as the "going (market) rate" for the trade in that industry. The rates are set at the level employers consider necessary to attract and retain skilled labour, and are paid uniformly on a group basis, not on a basis which varies between individuals in relation to their productivity.

Men in the clothing industry receive over-award payments in greater proportions and at higher amounts than do women. The 1988 CATU over-award survey indicated that cutters (predominantly male) were more likely to receive over-award payments than machinists (predominantly female) (76% as compared to 64%) and much higher amounts of over-award pay (52%, as compared to 26%, received over \$25 per week in this form, and 29% of cutters, as opposed to 15% of machinists, received in excess of \$50 per week).

One explanation for the different bases on which over-awards are paid in the clothing, textiles and footwear industries is that the labour-intensive areas in which women are concentrated are less able to afford over-awards than the capital-intensive areas where men are concentrated. This means that the male-dominated classifications are in a better position to command higher, market-based rates.

Supplementary payments for low paid workers have been used successfully in this industry to redress pay inequity between males and females. Award restructuring and work value cases on

the new multiskilled and broadbanded classifications should see considerable pay increases for many of the low paid workers in this industry.

Other Industries

Academics

Until recently, academic remuneration has been on a paid rates basis, although various types of additional payments have resulted in different levels of earnings. However, the July 1991 decision of the Australian Industrial Relations Commission establishes minimum rates awards. The decision also requires the implementation of a staff appraisal scheme. While at this stage there is to be no compulsion to link this to increments in pay, this is clearly foreshadowed.

Market loadings and relocation allowances

These are payable in regions and disciplines where recruitment is difficult. When the mobility of women is restricted because of their domestic responsibilities, they are less likely than men to be able to take advantage of such payments.

A recent report, *Study of the Labour Market for Academics*, notes several areas where significant recruitment difficulties are being experienced. While these include nursing, medicine, law, journalism, and other disciplines where women are now well represented, others such as accounting, computer science, engineering and actuarial studies are male-dominated.

Humanities, where women are heavily represented, are not experiencing shortages at present. It can be presumed that in disciplines which are much better paid outside the universities than in them, such as engineering, accountancy and computer studies, and which are male-dominated, are more likely to be attracting market loadings.

Consultancy

Academics who can take on private consultancy and research are in a better position to improve their remuneration. Women have tended to be under-represented in such professions and so have less access than men to consultancy work with its high remuneration. Concentration of women in lower level teaching positions means women often have heavy teaching loads, and are less likely to be engaged as consultants.

Non-Salary Benefits

Low interest loans, health insurance and other non-salary benefits are available to academics appointed to administrative positions such as Deans and CEO's. Women are rarely appointed in these positions.

We are not aware of research in Australia addressing gender differences in the level of first academic appointment. However, the Wilson Report on the Status of Academic Women in New Zealand (1986) showed clearly that women are appointed at lower levels than men with the same qualifications. 50% of men with a Masters degree were appointed to a Lecturer's position or above, but only

21% of women with that qualification were appointed at that level. It is these clear differences in institutional perceptions of women's and men's value in terms of remuneration and level of appointment which is of concern with the introduction of minimum rates awards. It can be expected that, despite EEO programs, these gendered perceptions will continue to be applied with the introduction of staff appraisal and performance based pay with consequences for the remuneration of female academics.

Public service

While public service remuneration is on the basis of paid rates awards, performance appraisal and performance linked reward is being encouraged. Since the beginning of 1991, double increments have been promoted as a reward for "outstanding" performance in the NSW Public Service. It can be assumed that, without careful monitoring and intervention, the dynamics which have led to historic pay inequity will continue to operate and the effects will be aggravated by greater flexibility in pay fixing. It has already become apparent that differences in salary packaging affect tax, childcare, superannuation, and other employment benefits in different ways for men and women workers.

Local Government

The local government industry (in NSW at least) has had until recently an extensive system of over-award payments. The

allowances numbered up to 300 until they were rationalised as part of the claim for the 4% in the 1987 Two-tier wage system under the Restructuring and Efficiency Principle. These payments were primarily associated with work that was seen as dirty. The payments were for compensation for working in dirty situations and/or for equipment/clothing necessary to carry out the work. The payments were only available to certain jobs, all being in male-dominated areas of the industry.

A census of local government employees in NSW in 1989 indicated women made up only 1.5% of those employed in the water, sewerage and drainage area; 3.4% of engineering and construction; and 3.9% of gas and electricity supply - the areas attracting most of the payments. It was in these traditionally male-dominated areas that the union was most active.

As part of award restructuring in the industry, a new award has been negotiated which is broadbanded and skill-based. As a consequence a number of jobs in female-dominated areas of the industry, particularly child care and community services, will receive substantial pay rises. However, over-award payments, in the form of a disability allowance, will remain and only apply to jobs in traditional male-dominated areas. Child care workers on the same level of skill as a person employed in any "outdoor" job in Band 1 of the award or an employee in gardening, building, metal or mechanical trade jobs in Band 2, will not receive the disability allowance despite the obvious "special disabilities" associated with the nature of the work performed. This will

maintain traditional male jobs in a privileged position in relation to pay.

In addition, the award will be a minimum rates award with actual pay rates being struck on the basis of the local market rates, the nature of the work, the nature of the qualifications necessary for the position as well as the application of acquired skills. This will clearly have a negative impact on those jobs in local government which are not associated with a strong and competitive local labour market, this being many of the traditionally female positions.

Occupations

We turn now to gender differences in over-awards within occupational classifications.

Table 1 is an extract showing the components of the average weekly ordinary time earnings for full time adults in different occupational categories.

Source: ABS COMPOSITION OF AVERAGE WEEKLY EARNINGS AND AVERAGE WEEKLY HOURS PAID FOR: FULL TIME NON-MANAGERIAL EMPLOYEES BY MAJOR AND MINOR OCCUPATION GROUPS, AUSTRALIA, MAY 1990.

OCCUPATIONAL GROUP	MALE AWARD RATE \$	OVER- AWARD PAY \$	FEMALE AWARD RATE \$	OVER- AWARD PAY \$
PROFESSIONALS	676.20	5.40	586.30	3.30
PARA-PROFESSIONALS	603.20	6.00	569.00	2.40
TRADESPERSONS	460.60	21.90	385.50	12.60
CLERKS	488.20	8.40	432.30	9.70
SALES & SERVICE	477.40	14.40	410.90	4.30
PLANT OPERATORS & DRIVERS	447.80	13.50	342.00	7.40
LABOURERS & RELATED	407.80	10.90	360.20	6.50
ALL OCCUPATIONS	494.10	13.00	452.10	6.90

Discrimination

The mere existence of gender differences does not of itself constitute discrimination. Over-award payments are set in relation to award rates. Since the abolition of male and female classifications in 1974, award classifications have not been based directly on gender. The granting or non-granting of over-award payments, or of higher or lower levels of such payments, is therefore unlikely to occur on explicit gender grounds.

On the other hand, discrimination in over-award payments does not

have to be a matter of gender-tagging. Direct discrimination may occur at enterprise level, if men and women working under the same award classification receive different over-award payments without good reason. As we have seen, this may be occurring in metal industry process work. But as well as direct discrimination, it is necessary to look at other factors, such as the history of the control of worker supply in occupations where high levels of over-award payments are made.

Inequality is based on discrimination if it results from the denial of equal opportunity and recognition. Gender disparities in over-awards may be the historical outcome of any one, or any combination, of four types of discrimination:

- * direct and intended discrimination barring women from certain jobs, training, and career paths. Between 1907 and 1972 gender inequalities in the basic, minimum or total wage, and in margins or allowances were formally sanctioned
- * direct but unintended discrimination, sanctioning employer preference for white, English-speaking, full-time male workers; and which have allowed such employees to negotiate monopolised advantages, including over-award pay and conditions, on the basis of assumptions about lifestyle, domestic roles or family responsibilities

- * indirect or structural discrimination in employment, pay, promotion, superannuation etc, resulting from the use of criteria, such as mobility or service continuity, which appear neutral but in fact discriminate against workers restricted by family divisions of labour
- * systemic discrimination, which may combine any of the first three forms of discrimination, or which may be the legacy of the way they have shaped social structures, institutions, and practices.

While it is now well-accepted that discrimination may be unintentional, there is still a tendency to assume that it belongs to a sphere of voluntary activity defined in terms of 'institutional factors', as opposed to a supposedly impersonal and neutral sphere labelled 'market forces'. Yet markets are institutions, operating, not in a vacuum, but on the basis of historically-given circumstances, and their operation cannot be arbitrarily equated with rationality. Markets are not given, but socially constructed and perceived, as are other social artefacts.

The reasonableness of market outcomes cannot be assumed: it must be demonstrated. One often-cited example which illustrates the institutional and potentially discriminatory nature of labour markets is the circularity of the 'rational choice' argument used simultaneously to explain women's low pay in terms of alleged

under-investment in education caused by an expectation of family responsibilities, and to explain women's family responsibilities in terms of low earning capacity resulting from lack of education (Amsden 1980).

In fact, there is a distinct lack of correlation between gender differences in training and gender differences in earnings (Chapman & Mulvey 1986; Rummery 1989), and this in itself is evidence of the institutional underpinning of what are called 'market forces'. Further evidence of this can be seen in the fact that the improvement in women's wage relativities in Australia since the 1970s has had an arbitrated rather than a market basis (Gregory & Daly 1990); and the fact that women's improved wage relativities have coincided with increases in women's employment levels, rather than the decline that market theory would predict.

The unwarranted assumption that market forces are rational, neutral and impersonal, and that discrimination must involve intentional interference with them, underlies the tendency to define discrimination as the unexplained residue in the gender wage differential, after acknowledging factors such as gender differences in hours, job types and levels, and wage rates for classifications (eg. Nevile & Tram 1991).

On the contrary, discrimination is built into all these factors, and hence into the very operation of market forces. In addition to a residue, which may be evidence of otherwise unexplained

direct discrimination, or of unknown factors, structural differences in labour markets for men and women reflect and reinforce various inequalities - for example, occupational segregation exacerbates the effects of most other identified correlates of male/female earnings differences, as well as having an independent effect.

As market forces are permeated, or even constituted, by historically-determined institutional factors, or operate through such factors, it makes sense to examine the possible structural and systemic discrimination underlying over-award differences, even when these differences appear as 'given' and 'impersonal'. It is thus necessary to make explicit the historical legacy which at any time is the foundation on which things called 'market adjustments' or 'market conditions' are constructed.

Reasons and causes

The reasons given for over-award payments fit into five overlapping categories:

- * rewards to a worker (returns to skill, effort or responsibility)
- * returns to workers (distribution of achieved productivity)

- * compensation to a worker (conditions, allowances for disabilities)
- * perceived attraction/retention requirements (market factors, merit, seniority, experience, flexibility)
- * incentives (productivity, performance pay, profit-sharing) (although these can be written into awards, rather than being over-award mechanisms)

Underlying and additional to these are other reasons: union strength, the nature of product markets, and the relative capital- or labour-intensity of the production process.

History of discrimination in over-awards: Interaction between wage fixing and job segregation

The present pattern of over-award payments cannot be understood without a knowledge of the way in which the determination of women's wages in Australia has evolved since 1907 through a series of piecemeal arbitrated and legislated changes.

From 1907 to 1966, determinations of the Arbitration Court and Conciliation and Arbitration Commission adopted the family wage concept of a needs-based basic wage with work value-based skill margins, and the employer's right, recognised by the Court, to make discretionary over-award payments. The Harvester judgment (1907) 2 CAR 1 determined that a fair and reasonable wage should support an unskilled labourer, his wife and three children in frugal comfort. The Clothing Trades case (1919) 13 CAR 647, 691, 707 set the basic female rate at 54 per cent of the male, on the basis of the needs of an average female 'who has to support herself, but also on the work value grounds that the 'unmarried as well as the married woman...is subject to the physical limitations of her sex'.

A third reason was to discourage the feminisation of certain classifications, by handicapping the 'gentle invaders' who were being employed in increasing numbers in some previously predominantly male occupational areas (Hunter 1988, p. 150). For similar reasons, the Fruitpickers' case (1912) 6 CAR had granted

women equal pay in cases where women working alongside men might displace them if paid at a lower rate.

While granting women employed in traditionally male occupations the same base rate as men, in order to prevent their undercutting and displacing men, the 1912 Fruitpickers' judgment also sanctioned the use of over-award payments, in order to enable employers to give favoured treatment to male employees whom they particularly wished to secure or retain. The judgment recognised the employer's prerogative to 'give higher wages to exceptionally good workers he desires to secure' (at 72). The stated aim was to promote 'greater efficiency in work, and ...true and healthy competition', but 'exceptionally good workers' meant 'male workers', who were seen as both more skilful and more deserving because of their family 'needs' (BPW 1990, p.9).

These judgments, made in part to avoid disturbing prevailing patterns of job segregation and pay relativities, helped to institutionalise discrimination and carry it forward in time. The arbitrary nature of the judgments can be demonstrated in a number of ways. The 1920 Piddington Royal Commission found that the basic wage bore little relationship to the cost of living. The needs criterion in fact went by the board in 1931, when an 'economic capacity' criterion was invoked to allow a 10 per cent wage cut (Hunter 1988, p. 149). Yet the legacy of the needs criterion lingered on, directed to stereotypical cases, not to real people.

If it had addressed real needs, an employed married woman, being supported by a male wage, should have earned nothing but a skills margin and any over-award rate going, a supporting mother should have earned more than the female basic rate, and an unmarried man should have earned the same basic rate as an unmarried woman. A statement by Powers J. in the Postal Telegraph Officers' case (1916) 10 CAR 314 indicates the nature of the reasoning behind this lack of match between real life needs and their idealised, arbitral abstraction:

I certainly do not see my way to fix 150 [pounds] as an adult wage for a single woman who has not in the ordinary course of events to prepare to keep a husband and a family of two or more children (at p. 395).

In other words, every single man was defined as a potential husband and father, and rewarded as such on the basis of this definition, while every married woman and supporting mother was paid as if she was single.

Skills margins were equally arbitrary. In theory, there should have been no gender difference in skills margins: in practice, these margins were often also 54 per cent (after 1950, 75 per cent) of men's. Thus, when the Clothing and Allied Trades Union case (1967) 118 CAR 286 claimed equal margins for skill, this was granted only when '...work done by men and women is the same' (at p. 300): in the majority of classifications, female margins were denied parity with men's.

Between 1907 and 1967, a complex marginal structure of skills classifications had been developed in male classifications, using

work value criteria that were not relevant in women's jobs, or which denied the economic contribution and demands on employees of women's skills, whether these skills involved interpersonal and organisational factors, or whether they involved dexterity, speed, attentiveness, or manual skills acquired other than by apprenticeship. Thus, in the Metal Trades Work Value case (1967) 121 CAR 587, the Commonwealth submitted that skill '...is something of a completely different order ' from manual dexterity (at p. 805), a view shared by a member of the Bench who stated that process workers 'handle machines the operation of which calls for manual dexterity, rather than technical skill' (at p. 743).

In theory, during the operation of the basic wage plus skills margins system between 1907 and 1967, only the basic wage component of the award wage reflected gender differences in 'needs' dictated by assumed differences in family responsibilities. In practice, the basic wage differential often spilled over into the skills component, with women's skills being devalued. It also spilled over into differences in over-award payments, with women being assumed to contribute lower work value.

The arbitrary origins of skills margins, and the element of discrimination in their determination, can be seen from the comments by Higgins J. in the Marine Cooks' case (1908) 2 CAR 55, 56:

It is not for me to find a scientific basis for the distinctions in the wages paid to the various skilled employees as between

themselves and the unskilled, and one another. The distinctions made may perhaps be traced to the operation of monopoly in greater or lesser degree; but the fact that they exist and are recognised in the practice of society is sufficient for me, in a practical inquiry with the view of settling disputes...I have no right to formulate, no right to apply, any novel ideas...in this case I have very little guidance...except in the practice of the employers themselves (at p.65)

The situation had not changed when in a Metal Trades Award case (1937) 37 CAR 176, Beeby J. commented:

The fixation of margins must of necessity be arbitrary. There is no measuring rod for ascertaining the relative value of skilled, semi-skilled and unskilled labour. An assessment can only be based on consideration of past practices and changes in methods of production (at p. 183)

Bennett (1984, pp. 118-132) has demonstrated that the distinguishing criterion of skilled work has been width of task expertise, rather than task complexity, because '...[a]nyone who has attempted...tasks which are called "semi-skilled" or "unskilled" will realise that, as performed by experienced workers, they usually involve a high level of skill' (Seymour 1966, p. 3). In the Metal Trade case (1948) 60 CAR 134, 136, the following definition was adopted:

A tradesman (sic) is an operative who, through a course of apprenticeship or long experience, has acquired the knowledge, skill and dexterity to enable him to perform all the types of work common to the trade at which he holds himself out as a tradesman (cited in O'Dea 1969, p. 62).

There were two processes involved in the masculine monopolisation of skills: the exclusion of women through discriminatory award clauses from jobs and from apprenticeship training; and the non-recognition of women's skills (shallow skill taxonomies and small margins). Thus, both horizontal and vertical relativities were depressed in women's classifications.

Women were explicitly excluded from a range of apprenticeships in state award clauses. In 1986, a national conference was held on removing legislative and award discrimination, and most discriminatory legislation has now been repealed (except for prohibitions on women working with lead). The continuing effect of discriminatory exclusions on the pattern of women's employment is visible in the AWIRS finding that one in six workplaces have jobs in which no women are employed - mainly in manufacturing and construction.

It was not until the August 1989 National Wage case (Australian Industrial Relations Commission Print H 9100) that incentives were offered, under the Structural Efficiency Principle, for the final removal of remaining discriminatory clauses in awards. However, awards are still exempt from the Sex Discrimination Act, seven years after its passage, although there has now been ample opportunity for discriminatory provisions to be removed from awards.

The masculine monopolisation of skill was made possible through job segregation: the existence of 'men's jobs' and 'women's jobs'. We have seen from the Fruitpickers' case example that, where employment was mixed, over-award payments could be used to create informally segregated categories of 'exceptionally good' (male) workers. Equal pay was also a mechanism for maintaining job segregation. This can be seen from the reasons given by Deputy President Webb in *ASLATRLS* and *ATEF v. Carter and Ors* (1925) 21 CAR 892, for setting a 'male' rate for work performed

by both sexes:

The object of prescribing such a rate is to prohibit the work being done by females. The idea underlying such a prescribed rate is that the work is men's work, and women should not be allowed to do it except at the rates prescribed for men.

A major purpose of monopolisation is to raise market prices by restricting supply: the requirement that certain types of work could be done only by men who had served a lengthy apprenticeship enabled a greater number of skill margins to be set in these classifications, as well as significant over-award payments. Women's labour power, by contrast, was more plentiful and cheaper, and women were thus excluded where this was possible through segregation mechanisms.

This is the historical link between skill and job segregation on the one hand, and over-award payments on the other. We have seen that over-award payments became a central feature of workplace wage determination after the second world war: the shortage of skilled labour as a result of the war and in a climate of rapid growth was the reason for this reliance on the over-award mechanism. In this sense, over-awards have served as a market adjustment mechanism, particularly in capital-intensive areas, where the capacity to pay has not been in dispute.

The shortage of skilled male labour during the second world war enabled women to raise their award wages by 1950 from 54 per cent to 75 per cent of men's, and paved the way for the 1969 and 1972 Equal Pay claims. Historical accounts of this process (eg.

Curthoys 1988) reveal that over-award payments were a central mechanism in the improvement in women's relativities that occurred in the 1940s, but that they operated as a safety valve, allowing the continuation of discriminatory inequalities in women's wages.

The problem of what to pay women entering male jobs was temporarily resolved from 1942 - 1944 through the establishment of a Women's Employment Board, which set wages not on the family wage basis of 'needs' plus margins but on the basis of productivity, defined with reference to capacity to pay. It granted wages normally at 90% of the male rate. Manpower legislation empowered the government to direct women from high-paid male jobs to low-paid female jobs in the interests of national security. The government coped with the resulting unrest by means of National Security (Female Minimum Rates) legislation, which declared certain industries vital to the war effort, and allowed wages for traditional female jobs in these industries to be upgraded from 54 per cent to 75 per cent of the male rate. Women in the rubber and textile industries succeeded in having the 75 per cent incorporated in their awards. In general, however, the difference between the 75 per cent rate and the 54 per cent rate was an over-award payment made to women workers in order to gain acceptance of the by now glaring award wage inequalities between traditional male and female classifications. With the expiry of wartime regulations at the end of 1948, a more lasting resolution had to be found to the problem temporarily resolved through the over-award mechanism.

In order to prevent women reverting to the old 54 per cent rate, unions unsuccessfully attempted to have the 75 per cent inserted in awards, using the 1948 Metal Trades case as a vehicle. The Commonwealth government amended the arbitration legislation, allowing the setting of a separate female basic wage, and a major Basic Wage work value inquiry was conducted in 1949-1950, during which the ACTU and women's organisations pursued equal pay, although the ACTU simultaneously argued for the family wage. The Basic Wage decision (1950) 68 CAR 698 granted women 75 per cent of the male rate, thereby incorporating into awards what had become the going rate through over-award payments originating in wartime market pressures.

Equal pay was rejected on capacity-to-pay grounds, the Arbitration Court arguing that existing relativities could be altered only by legislation, not arbitration. The Commonwealth parliament in July 1951 affirmed the principle of equal pay and ratified ILO Convention 100 on Equal Pay, but said that it could not legislate for equal pay, as wage-fixing was an arbitral, not a legislative matter. Women's lesser 'needs' were now defined in terms of employers' capacity to pay as well as men's family wage 'needs', on the assumption that there was a fixed 'wage fund' available for the distribution of remuneration.

The 1967 National Wage Case (1967) 118 CAR 655 implemented the 1966 in-principle decision to introduce a total wage, related to skill and capacity to pay, in place of the two-tiered basic wage plus margins. As we have seen, in the same year, the Bench in

the Clothing and Allied Trades Union case gave equal margins for skill only when women's work was identical to men's, and in the Metal Trades Work Value case accepted that women's manual competencies were 'of a completely different order' from, and less demanding than, men's technically-defined skills. In the 1967 National Wage Case, Kirby CJ noted that existing basic wage differentials would mean different total wages for men and women, and suggested an extension of the Clothing Trades margins decision to the total wage, thereby pre-empting the interpretation of equal pay that the Commission was prepared to entertain in the Equal Pay Case (1969) 127 CAR 1142 (Hunter 1988, p. 157).

We have seen that historically, women's basic wage had been founded, less on work value than on family wage and minimum wage considerations and on economic arguments such as capacity to pay. We have also seen that in theory women had access to the same skill margins as men, but in practice skill was defined to the disadvantage of women. Work value had never been the main determinant of women's wages. The total wage concept obscured the historical origins of women's wage levels, and, by a circular process, reinforced the notion that women's work must be of lesser value, seeing that it was paid less.

While it was acknowledged in the 1967 Metal Trades case that the predominantly-female process worker classification contained a range of levels of skill and complexity, the proposal to introduce an extra skill classification was rejected on the

grounds that it might 'create factory jealousies' (121 CAR 587, at p. 642), to which women were stereotyped as being prone.

It was also acknowledged that some women earned over-award payments, on grounds such as flexibility, concentration, dexterity and good eyesight. Yet definitions of skill and work value, in terms of identity with men's work, meant that these over-awards were not incorporated into the award. Here again, over-awards, even when they functioned as market corrections, were not recognised as such in the case of women's work. This illustrates the tendency to reward women workers on an individual basis for things that are seen as personal characteristics, rather than on a group basis for things that are seen as job requirements contributing to work value.

The National Wage and Equal Pay decision (1972) 147 CAR 172 adopted a more liberal principle of equal pay for work of equal value, but this hardly helped where occupational segregation made women's work unique, and where work value criteria developed with reference to men's jobs were inappropriate. The significance of the 1972 Equal Pay decision for over-award comparisons is that the undervaluing of women's work in awards is likely to spill over into lower levels of over-award payment than men receive.

The 1972 Equal Pay principles proved difficult to apply or were applied in a token fashion. Of 54 equal pay decisions between 1973 and 1981, only 35 awards were adjusted to allow equal pay for work of equal value, and in only two cases were thorough work

value assessments or inspections carried out (Short 1986, p.324). Male and female classifications were often simply integrated without specific work value studies - for example, it was simply assumed that secretaries employed under Municipal Officers' awards should be placed at the bottom of the previously male clerical scale (Hunter 1988, p. 162). The failure to carry out careful work value assessments reflects the low priority of equal pay in a climate of decentralised wage fixing and rapid increases (1972-1975), wage indexation (1975-1981) and wage freeze (1982-1983).

In 1973, the Commonwealth Government amended the Conciliation and Arbitration Act to allow the Commission to fix a minimum wage for all adults, and in the 1974 National Wage (or Minimum Wage) case (1974) 157 CAR 293 extended the minimum wage to women, benefiting many low-paid women workers. While the Commission formally explicitly discarded the family component from the minimum wage concept (at p. 299), it did not eliminate the gender disparity in wages that had resulted from that concept, which thereafter remained implicitly embedded in gender wage differentials. Nor did it address the problem that large numbers of women may have been in the lowest-paid category because their skills were undervalued.

With the operation of centralised wage fixing under the Accord, the Commission in the National Wage case (1983) 291 CAR 4 rejected any proposal for large-scale work value, as inconsistent with wage restraint. In order to argue consistency between the

1972 Equal Pay principles and the 1983 wage fixing principles, the ACTU pursued the 1986 Nurses' Comparable Worth test case, interpreting comparable worth in terms of principle 5(b) of the 1972 Equal Pay decision. The result was a reaffirmation of the 1972 principles, within the confines of overall economic policy.

The Australian Federation of Business and Professional Women had intervened in the December 1990 National Wage Case, arguing that the systematic devaluation of women's skills and job attributes indicated the need for a Work Skills Value Inquiry to review all aspects of skill evaluation. The April 1991 National Wage Case decision rejected this proposal.

The problem therefore remains of addressing the issue identified in Principle 2 of the 1972 Equal Pay principles:

The gap between the level of male and female rates in awards generally is greater than the gap, if any, in the comparative value of work performed by the two sexes because rates for female classifications in the same award have generally been fixed without a comparative evaluation of the work performed by males and females.

This problem flows over into the gender gap in over-award payments. It, together with the lower incidence of over-awards amongst women workers, accounts for the fact that women's over-awards are running at 53 per cent of men's.

3 Discrimination in the components of wages

Gender differences in award and over-award payment do not necessarily mean that wage discrimination is occurring. However, "flexible" wage packages and arrangements which include several different types of payments, only some of which are exposed to scrutiny by the AIRC, can allow discrimination in some types of payments to continue (or emerge) as discrimination is eliminated from payments under the AIRC's scrutiny.

In theory, wage differentials could reflect the fact that women are employed in jobs demanding less skill, responsibility and effort. In other words, they could reflect employment discrimination, rather than wage discrimination. Against this hypothesis, and against more general denials of wage discrimination, three arguments can be raised.

Needs and minimum rates

In the first place, even the brief history of Australian wage determination outlined above shows that employment discrimination and wage discrimination have been inextricably linked, and indeed functional to each other. Wage differentials have been used in order to maintain separate male and female classifications, and separate classifications have been required in order to enable wage differentials to be sustained.

Margins

Arbitrary assumptions about need, based on assumed family responsibilities, have spilled over into assumptions about relative skills and work value, which have been reflected in differential margins and over-award payments. The formal repudiation of family wage concepts in the 1970s did not close the wage gap for which they had been responsible. This was because the family differential had already come to colour perceptions of women's work value. These perceptions of women's work value, which had been embedded in skill margins until the transition to the total wage concept in 1967, had thereafter come to be diffused throughout the whole of women's wages. Over-awards, where concepts of value were particularly focussed, thus came to bear the residual effect of an outdated and repudiated concept.

In the second place, we have seen that, at various times it has been acknowledged that male marginal differentials have been set on an arbitrary basis, influenced by factors such as monopolisation. Since the establishment of the total wage, differentials that were formerly marginal have, by a complementary process to that described above, permeated the entire award wage structure, and carried over into over-awards. There is no sure way of determining the degree of inequity in work value without a thorough investigation of the relative value assigned to women's work.

Relationship between awards & over-award rates

The award system remains exempt from the Sex Discrimination Act. While over-award payments are not, the separation is an artificial one, created in part by the weight of tradition, not by its own logic. In real life, there is no clinical demarcation between the way in which work and workers are valued in awards, and the way this occurs in over-award payments. We have seen the way in which over-awards have sometimes functioned to bring added flexibility into the award system, and have then been absorbed back into the system. Because of this symbiotic relationship, over-awards tend to reflect and even exaggerate the structural features of the award system, including job and wage discrimination. While the problem of over-award discrimination cannot be understood without reference to the history of discrimination in the award system, this does not rule out any attempt at separate rectification.

In particular, it is necessary to address:

- * discrimination in the use of over-awards to reward women workers' skill, effort and responsibility
- * discrimination in the use of over-awards to compensate women workers for the demands of the job, and for unfavourable conditions and disabilities associated with the job

- * discrimination in the use of over-awards to provide returns to workers by way of distributed productivity
- * discrimination in the degree to which over-awards reflect workers' value to the employer (market factors, merit, seniority, experience, flexibility)

These areas are of particular concern, in the light of the AWIRS report finding that 59 per cent of managers in workplaces where over-awards were paid reported that these payments were made principally on the basis of merit or as a reward for effort (Callus et al. 1991, p. 43).

Discrimination in returns for skill, effort, responsibility

There may be discrimination in rewards for skill effort and responsibility. The value created by women's skills and competencies may be under-recognised, or not recognised at all. This is particularly likely to be the case when the training required for these skills and competencies is informally acquired on the job, or through life and work experience, rather than through formal accredited training. It also likely to be the case in general, because women's skills tend to be recognised by a relatively narrow range of relatively lowly-valued credentials.

There is also a tendency to see the machinery and electronic equipment used by women, and the materials on which they work, as somehow not as 'technical' as those involved in men's work.

The responsibility involved in women's work may be insufficiently recognised. The effort involved in women's work may be undervalued by a failure to understand the complexity of jobs and tasks, the concentration required by them, or the strain, fatigue, and stress, associated with them.

The recent Danfoss Case decision in the European Court was that a system of assessing job value which ranked women's work value below that of men could be presumed to be discriminatory unless it could be proved otherwise. This decision appears to place the onus of having a transparent system for assessing job worth on an employer.

Compensation: disability allowances

There may be discrimination in compensation for the demands of the job, and for unfavourable conditions and disabilities associated with the job. Disabilities are often defined in terms of men's jobs: site allowances, dirt, noise, temperature or climatic extremes and danger. The discomfort, stress, risk, unpleasantness and danger that many women (eg nurses) encounter in the course of their work is often denied or undervalued.

Returns to workers: distribution of productivity

There may be discrimination in the distribution of productivity. Possible sources of discrimination in the distribution of productivity include:

- * failure to devise measures of productivity in the areas where women are employed
- * failure to recognise the contribution made by women to productivity
- * failure adequately to reward women for this contribution
- * establishment of low minimum wage plus productivity for female process workers, with hourly rate of pay and over-award payments for male classifications.

There has been a reluctance to develop measures of productivity in service industries, where products are neither divisible nor tradeable. In addition, many women's jobs have a qualitative component which is not readily measurable: for example, customer service work.

Perceived attraction/retention payment requirements

There may be discrimination in assessing attraction/retention payment requirements (merit, seniority, experience, flexibility)

There can almost be said to be two systems of over-award payment. On the one hand, there are the types of over-award which historically have acted as market adjustments, and which have often end up being absorbed in awards: the wartime rates set for women by the Wages Employment Board are one example cited above of this sort of over-award. Such forms of over-award tend to go to a classification or group of workers, and are often negotiated

by the union. They seem to be common in manufacturing industry.

On the other hand, there are the types of over-award payment that shade over into performance pay. Sometimes, performance-based pay is explicitly authorised in awards, and sometimes (as in the banking industry) there seem to be rungs, within the main salary steps set out in the award, which are accessible by individuals on the basis of merit. The main difference between this type of merit pay and the type of over-award discussed in the previous paragraph is that merit pay is awarded to individuals, not to groups.

Merit pay differs from performance bonuses in that it represents a permanent pay increment, not a one-off increase that is not guaranteed from year to year. On the other hand, it differs from the skill-based pay points in award restructuring blueprints, in that, even when formally negotiated and set out in a uniform scale, it need not be part of a career path. Bank workers for example, may receive a number of performance-appraisal based increments without going up a career grade.

Merit pay also differs from seniority pay, in that while the increments in both cases are individually-based, they are more discretionary in the case of merit pay. There is clearly more scope for discrimination in a discretionary system, unless the performance criteria are clearly defined, the appraisal system is an open and automatic one, and there is an appeal mechanism.

While merit supposedly involves less indirect discrimination against women than seniority, because merit is not based solely on the years-of-service criterion which disadvantages women, there is evidence for thinking that merit is in practice sometimes indirectly defined by seniority. There is also the danger that merit criteria will undervalue women's skills and under-recognise the demands of women's work.

Seniority, in the sense of service continuity, may be a proxy for the qualities that are really of value to employers, namely experience and maturity. These qualities are particularly relevant in service work, and there are positions, in finance, office administration, teaching and nursing, where employers actively seek the life experience and previous work experience which women returning from child-rearing bring to the job. In most cases, however, career breaks bring financial penalties, not access to over-award payments.

Similarly, merit pay may reward 'good time-keeping', in the sense of regular full-time attendance, and sometimes preparedness to work extra hours. Again such a definition of merit may discriminate against women because of their family responsibilities. The recent Danfoss case found that requirements to work variable schedules and locations could be found discriminatory if employers could not specifically demonstrate that they were essential to the work.

Market factors

. Union strength

Gender differences in unionisation and union bargaining power may contribute to differences in access to over-award payments, and differences in the type of over-award received (classification-based or individual/discretionary).

In August 1990, 34.6 per cent of women were union members, compared with 45.0 per cent of men (ABS Cat. No. 6325.0). The public sector areas were relatively highly unionised. By contrast, in those areas of the private sector area where women were concentrated, levels of unionisation were low: 28.7 per cent in Finance, property and business services, 25.0 per cent in Recreation, personal and other services and 22.6 per cent in Wholesale and retail trade.

It has already been noted above, that in Recreation, personal and other services and in Wholesale and retail trade, women's access to over-award payments is significantly lower than men's, and the average amount received in over-award payment per week by women is much lower than that received by men. While women's access to over-awards, and the amount of over-award payment they receive, is relatively high in Finance, property and business services, over-award payments in this industry are more likely to be made on an individual basis at the discretion of management, than on a group basis as the result of union negotiation. This squares with the AWIRS finding that non-

unionised workplaces are more likely to pay over-awards than unionised workplaces (81 per cent to 70 per cent) (Callus et al. 1991, p. 43).

Putting this information together, we can surmise that, in more strongly unionised areas of the private sector workforce, there is a tendency either to low levels of over-award payment or to classification-wide over-awards, while in the less unionised areas of the private sector workforce, there is a wide gender pay gap, and a tendency to use over-awards as a market mechanism for attracting or keeping individual workers.

Product and labour markets

The AWIRS report suggests that, at least in the context of the No Extra Claims wage principles that have been in operation under the Accord, over-award payments are more likely to be made in response to product and labour market conditions, or for management reasons, than as a result of workplace bargaining. 47 per cent of the surveyed workplaces that paid over-awards reported doing so because the award rate was considered to be too low to attract suitable employees (Callus et al. 1991, p. 43).

This finding has adverse implications for women workers, for two reasons:

- * the history of job segregation in Australia suggests that skill shortages are more likely to occur in those

traditionally male areas of employment, where trade and other credentials have helped to create tight labour markets, than in women's skill areas, where lack of training prerequisites has created conditions of greater crowding.

* with the possible exception of finance, women tend to be employed in labour-intensive, rather than capital-intensive industries and classifications, where the spread of over-award payments would have a greater relative impact on employer cost structures.

Part-time work and over-award payments

A large majority of part-time workers are women. In August 1990, women made up 78 per cent of the part-time paid workforce (ABS Cat. Bo. 6203.0).

Part-time women workers are acknowledged as making a significant contribution to productivity, for three reasons:

- * their family responsibilities and reliance on the job are seen as making them steady and reliable workers
- * their life and work experience, and the organisational skills they develop in juggling family and work, make them highly productive workers
- * their pattern of employment is fine-tuned to the peaks and troughs of the flow of work in the workplace, so that they tend to work at constant high intensity, and are not paid for the less busy times that occur during

most working days or weeks

Yet part-time workers have virtually no access to over-award payments.

As Table A shows, around 40 per cent of the female paid workforce are in part-time employment, compared with 8 per cent of the male workforce. Whereas for men, part-time employment is most common at the beginning and end of their working lives, the percentage of part-time workers increases steadily with age. There are therefore likely to be systemic factors, relating to women's responsibilities, first for children and later for aged relatives, that account for their pattern of participation in part-time work.

It is therefore of concern that part-time workers have so little access to over-award payments. The organisational and interpersonal skills that mature-aged part-time women workers bring to the paid workplace are often integral to productivity in office-based and customer service employment (Davies & Rosser 1986; National Training Council 1986). These workers tend, however, to be treated as a marginal or peripheral section of the labour market. One reason for the low pay of part-time women workers in Australia is that under 3 per cent of part-time workers receive over-award payments.

The large proportion of women who work part-time reduces women's average weekly earnings from over 80 per cent to approximately

66 per cent of men's. This is not simply a problem of lower earnings caused by fewer hours worked per week. Rather, it is a problem of part-time workers receiving lower hourly rates than full-time workers, particularly once the casual loading is discounted for. In May 1990, average hourly earnings for adult full-time workers were \$13.50, and for part-time non-managerial employees were \$12.70. Adult full-time women workers earned \$12.40 per hour and adult part-time women workers earned \$12.60 per hour. Clearly the 20 cents per hour differential between part-time and full-time women falls far short of the casual loading. This loading, which in 1986 averaged 20 per cent in federal awards and around 25 per cent in Victorian awards (Lewis 1990, Tables 28 & 29), is a compensation for lack of various types of leave, superannuation, and other conditions and benefits of permanency. A little over 60 per cent of all part-time women are employed casually (ABS Cat. No. 6341.0). Estimating the loading at 20 per cent and the proportion of part-time women who should be receiving it at 62 per cent, we can calculate that the part-time differential for women should currently be \$1.49 per hour on top of the rate for full-time women. One of the contributing factors to the low hourly rate of part-time women, relative to part-time men and full-time workers, is thus the fact that the majority of part-time workers are employed casually.

Part time jobs have also been concentrated in the lowest skill levels. Past award and other restrictions on the level and type of part time work has resulted in crowding of women needing to work part time into low skill occupations with poor prospects of

training or advancement. Although part time work provisions have been inserted in many awards under the Structural Efficiency Principle, considerable effort will have to be devoted to work design and training provision if part time jobs are to afford equal opportunity with full time jobs.

The problem of low standard rates of pay for part-time work is compounded by the lack of access to over-award payments by part-time workers, particularly women. This is despite the fact that part-time women are likely to be located in the small private sector workplaces where merit pay and over-awards are most prevalent (Callus et al., Tables A7, A13). The industrial and occupational basis of this ghettoisation of part-time women can be seen in Tables B and C. Here we see a particularly high rate of part-timers in the female workforce in the private sector industries of Construction, Recreation, personal and other services and Wholesale and retail trade; and occupationally amongst Salespersons and personal service workers and Labourers and related workers.

Data in the AWIRS and ABS sources cited in the previous paragraph allow us to build up a picture of small private sector workplaces in which unions are weak or non-existent, and in which the workforce is highly segregated between full-time men earning over-awards including merit pay and performance pay, and part-time women treated as if they were a dispensable, unskilled workforce, regardless of the experience and the interpersonal and organisational skills which they bring to the job.

4 Industrial relations directions and implications

Will Equal Employment Opportunity strategies remove gender bias in over awards?

Equal employment opportunity programs have tended to be concerned more with the occupations and job levels women have access to, rather than with the value and remuneration attached to the jobs, which have traditionally been set in the industrial system. However, increasing use of job evaluation systems in addition to (and sometimes instead of) the wage fixing processes of the industrial system is resulting in consideration of the equal opportunity implications of job value outside industrial tribunals. Equal employment opportunity strategies increasingly are being developed in all areas of human resources management.

While a broad range of equal opportunity measures - work related childcare, flexible work arrangements, fairer recruitment processes, better access to training, etc. - are contributing to changing the position of women in the workforce, changes are likely to be slow, in view of the extreme gender segregation of the labour market. Changes in occupational distribution will not necessarily affect the depressed wages in the traditionally female dominated areas. For women to have the same occupational distribution as men, 1/3 of women would have to change occupations, which is scarcely imaginable.

Unless there are specific compensatory measures, to remove the

effects of past discrimination for all those already employed under directly and indirectly discriminatory arrangements - also scarcely imaginable in the current Australian context - the effect of introducing equal opportunity in its entirety for a current cohort could only partially and gradually affect opportunities for the past cohorts constituting the existing stock of employment.

In any case, to the extent that gender wage differentials reflect undervaluing of particular types of work (skills, conditions, knowledge, etc.), only a more systematically articulated approach to work value can produce the explicit criteria required to legitimise or challenge remuneration arrangements. It is sometimes suggested that the hard to recognise skills - working with others, communication, etc. - are exactly the skills which are increasingly necessary for effective and productive organisations, and that organisations which are unable to recognise, reward, and train for those skills will be competitively disadvantaged.

The effect of award restructuring

In 1987, the Australian Conciliation and Arbitration Commission gave an expanded role to supplementary payments in wage-fixing. This was done for two purposes: to move award rates closer to market rates or paid rates, and to protect the living standards of low-paid workers who were not in a position to gain over-award payments. Supplementary payments were required to be absorbed

up to the level of equivalent over-award payments.

The August 1989 National Wage Case decision contained a Minimum Rates Adjustment principle, with all minimum rates expressed as a base rate plus supplementary payment, and made relative to the metal and building industry tradesperson rate on the basis of skill, responsibility and conditions. From the August 1989 to the April 1991 National Wage Case decisions, awards were required to separate out wage rates and supplementary payments, the latter clearly defined as minimum payments in lieu of over-awards: these minimum rate adjustments were to be fully absorbed up to the level of over-awards. Under the Minimum Rates Adjustment process, over-award payments are absorbed, and the increase in the award wage is equivalent to the difference between the old rate plus over-award, and the new minimum rate determined by appropriate relativities. The October 1991 National Wage Case decision allowed a consolidation of minimum rates: supplementary payments no longer need be prescribed in separate clauses. Thus, although the AIRC has, on several occasions dismissed submissions raised by pay equity advocates about possible discrimination in over award payments as being outside its jurisdiction, it has not always refused to take account of the interplay of award and over award payments in determining appropriate award rates.

Skill based awards, using the competencies framework of the National Training Board and including career paths and external accreditation, could incorporate and replace existing over award payments for merit.

Enterprise Bargaining, Overaward Payments and Pay Equity

In 1950, Australia had the fourth highest standard of living in the world. By 1990 Australia was ranked eleventh (TAFE 1990). During the 1980's Australia's trade balance has deteriorated and for many years there has been a trade deficit. This reflects a decline in overseas markets for Australia's traditional mineral and rural products coupled with a decline in the prices of those products. In Australia rural produce and commodities continue to provide about 80% of Australia's exports. However, whereas in 1953 manufactured products share of world trade was 46%, by 1983 it had increased to 61%. During the same period primary commodities share of world trade shrank from 53% to 30% (Storey 1990). This placed Australia on an increasingly fragile economic base. In the late 1970's it had been widely hoped that major developments in the extraction and processing of Australian mineral resources would provide the base for renewed economic growth but the failure of the projected "resources boom" highlighted the deficiencies of national economic management.

This led the Australian Labor Party, then in opposition, and the Australian Council of Trade Unions, in 1983 to agree on a statement of Accord regarding Economic Policy. This has become known as the Accord, and was shortly followed by the election of the Labor Party to Government. The Accord signalled a closer strategic relationship between the Federal Government and unions and contained as its principle aspects;

- (1) the control of prices
- (2) the maintenance of real wages, a recognition of the role of wage and salary earners in the increased national productivity and the need to examine working conditions in line with greater productivity
- (3) the comparable restraint of non wage incomes; and
- (4) commitments on taxation and government expenditure.

The course of economic restructuring has altered substantially since the first Accord was devised. But it remains fundamentally agreed that to improve relative economic performance Australia needs to rely less on primary products and to develop a manufacturing industry which will provide high quality non-standardised goods and services which can compete successfully in world markets. The process contains three essential elements: the restructuring of industry, a more flexible and productive work organisation; and a more flexible and efficient workforce through skills formation.

Enterprise bargaining is being pursued in Australia on the assumption that it will result in greater flexibility of the organisation leading to greater efficiency and productivity in the market place. It is being promoted by various means, including legislation and National Wage Cases.

Models of enterprise bargaining in Australia

Regulated enterprise bargaining.

Most parties to the National Wage case in August 1990, supported the Commission in its role of setting legally binding minimum wages and conditions with enterprise bargaining on productivity to secure overaward payments. This model essentially involves the relevant unions at all stages in the process, both nationally and at the enterprise.

Deregulated enterprise bargaining.

In New South Wales, the Industrial Arbitration (Enterprise Agreements) Amendment Act 1990 allowed for the registration and enforcement of agreements made at the enterprise level. Once registered they were no longer subject to relevant award provisions. The New South Wales Industrial Relations Act 1991 goes even further to providing greater scope for management and employees to negotiate their own arrangements to suit individual enterprises and workplaces including the removal of some organisations from the requirements of a centralised industrial system. Interference from external tribunals, unions and even employer organisations is seen as promoting inefficiency and poor production.

The Federal Opposition, the Business Council of Australia and others support further deregulation of the industrial relations system with the scope of bargaining at the enterprise level limited only by legislation which sets minimum acceptable

standards for hours of work, annual leave, sick leave, minimum wage and perhaps some equity standards such as access to maternity leave. In NSW minimum conditions for sick leave have been set at one week on full pay per year. The role of unions in deregulated enterprise bargaining is actively discouraged.

Enterprise Bargaining and women workers

Enterprise bargaining will encourage unequal pay between men and women and increase the gender wages gap. This is evidenced by the gender distribution of overaward pay, the effect of occupational and industrial segregation on overaward payments of women, the experience under the second tier of the March 1987 National Wage Case, and international comparisons between centralised wages systems, and those which rely on enterprise bargaining.

Overaward Payments

Overaward payments are already negotiated overwhelmingly on an enterprise basis, and so provide a good indicator of likely gender wages outcomes. On average, women earn less than half the overaward payments of men, as we have seen elsewhere in this submission.

As the report of the National Womens' Consultative Council into Pay Equity found,

"The limited access of women to overaward payments is the result of a number of factors ranging from blatant discrimination and the undervaluing of womens' skill to occupational and industry segregation and a lack of bargaining power. Inequitable access is a large factor contributing to differing earnings of men and women". (NWCC 1990)

Occupational and industry segregation

The differentials between male and female earnings across industries due to the extreme occupational and industry segregation of women in Australia, are likely to be exacerbated by enterprise bargaining.

In November 1989, women were employed in five main industries;

community services (27.3%), wholesale/retail (23.6%), finance and property and business services (13.3%), manufacturing (10.5%) and recreation, personnel and other services (10.4%).

Overaward payments vary across industries. Community services, where 27.3% of women work, attracts the lowest overaward payments for men and women, along with public administration. The highest average overaward payments for men are in the retail industry where women attract 17.3% of male overaward payments. The highest average female overaward payment is in the wholesale

industry where they receive a 69.9% of male overaward payments.

Even within occupations women receive fewer overaward payments than men with the exception of managers and administrators. Women process workers received only half the overaward payments of male process workers between 1986 and 1989, and only a third of the overaward payments of a fitter and turner. A female shop assistant earns on average \$4.20 a week in over award payments, compared with overaward earnings of \$33.00 for a male shop assistant.

It is likely that existing differentials across industries, occupations, and firms will be exacerbated by a more enterprise based system, in the absence of redistributive effects of centralised processes. Existing bargaining disadvantages will be compounded in cumulative increases in some areas and stagnation in others, resulting in increased earnings differentials.

The 1987 Restructuring and Efficiency Principle (Two-tier system)

The March 1987 National Wage Case consisted of a two tier wages system. The first tier provided for an across the board wage increase to all affected workers. The second tier was the amount which could result from negotiations or by arbitration on the basis of offsetting improvements in work practices. Second tier increases were to be made conditional upon improving efficiency to changes in work practices. Efficiency was to be sought at a decentralised industry and enterprise level. It appears that

trade-offs bit more deeply into fundamental employment conditions in female dominated industries, partly because historically fewer enhancements of basic employment conditions had been achieved in them.

International Comparisons.

JAPAN has 75,000 enterprise unions. This is alleged to provide a system of job security and bonus systems in major companies which benefit everybody. Yet only 30% of the female workforce benefit. The bulk of the female workforce is restricted to part time, unskilled and casual work, and has no job security, no superannuation, sick leave, holiday benefits or other benefits. Women are often forced to retire on marriage. Women earned 55.7% of men's earnings in Japan in 1987.

In the UNITED STATES OF AMERICA enterprise unionism has been one of the weapons used by employers in union avoidance strategies, e.g. DuPont, Proctor & Gamble. Generally the United States Government has not involved itself in setting wages for employment in the private sector, except that there has been a federal minimum wage since 1938 which is the same for men and women. This is set at such a low level it is largely irrelevant. Wage outcomes are determined by collective bargaining. In the United States women earn 70.3% of male earnings.

NEW ZEALAND and Australia had the lowest wages gender gap of seven OECD countries studied in 1987. Both had centralised wage

fixing systems. Japan, Canada and the United States, all of which rely on forms of enterprise bargaining to determine wages, had the highest wages gender gaps. However, New Zealand has recently suffered massive deregulation of the labour market with the introduction of the Employment Contracts Act. The Act takes away the protection of awards, centralised pay adjustments and the role of unions in negotiation by allowing individual bargaining agents to negotiate for groups of workers or individuals. The New Zealand National Advisory Council on the Employment of Women has shown that women have suffered from the changes in economic policy.

Indeed there is evidence in New Zealand of a growing division between those in secure jobs in large companies and those in marginal employment. The latter are already seeing a considerable reduction in their wages and conditions and the deterioration seems likely to continue. Harbridge and McCaw (Asia Pacific Human Resources Management, Spring 1991) demonstrate that voluntarism (in union coverage, bargaining, and union membership) and the lack of procedural rules place significant pressure on unions to accept concessionary bargaining, and force unions to make strategic choices based around large worksites.

It is notable that many countries with decentralised collective bargaining also have equal pay legislation to allow redress for bargaining outcomes based on discrimination. However, equal pay legislation generally has not performed as well as centralised

solidaristic wage bargaining, partly because of the need to address specific cases in great detail in a legal framework (and the resulting costs and time involved), the lack of general application of findings, the determination of employers to appeal and resist court findings, the ex post facto nature of proceedings, and the technical difficulties of proving discrimination.

Efficiency and Equity Outcomes

The transfer of wage bargaining in key sectors of the economy from a national to an enterprise level outside any constraints or guidelines which would at least distribute productivity increases to all of the relevant workforces would severely weaken the ability of the union movement and the federal government to negotiate over wages, superannuation, taxation, family assistance and industry development, as well as equity outcomes.

The loss of a centralised system deprives weaker groups of opportunities for flow on from stronger groups, although both groups suffer the same cost of living increases. The decline of comparative wage justice deprives weaker groups of institutional means of relating the value and reward for the work they do to the value and reward of the work for which stronger groups have won acknowledgment. The strong equity basis of the Australian wage fixing system is fundamentally compromised by that. The historic pattern of wage push pursued through overaward and award claims, followed by catch-up, coordinated by the trade union

movement, which contributed to better male/female wage relativities than in most countries, has been broken.

The reasons for the change are complex, but include a weakening of conviction of stronger groups that wage restraint would be reflected in social benefits (rather than transfer to profit and speculative investment), concern at the dependency of trade union strategies on the Accord with the ALP. There has been a heightened sense that the volatility of the business environment meant that institutionalised wage fixing could not respond quickly enough to translate bargaining opportunities open to stronger, strategically well placed groups into across the board increases, and that possible wage increases were being lost altogether.

At the same time, business strategists have become increasingly insistent on the need for enterprise bargaining on the basis of their claims that it would support international competitiveness. With increased unemployment the position of unions has become weaker, and pressure to accede to arrangements to protect remaining jobs stronger, contributing to some fragmentation in union strategies. Improvements in the position of weaker groups has been sought increasingly through lower inflation, lower interest rates, and lower taxes, while cuts in government expenditure have disadvantaged the lower income earners who need public services.

The National Wage Case and Enterprise Agreements

The Accord Mark VI between the Federal Government and the Australian Council of Trade Unions, amongst other things, sought a modified no extra claims commitment which would enable unions to negotiate at an enterprise level for overaward payments based on productivity.

The National Wage Case of April 1991 however, rejected placing enterprise bargaining within the wage fixing principles. The Full Bench of the Australian Industrial Relations Commission noted that enterprise bargaining proposals challenged a long established principle of wage fixing in Australia, namely, that the benefits of increased productivity should be distributed on a national rather than an industry or enterprise basis. It was felt that the parties and interveners needed to clarify the aims and objectives of their proposals for enterprise bargaining. They had not given adequate attention to the criteria for future wages increases other than that arising from enterprise bargaining.

The Bench also noted in its consideration of pay discrimination that "We cannot predict the extent of the disadvantage which female workers will experience if the Commission gives its approval to a scheme of enterprise bargaining. We do accept, however, that enterprise bargaining - especially bargaining for overaward payments - places at a relative disadvantage those sections of the labour force where women predominate. This is a concern which might be given more attention by the parties and interveners in future considerations of enterprise bargaining."

The NSW Industrial Commission had no such concerns. It noted the recent introduction of the NSW Industrial Arbitration (Enterprise Agreements) Amendment Act 1990 which set up the basic negotiating criteria of "productivity and efficiency". An enterprise was defined as a 'business, project or undertaking'. The NSW Enterprise Agreements Principle was designed to permit enterprise bargaining within the terms of the Act, but within the award system. It allowed enterprise arrangements for some 500 active awards held within the State system which defined rates of pay and conditions for more than 60% of NSW employees.

Meanwhile the ACTU rejected the National Wage Case and continued to pursue overaward claims based on productivity in pursuit of the Accord Mark VI. Initially these claims were pursued in the building and construction industry and the metal industry, areas where unions are industrially strong and where the workforce is predominantly male.

By the National Wage Case of October 1991, the Australian Industrial Relations Commission was under considerable pressure to reconsider its position. The Commission noted that although the concerns expressed in its April decision had not yet been allayed, a further and concerted effort should be made to improve the efficiency of enterprises. The Bench stated in its decision "It should be recognised however that the distribution of all the benefits of productivity growth at the enterprise level would lead to inequity and, ultimately, to a distorted and unsustainable wages structure."

The enterprise bargaining principle requires a consent award under Sections 112 or 115 of the Australian Industrial Relations Act. It must operate for a fixed term and is not to continue beyond its expiry date. Enterprise agreements are to operate in conjunction with relevant awards.

Increases under the Enterprise Bargaining Principle have to be based on the actual implementation of efficiency measures designed to effect real gains in productivity.

Productivity Measurement

Overaward payments, the enterprise and productivity bargaining are now inescapably linked. Pay rates are now directly related to measured productivity gain. However, the Australian Workplace Industrial Relations Survey found that only 11% of workplaces measured productivity through a quantity ratio measure, and 37% did not measure it at all. The question becomes how to place equity outcomes on the agenda.

There are three main alternative measures of productivity measurement, according to Kearney (1991*):

1. single factor productivity, which examines the ratio of the quantity of output to the quantity of some single input such as labour, capital or land.
2. total factor productivity which measures productivity

by examining the ratio of the quantity of output to some index of inputs both labour and capital and perhaps some other inputs in addition.

Both the above two measures cannot deal with (a) multiple and possibly conflicting objectives, (b) output quality, (c) multiple outputs where prices change rapidly or when complete market failure implies the non existence of any pricing mechanism; and (d) externalities.

The third methodology is

3. Organisational performance indicators and/or multi factor analysis e.g. organising, training, encouraging, equipping and helping the workforce to achieve an organisation's aims and objectives.

Productivity is difficult or impossible to measure in many industries, even where products are tangible and placed on the open market. The multi-factor approach has the potential to take into account equity issues, where single and total factor productivity measures cannot.

A recent example of adopting a multifactor approach under the National Wage Case Principles is the Rheem Water Heater Division (Enterprise Bargaining) Award 1991. There, the objectives of the consent award were incorporated into it, including "to achieve real, sustainable productivity improvements by virtue of the

following:

- (a) the creation of a culture of an understanding of productivity and its relationship to employees' primary concerns - secure and meaningful jobs. When people can accept that productivity improvements are in their interests they will be much more motivated to achieve the targets.
- (b) simultaneous improvement of all the productivity issues such as cost, quality, technology, work organisation, product delivery and education/training through continuous learning.
- (c) establishment and maintenance of consultative and participative processes that encourage all employees, management and the workforce alike, to deal with the real barriers affecting productivity.
- (d) resolution of these barriers by way of redefining and reorganising the way in which work is performed, breaking down functional barriers, incorporating quality as an integral component of the work itself, and providing for work teams to be established.
- (e) redefining jobs in order to implement the above changes and create equality of opportunity.

- (f) implementing an education/training and skilling program for all levels of the company which enables employees to function and contribute as teams and which in turn provides clear career opportunities.
- (g) reduction of labour turnover, disputation, absenteeism and lost time through injury by the creation of jobs which promote a safer and better working environment and hence job satisfaction and self worth.
- (h) performance improvement programmes and the establishment of performance indicators and benchmarking as a way of defining achievable targets, agreed by all and supported by clear objectives.
- (i) establishing closer links and agreements with suppliers and customers."

The scope within these objectives to address equity issues is tangible, and could properly include identifying female skills, providing female employees with equitable access to training, affirmative action measures, introducing child care facilities and parental leave as a measure to reduce turnover and absenteeism, incorporating female employees into the consultative and planning processes of the organisation etc. At least the measures are explicitly articulated, and sufficiently varied to permit formulation of claims by a wide range of occupational groups, including those performing highly

productive essential work distant from the most obvious point of production. Equity objectives should be a required objective of all productivity bargaining and incorporated into all enterprise agreements.

A Solution?

While this submission has illustrated the very real potential for enterprise agreements and productivity bargaining to increase the wages gender gap, it is possible to acknowledge the dangers and put some constraints in place.

It should be required to be demonstrated that all awards, and agreements supporting overaward payments that factors affecting pay equity have been taken into account at both the industry and the enterprise level. This would include minimum rates adjustment strategies, work value cases under the structural efficiency principle, conditions of employment, the distribution of overaward payments and affirmative action measures.

Pay equity strategies and implementation action plans could become a prerequisite for the registration of any award or agreement under the Enterprise Agreement Principle of the National Wage Case. Industry specific strategies for pay equity could be incorporated into any new Structural Efficiency Principle.

Only action such as this can help ameliorate the potentially

crippling effects that enterprise bargaining and overaward payments can have on the struggle to reduce the wages gender gap between men and women.

- * Kearney Colm "Performance Measurement in the Australian Public Service" University of Western Sydney Macarthur. December 1991 in Niland J. Brown W. and Hughes B. Breaking New Ground: Enterprise Bargaining and Agency Agreements for the Australian Public Service. December 1991 Canberra.

5RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS

1. Appropriate guidelines on productivity improvement in the service sector should be developed by the Department of Industrial Relations, with the advice of the Equal Pay Unit, in order to provide guidance at the enterprise level and to enable service industry workers to negotiate productivity-based increases.
2. The exemption for discriminatory awards from the Sex Discrimination Act should be removed.
3. The Trade Union Training Authority should be requested to develop training modules on discrimination in award and over award payments, and on enterprise bargaining, for inclusion by unions in award related training programs, and to incorporate training on those issues into TUTA training. The HREOC should offer its assistance and advice to TUTA in preparing training programs. The Affirmative Action Agency should be asked to contribute to the development of training programs.
4. The HREOC should develop and deliver an information and promotion program on direct and indirect discrimination in over award payments.
5. The Commonwealth Government should include in its

submissions to National Wage Cases periodic monitoring of the incidence and impact of over award payments and enterprise bargaining, on gender wage relativities overall and in specific industries and firms, and make recommendations to improve gender equity, based on those reviews.

6. HREOC should commission research into rates of pay set outside awards. Specific attention should be given to the effect on earnings in female dominated industries and occupations of group and individually-set rates

7. The HREOC should regularly appear in National Wage Cases and other cases significantly affecting the overall wage fixing framework to present submissions relevant to the AIRC fulfilling its obligations to take account of the Sex Discrimination Act. Specifically the HREOC should address the issues raised in this submission in relation to defining discrimination, the features of the existing industrial system which support and impede pay equity, and approaches to defining skill and merit.

GENERAL RECOMMENDATIONS

In addition to the specific recommendations, the NPEC also wishes to:

- . outline some general principles on gender equity in over awards
- . affirm some industrial relations processes and mechanisms which support pay equity

- . provide a framework for defining discrimination
- . suggest an approach to defining skill and merit

Fundamental principles for gender equity in over awards:

- . equitable sharing of benefits - bonuses, productivity payments, allowances, over-awards - among all employees, not just full-time workers
- . there should be scrutiny by HREOC of the institutional arrangements which construct differential results for men and women workers
- . enterprise-based bargaining arrangements for the distribution of productivity must apply equitably to all occupational groups in the same workplace/enterprise
- . part-time workers must be integrated within the mainstream workforce, so that their integral contribution to productivity is rewarded
- . payment, conditions and benefits must be negotiated and maintained equitably, regardless of whether workers are full-time, part-time or seasonal, and the pay, conditions or benefits of weaker groups must not be traded off at the expense of stronger groups

Features of the industrial system contributing to pay equity

The NPEC recognises that some existing features of and approaches to the existing industrial relations system contribute to pay equity, and supports and recommends further development of them:

- . there should be no negotiation (in context of enterprise agreements) at workplace level on allowances, penalty rates, etc - any matter that could result in loss of income (as advocated by ACTU)

- .supplementary payments, minimum rates adjustments, and structural efficiency principle work value mechanisms should continue to be used to absorb over-awards

- .substantial differences in gender relativities in over awards between states/territories could be addressed by simultaneous Federal and State Commission hearings or by Commissioners sitting on both benches, where the differences relate to different applications of principles across jurisdictions and appear to have a discriminatory basis.

Defining discrimination

- .unless employers can show objective cause why different groups of employees get different over-award payments within broadly comparable job types and classifications, those differences constitute discrimination regardless of whether the jobs are

full-time, part-time or seasonal. The burden of proof of "reasonableness" of differences should fall on employers.

.allocation on the basis of sex of jobs or tasks which results in differential earnings for men and women in the same classification is discriminatory, in the absence of other evidence.

.in determining whether allocation of jobs on the basis of sex, or sex differentiated over award payments, are in fact cases of discrimination, it may be necessary to review actual job content.

.in complaints of discrimination related to market rates, employers should be required to demonstrate the need for and basis of (eg skill, other institutional factors) payments to the various occupational groups

Defining merit and skill

.agreed-upon definitions of skill, merit, market rates are needed. Merit could be incorporated in skills-based awards, using the competencies framework of the National Training Board as criteria - each skill needs to be defined in terms of the following components: (non-gender-biased) technical; contextual; interpersonal; organisational.

.the National Training Board endorsed competencies framework should be used to replace minimum rates plus over-awards as a

market mechanism.

.criteria for merit should be publicly defined; this definition must ensure that the requirements for demonstrating merit (e.g. patterns of attendance) are not more difficult to meet in the case of workers with family responsibilities

.where informal processes of merit-based payment of over-awards occur, it must be possible to show that the outcomes are consistent with publicly-defined merit criteria.

.as an interim measure, seniority schemes which are used for making over-award payments should apply on a pro-rata basis to part-timers; and should give full credit, for the purposes of seniority, for reasonable periods of withdrawal from the paid workforce to meet family responsibilities. Part-time workers should be able to claim credit for family responsibilities undertaken while working part-time. However, seniority schemes should progressively be replaced by more accurate and equitable ways of rewarding increment of skills through experience.

Discrimination in unregistered enterprise agreements which fall under the jurisdiction of the HREOC includes:

- a) non-representative bargaining committees, for example exclusion of part-time or casual workers
- b) narrow or inequitable productivity measures
- c) a discriminatory application of bargaining guidelines, resulting, for example in proportionally higher payments to

workers on higher classifications; or differences in the timing of increases resulting in undue delays to some groups of workers .

d) other inequitable outcomes

It is discriminatory not to offer on a pro rata basis to part time employees over award payments which are offered on a group basis to full-time employees

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