

National Pay Equity Coalition (NPEC)
Submission on the Issues Paper

*Payequity and the
undervaluation of women's
skills in NSW*

NSW Pay Equity Taskforce

November 1996

Introduction

The National Pay Equity Coalition welcomes the opportunity to comment on the Issues Paper and the initiative of the NSW Labor Government in establishing the Pay Equity Taskforce. The approach taken in this State is in stark contrast to the retrograde steps being occurring at the federal level with the new industrial relations legislation and in all other states, notably in Victoria and Western Australia. As stated in many previous submissions by NPEC to successive National Wage Cases, the award system and a more centralised approach to industrial relations is the starting point for reforms which improve pay equity for women.¹

NPEC believes that the NSW Industrial Relations Act 1996 offers considerable scope to lead the way in Australia on pay equity. The definition of pay equity as equal remuneration allows for consideration of the key components of pay inequity to include overaward and other payments. As outlined in the Issues Paper, the pay gap widens, the more discretionary the payment.

NPEC also agrees with the focus of the Pay Equity Taskforce on the undervaluation of women's skills. The gender segmented nature of the workforce means that there are large areas of work traditionally undertaken by women which have not had access to the principle of equal pay for work of equal value. In particular pay rates in clerical and sales and service areas have remained depressed, at least in part, because of a lack of a male comparator. As set out in detail in the Issues Paper, many complex factors contribute to pay inequity, including broad societal factors such as the predominance of women in part-time and casual employment and continuing discrimination in career advancement. The industrial relations system is not the only lever of government in achieving pay equity. However NPEC believes that it is the primary vehicle for addressing the undervaluing of women's work.

¹ Gillian Whitehouse has shown that there is a decisive difference of 16.9 percent in favour of pay equity from the most and least centralised systems. Whitehouse 'legislation and Labour Market Gender Equality: An Analysis of OECD Countries', *Work, Employment and Society*, Vol 6, 1992. See NPEC Submission to the Senate Inquiry into the Workplace Industrial Relations Bill, June 1996.

In formulating this submission, NPEC has discussed the key issues with a number of women's organisations and the Department for Women (DFW) and agrees with the need for a Pay Equity Inquiry followed by a test case. In particular, NPEC supports the process put forward by DFW in its submission for the appointment of a Pay Equity Commissioner and for undertaking a Pay Equity Inquiry to establish equal remuneration principles. Rather than restate the argument put forward by DFW, this submission examines the recent Clerks (State) Award Decision² to illustrate the need for more investigation of work value issues and for an explicit focus on pay equity in the review of awards covering female dominated occupations.

NPEC's key proposal is that a Pay Equity Inquiry should examine two areas of work, in the clerical and service industry occupations. The majority of women workers are concentrated in these occupational categories. A focus on these two areas would address the issue of compressed career paths and low levels of remuneration for women in female dominated occupations.

NPEC argues strongly that enterprise level reforms cannot deal with the systemic discrimination reflected in the structure of awards in these occupations. As shown in the case study below, the awards are under-described and compressed horizontally and therefore do not reflect the broad range of jobs in these occupational categories and vertically, with flattened career paths, which stop below the para-professional and degree level.

NPEC believes it would be useful to compare the structure of clerical work in the public and private sector. The 12 level structure in the State Public Service suggests that there are a whole range of skills and levels not reflected in the private sector.

The Clerks Award

The following case study and the additional material in Appendix 1 show some of the key difficulties to be overcome in making the award framework deal appropriately with valuing women's work.

² Glynn J. Matter No 2335 of 1992

The recent Decision by Glynn J in the Clerks (State) Award brought to a close applications that had been before the Industrial Commission of NSW for a period of three years. The Decision noted:

...these proceedings have been on foot since 1992. Even prior to that date there had been two applications for a new award in almost identical terms by the FCU³

Central to the applications before the Commission were submissions addressing the classification structure, associated definitions and gradings of work and accompanying wage rates. There was a recognition in the submissions of all parities that the infrastructure provided by the award was deficient in its description and valuation of the work. This structure was introduced in 1978/79⁴ and replaced loadings which were introduced in 1954.⁵

The Decision, is an improvement on the previous award. It canvassed several issues related to the under-description and under-valuation of women's skills and considered relationships to accredited training. A new classification structure has been introduced which aligns wage rates and relativities to the benchmarks in the Metal Industry Award established through the Australian Industrial Relations Commission IRC.

<i>Grade</i>	<i>Relativity %</i>	<i>Wage Rate \$</i>
1	87.4	380.60
2	92.4	401.50
3	100.0	433.20
4	110.0	474.90
5	125.0	537.50

Note: The Decision reversed the order of the rates. The old award was based on an ascending order from 1 to 5. In the new award the highest grade will be Grade 1. The Decision also noted that there is no direct comparison between the two classification structures.

NPEC has examined the previous award in detail. This critique (at appendix 1) shows that the previous structure of the award:

³ Glynn J. 121-122

⁴ Dey J. Nos 330 and 360 of 1978. 1978 A.R. 724 Resultant Award (212 I>G. 492) made 24/1/79

⁵ 1954 A. R. 307

- contained poorly descriptions of the work
- was poorly assessed for work value
- wage rates did not reflect those paid in the market
- the descriptions in the award did not reflect advertised descriptions.

Despite the reforms initiated by the Decision, a number of outstanding matters relevant to the work value in this sector remain.

As noted by Probert in her critique of the restructuring of clerical work in Victoria, the concept of award restructuring and the processes utilised to achieve award reform assumed the existence of a clerical industry within which career paths can be developed.⁶ Clerical workers operate across industries and under a wide range of conditions.⁷ Probert argues that if clerical work is defined as an occupation rather than as an industry, it is possible to more accurately examine how the labour market works and reflect this in an assessment of work value.

Assessing work value involves an examination of skill. Both Probert and Pocock suggest that the examination of skill that underpinned the award restructuring process was essentially gendered.⁸ Men have historically been more successful in winning a definition of 'skilled' for their work. The jobs and skills of the majority of male workers have usually been very precisely defined and linked to a formal training structure. The task in award restructuring was to broadband a large number of the individual classifications. Employers, particularly in manufacturing sectors saw this process as achieving greater 'flexibility', an outcome they were willing to pay for. In the clerical area, like many other areas of women's work, the reverse needs to take place where a number of broad levels need to be 'unpacked' to introduce classifications which recognise varying skill levels and different types of jobs. In the clerical area, employers have

⁶ Probert B. Award restructuring and clerical work: Skills, training and careers in a feminised occupation. *Journal of Industrial Relations*, 34(3), September, 1992, 436-454.

⁸ Pocock, B. Women's work and wages. In S. Magarey & A. Edwards (Eds.). *Women in a restructuring Australia*. Sydney, Allen & Unwin, 1995.

shown in their arguments against these kind of reforms that they see no benefit in a new award structure. From their perspective, clerical workers are already multiskilled and changes to the classification structure to reflect assessment of work value linked to accredited and articulated training carry the potential of having to pay more for existing skills.

The award restructuring model is based on the notion that the standards which are incorporated into awards are commensurate with formal qualifications and credentials. This approach is problematic in the clerical area and in many other areas of work predominantly undertaken by women because it bears little relation to current training practice (in the absence of a viable process for recognition of prior learning or recognition (RPL) of current competencies (RCC) and the skills held by the majority of clerical workers in the private sector.

The approach to the determination of work value also remains unclear across industrial tribunals. Pocock notes the variance in the weight attached to an equivalence of training between areas of work. While a training equivalence should not be the only measure of skill, the approach used by tribunals in areas of work not characterised by formal qualifications remain opaque. Pocock goes on to note 'that the absence of an explicit comparative skills or work value assessment means that, once again the, method of wage fixing for a significant group of women workers remains clouded'.⁹

difficulties noted by the research were evident in Justice Glynn's deliberations in the Clerks (State) Award. The problems of the comparison of work in awards for the purpose of the Minimum Rates Adjustment (MRA) is indirectly raised in the Decision in a number of places. The Decision notes that the nature of the work covered by the Metal Industry Award cannot be compared with the nature of the work covered by the clerical award.

This approach led to inconsistencies in the manner in which the relativities were assigned. For example it was not clear why the Commission accepted the evidence of an expert witness Mr Pickersgill that the union's grade three proposal equates with the Metal Industry Award level C10 (p61-64), while rejecting the union's submissions on

⁹ Pocock, p

the relativity to be assigned to the highest rate in the award (130 per cent).

There are clear differences in the processes and techniques applied to accomplish work outcomes which are different, as say between contributing to the effective operation of manufacturing production and contributing to the effective operation of other kinds of production and services. However, the issue from a pay equity perspective rests on an Inquiry into the relationships between various kinds of applied skill. The establishment of these relationships is difficult to do in a systematic way where for example work such as that covered by the Clerks (State) Award has traditionally not been underpinned by formal qualifications. Historically the evaluation of the clerical award has involved considerations which are discriminatory and would now be illegal for wage fixing purposes.

There have now been a number of developments which would permit such an Inquiry into the relationships of work characteristics in different occupations to be assessed.

In this context, NPEC believes that more weight should have been given to evidence available from NSW TAFE on the Advanced Certificate on Office Administration in New South Wales. The hours of study required is noted in the Decision (p.64) but was not further pursued. The relationship between hours of study required and the award classification rate (skill level) is well established in awards covering predominantly male workers like the Metal Industry Award. The growth of formal recognition of the skills hitherto largely acquired on the job provides a basis for the analysis and comparison of the nature of the skills. This forms a reference point to compare work covered by the Metal Industry Award (MIA) and the work covered by the Clerks Award and other awards covering work which has so far not been part of formal training, both on and off the job. At p65 of the Decision, it is observed that there was 'no evidence about what a C.5 (in the MIA) is or does'. While such evidence is left unexamined and the relevant considerations of qualifications and relative lengths of time to acquire the appropriate skills are not considered, there must be some doubt as to whether the issue of the 130% claim by the union was fairly dealt with.

At p66 of the Decision, the Commission considered the relationship of the Minimum Rates Principle (MIA) with the task of the State

Tribunal. The Minimum Rates Principle was characterised as a principle developed to deal with problems in the federal jurisdiction. The contention was the intention of the Principle has always resided with the state body through an obligation to set 'fair and proper rates'. This view rests on a presumption that the current rates in the Award under consideration are essentially correct. Yet there is clear evidence, both from that considered by the Commission and from a range of other sources presented in this submission that this presumption is not correct. In the review of the history of the application, contained in the Decision, there is also an acknowledgment of the need for change.

The Commission's observation that 'The Australian Standards Framework is not a valid or reliable tool because it was never intended to determine industrial classifications', does not address the central issue of gender bias in work description. The ASF is a broad framework which allows distinctions to be made between work of varying characteristics.¹⁰ The ASF is a broad and nationally accepted framework for the consideration of the characteristics of work. It is a necessary first step in comparing or distinguishing between work. The translation into award classifications is clearly a matter for industrial parties and tribunals. However, the considerations which have traditionally been utilised by Australian tribunals for the determination of work value and relationships between various kinds of work are not different in principle from those which underpin the approach exemplified by the ASF and the support for recognition of these relationships via the development of the AQF and its articulation with the ASF. This issue deserves a wide ranging examination since it clearly has impact on comparisons of work which might be made between traditionally female dominated work and traditionally male dominated work. Again the issue of comparison difficulties between trades work and training and clerical work were referred to at p67, as well as the issue of the 'style of supervision'. This problem was thought by the Commission to be particularly reflected in the difficulties in assessing the work of classifications of above trade level.

However it is difficult to assess from the Decision on its face, whether competencies developed by National Office Skills Finance and Business (NOSFAB) which establish the skills and knowledge

¹⁰ NTB 2nd Edition p17

involved in coordinating the work of others or managing the work of a team, were properly considered in relation to similar skills and knowledge which are given award classification expression in the Metal Industry Award. This issue did receive some consideration in the Commission's observations about the lack of a formal education barrier which would hinder a clerk from moving from award coverage to managerial or executive levels P69 70. While it is true that compared to the Metal Industry Award the Clerks (State) Award as yet lacks a detailed hierarchy of formal qualifications to denote relative work value, the description of the work of clerical workers via competencies utilised in the workplaces where this work is undertaken and their arrangement by reference to the ASF levels would yield an equivalence, particularly where for example, curriculum has been developed to support training for work at various ASF levels.

Where this has been done in accordance with the requirements set by accreditation and standards bodies, an AQF qualification would be identified which would provide direct reference to the levels in the Metal Industry Award. Whether or not there exists at the moment a lack of formal training, yielding recognised qualifications, the Decision refers to a great deal of evidence that a large amount of training occurs at the enterprise level. Clearly this training meets an industry need and evidence was given about the mixture of formal courses and on the job training that make up the skills acquisition process in this industry. This combination is not too different to a number of industries where for example, competency based training, both on and off the job is utilised within an assessment framework which provides recognition for trade level and beyond for skills acquired in ways other than formal off-the-job courses leading to traditional certificates. The fact is that the MIA reflects 70 odd years of accreted skill recognition which is reflected in the Award as a result of a number of processes including, but not limited to, industrial campaigns to have a competency based approach to classification incorporated into the award. There is no particular reason why a lack of formal training at the moment for some aspects of clerical work (particularly at the upper levels should provide an insuperable barrier to considerations of skill and knowledge exercised by workers in the occupations falling within the general term 'clerical and administrative.' These issues receive some consideration in the Decision at pp73-77 within the context of the role of computers and the skills required for their use and operation. The evidence shows

that it is the work context within which these skills are applied that is the relevant consideration and that the various and many contexts within which these skills are applied should be grouped in a way which yields direct comparisons with unlike work processes involving the exercise of equivalent levels of skills and knowledge.

In fact the new grading structure is substantially based on the second edition of the competency standards. However, it is a five level structure which does not articulate to degree level and does not clearly line up the award with a RCC/AQF framework.

In proposing that AQF/ASF provides a starting point for a detailed examination of these issues, NPEC is aware that there are legitimate concerns about the assumptions contained in these alignments about the value accorded to work, which may also simply contain historical biases.

The difficulty in addressing these issues is that both training reform and changes at the Award level need to occur simultaneously. The recommendations set out below provide a process for ensuring that reforms relevant to pay equity occur through the industrial relations and education and training systems.

Recommendations

NPEC proposes that:

- **an RCL/RCC process with explicit equity objectives, should be a high priority in female dominated occupations and can be carried out through DTEC, in conjunction with the relevant industry training boards.**
- **This results of an investigation of the skills recognition and training framework would contribute to a Pay Equity Inquiry. In order to conduct this Inquiry**
- **the IRC appoint a pay equity commissioner to conduct a Pay Equity Inquiry focusing specifically on the Clerks (State) Award, equivalent state public sector determinations and a number of service sector awards**
- **this Inquiry should review the recent Clerks Decision and the award history of the awards specified above and request submissions from DTEC, the relevant ITABS and ANTA on progress in the articulation and accreditation of training in these occupations, including the current status of RPL/RCC, ASF/AQF**
- **The aim of the Inquiry is to establish a set of principles which specify processes for ensuring that the work of women in these occupations is properly valued.**
- **This approach would ensure that criteria for work value are established which:**
 - **identify the skills and competencies of skills held by women**
 - **reflect these skills through accreditation and articulation of training and recognition of current competencies**
 - **use the ASF/AQF process to align the awards to an eight/nine level structure**
 - **set award rates that adequately remunerate women for their skills.**