

**National Pay Equity Coalition
Women's Electoral Lobby
National Foundation for Australian Women**

**Submission to the Australian Industrial
Relations Commission**

Award Modernisation Process

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Aged Care Industry Award

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PART ONE

Introduction

This is a joint submission by the National Pay Equity Coalition (NPEC), the Women's Electoral Lobby (WEL) and the National Foundation for Australian Women (NFAW).

NPEC was formed in 1988 to address the issue of unequal earnings for men and women in Australia, over the working week, over the years of workforce participation, and over a lifetime. Its activities include publicity, education, lobbying of governments, State and Federal, and regular representations to industrial tribunals and government inquiries on all issues relating to women's earnings and workforce participation.

WEL is a feminist non-party political lobby group founded in 1972. WEL has long contributed to policy development and debate and continues to act as a research/advocacy group on issues that still disadvantage women in Australia today. WEL is dedicated to creating a society where women's participation and potential are unrestricted, acknowledged and respected; where women and men share equally in work and in society's responsibilities and rewards.

The National Foundation for Australian Women is a non-politically aligned feminist organisation working to promote the advancement of women in all spheres of activity. It is currently working actively in social and economic policy issues, promoting greater participation of women on company boards, and as well supporting a number of projects such as Women's History Month and the Australian Women's Archives Project which work to ensure that the contribution of women to Australian society is recognized and remembered. In 2007 NFAW co-sponsored research with the Human Rights and Equal Opportunity Commission and the Women's Electoral Lobby into the effect of industrial legislation on women in the workforce. It has since been active on the issues of paid maternity leave, pay equity and childcare.

NPEC and WEL have a long history of collaborative work on submissions to industrial tribunals and government inquiries on matters concerning pay equity and women's employment conditions. We have in the past sought and been granted intervention status in industrial tribunals in both the State and Federal jurisdictions, appearing in equal pay, family leave and maternity leave cases, National Wage Cases, Award Rationalisation Taskforce proceedings and the recent Williams Inquiry.

Over the years, NPEC and WEL have devoted considerable energy to a major factor contributing to women's unequal earnings- the historical undervaluation of women's skills in industrial instruments. After many years of effort, we have achieved some important breakthroughs on this issue in recent years, whereby this historical undervaluation has been recognised by the New South Wales, Queensland and Tasmanian industrial tribunals. Following this recognition, these industrial tribunals have adopted principles to allow a revaluation of women's work, and significant pay rises have been achieved for some groups of women employees.

Developments in pay equity in Australian industrial tribunals

Over the past forty years, Australian industrial tribunals have made some major decisions which have formed and shaped women's workforce experience. In 1969 the Conciliation and Arbitration Commission adopted the principles of equal pay for equal work and in 1972 the principle was extended to the concept of equal work for equal value. The current federal legislation, the *Workplace Relations Act 1996*, gives the AIRC the capacity to issue equal remuneration orders with reference to ILO Convention 100, which includes the requirement to prove discrimination in determining whether gender-based undervaluation has occurred..

The requirement to prove discrimination has proven to be a major hurdle to advancing pay equity. The two major Federal cases, the HPM case and The Age case, tightened the grounds on which equal remuneration claims could be heard.

As a result of this and prior to the WorkChoices amendments to the Federal legislation, most advances in equal remuneration and pay equity took place in State jurisdictions, following the adoption of new equal remuneration principles by the industrial tribunals in New South Wales, Queensland and Tasmania.

The State-based principles proved to be more successful because of their application through awards on a multi-employer basis and the requirement to prove undervaluation rather than to prove discrimination. Further there is no requirement for comparators and, in the case of the Queensland principle, it is capable of application to a wide range of industrial instruments.

We will submit that the award system has been an effective means of advancing pay equity. At this historic time of modernising awards the Australian Industrial Relations Commission has a unique opportunity to examine classification structures and rates of pay in a manner so as to fulfill the obligation to provide for equal remuneration for work of equal value.

PART TWO:

The Award System

In November 2008 the Australian Labor Party was elected to form a new Federal Government. As part of their election promise they proposed the abolition of WorkChoices and the establishment of a new workplace relations system, Fair Work Australia. High on the agenda was a fair workplace relations system with a new legislative framework, new institutional arrangements, new national employment standards and new modern awards.

Importance of the Award system to Women:

We acknowledge the important role in regulating awards that the AIRC and State Tribunals have in the past played in securing greater equality for women workers. Historically awards set by the various tribunals have played a significant role in the setting of pay and conditions of work for women. Women have been more award dependent than male workers.

It is clear that moves to a more de-centralised bargaining system has failed to make advances in closing the gender pay gap or delivering advances in women's workforce equality. Advances delivered to the majority of women workers have been the result of Test Cases, Decisions and Awards made in the various Tribunals. While our Organisations appreciate the need for flexible bargaining arrangements at a workplace level we see it as a necessity that it is underpinned by a strong and comprehensive modern award system that provides appropriate entitlements and wages to workers left out of the bargaining system. Studies indicate that the undermining of award conditions by Australian Workplace Agreements and the deleterious impact on women and low paid workers reinforces the need for an inclusive award system that cannot be undermined. (see Peetz, NFAW, WEL & HREOC, Victorian, Queensland Government Reports, Pocock, Preston)

We acknowledge the priority of modernising awards as a means of securing many entitlements that were lost to workers under Australian Workplace Agreements and the WorkChoices legislation.

Having stated the importance of the award system to women workers we therefore reject the proposals made by the ACCI and AiGroup that proposes 'Flexibility Clauses' that will enable an employer and individual employee to depart from the award. This, we would argue, is effectively giving rise to another form of AWA with no external review. It is quite clear that AWAs were rejected by the electorate and that Government policy is to put this unfair form of industrial agreement to an end.

We note that in the Second Reading speech for the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008*, the Government stated its view on individual agreement making not being capable of undermining the safety net:

'In Labor's view, a modernized safety net means there is no need for individual instruments which can override it. Rather, the only individual agreements that would be necessary are common-law contracts which build on the safety net but never override it or take it away'

Award Modernisation

On 28th March 2008 the Minister for Employment and Workplace Relations signed an award modernization request which provides the Australian Industrial Relations Commission when carrying out the award modernization process to have regard to the following factors:-

Division 2 – Award modernisation process

576B Commission's award modernisation function

- (1) It is a function of the Commission to carry out one or more award modernisation processes.
- (2) In performing its functions under this Part, the Commission must have regard to the following factors:
 - (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
 - (b) protecting the position in the labour market of young people, employees with a disability and employees to whom training arrangements apply;
 - (c) the needs of the low-paid;
 - (d) the desirability of reducing the number of awards operating in the workplace relations system;
 - (e) the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and to promote the principle of equal remuneration for work of equal value;
 - (f) the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workforce;
 - (g) the safety, health and welfare of employees;
 - (h) relevant rates of pay in Australian Pay and Classification Scales and transitional awards;

- (i) minimum wage decisions of the Australian Fair Pay Commission;
- (j) the representation rights, under this Act or the Registration and Accountability of Organisations Schedule, of organisations and transitionally registered associations.

We submit that in order to satisfy these requirements the Commission when conducting the modernisation process in the Aged Care Industry has jurisdiction to review awards in accordance with Section 576B (2):

- (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;
- (c) the needs of the low-paid;
- (e) the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and to promote the principle of equal remuneration for work of equal value;
- (f) the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workforce;
- (h) relevant rates of pay in Australian Pay and Classification Scales and transitional awards.

We submit that in the modernisation process a contemporary assessment of work value and classification structures and rates of pay be undertaken in order to satisfy the legislative requirement of addressing the needs of the low paid, providing for the principle of equal remuneration for work of equal value, assisting employees to balance work and family and improving retention and participation in the workforce.

PART THREE

Aged Care Industry

Why the need for gender free work value assessment?

We submit: That the Aged Care workforce is a female dominated industry in which some occupations which are dominated by women are low paid:- That there are many part-time workers:- That the work performed by these women is underpaid as many of the skills performed are undervalued and unrecognised because of gendered concepts of work value:- That changes in work in the industry and change in composition of the workforce requires contemporary assessment of classification structures and rates of pay.

National Aged Care Workforce

According to the National Aged Care Workforce Census and Survey

'the typical worker is female, Australian born, aged about 50, married, in good health, has at least 12 years of schooling and some relevant post school qualifications and works 16-34 hours a week. She is likely to be a Personal Carer, working a regular daytime shift. The post-school qualification is likely to be Certificate 111 in Aged Care'.

The number of direct care workers employed in aged care facilities and the number of agency workers totals 116,000, of whom 25,000 were registered nurses, 15,000 were enrolled nurses, 67,000 personal carers and 9,000 allied health workers.

Ninety-four per cent of workers were women and 43 per cent of aged care workers are 45 years or younger. Two thirds of workers were permanent part-time employees. (Richardson and Martin2004:2).

As at May 2003 61,000 personal care and nursing assistants of whom 82% are female and of which 55% work part-time on an average of 21 hours per week. They are mainly employed in the private sector.

Consideration of Needs of the Low paid.

In conducting the award modernisation process the Commission has a legislative requirement to consider factors such as the needs of the low paid.

We submit that many workers in the industry are low paid and specifically that personal carers working in the industry are low paid and that awards that cover them reinforce low pay.

There are a myriad of awards and agreements that cover personal care workers in the aged care industry. Personal care workers in the aged care industry are also covered by various classification structures and rates of pay.

When establishing whether or not these workers are low paid we point to ABS 6306.0 Occupational Weekly Earnings puts the Average Weekly earnings of Personal Carers at \$801.00. However this figure is somewhat misleading as it does not disaggregate figures separating Carer's with higher qualifications and rates of pay and other less qualified workers with inferior rates of pay.

However, at this level the ABS category of Personal Carers are still low paid when measured against average weekly earnings.

TABLE 1

AVERAGE WEEKLY EARNINGS MAY 2006		
	Average Weekly Earnings	Average Hour Rate
Non-Managerial Males	\$1116.50	
All Non-Managerial		\$26.30
Non-managerial Females	\$933.60	
Personal Carers	\$801.00	\$20.70
Sales Assistants & Sales Persons	\$762.50	\$19.80

We refer again to the National Aged Care Workforce Census 2004 report which examines HILDA data. In 2004 when the Federal Minimum wage was set the AIRC at an hourly rate of \$11.80, in the Aged Care industry 57% of workers with Certificate qualification or no qualification earned under \$14.00 per hour. Healy and Moskos estimate that at least 60% of personal care attendants earned below \$500.00 per week. (2004:11)

A review of rates of pay in awards in the industry indicates that award rates of pay are very low and not much higher than the current Federal Minimum Wage.

The Federal Minimum Wage as at October 2007 was \$13.47 per hour.

A review of **all** current awards in the industry is beyond the scope of this Submission, however reviewing many awards indicates low rates of pay for Assistant Nurses and Personal Carers.

TABLE 2

Nursing Homes, & Nurses' (State) Award (AN120387-NSW) pay rates effective 1/10/2007	
Assistant Nurse over 18	Hourly Rate
1 st year	\$15.65
2 nd year	\$16.12
3 rd year	\$16.59
Thereafter	\$17.08

TABLE 3

Award for Accommodation and Care Services Employees for Aged Persons – State (Excluding South East Queensland) 2004 (AN140018-Qld) pay period after 1/10/2007	
Personal Care Attendant	Hourly Rate
All Levels	\$14.82

TABLE 4

Nursing Homes Award –(AN170121 – Tas) effective 1/10/2207	
Extended Care Assistant	Hourly Rate
Level 1	\$14.51
Level 2	\$15.41
Level 3	\$15.76
Level 4	\$16.06
Level 5	\$16.47

We submit that evidence indicates that many workers in this industry are low paid and that this pay does not reflect the value of the work performed. As many workers are employed in the private sector and are unorganized and not covered by bargained agreements, we suggest that this reinforces the importance of awards that provide proper and realistic value rates of pay for the work performed.

PART FOUR

The dynamics of undervaluation:

Gender basis for Undervaluation and Low Pay:

The New South Wales Industrial Relations Commission identified the characteristics of gender-related undervaluation in the Pay Equity Inquiry (Matter IRC6320 of 1997). The Commission drew on a range of case studies and cases in identifying those characteristics that have often been found to be associated with undervaluation of work on the basis of the gender of those typically engaged in that work. These concepts are very useful in pointing to a need to re-consider the adequacy of the description and valuing of work, without requiring proof that sex discrimination has affected the valuing of the work in the past.

The Commission identified as relevant the following factors:

- low visibility
- low union participation
- in small workplaces
- in service rather than product related markets
- high incidence of consent award wage movements
- high incidence of part time and casual work
- work which is described as creative, nurturing, caring and so forth.

Other relevant institutional factors identified were:

- treatment by industrial tribunals
- regulation
- treatment of and access to qualifications and perceptions of male and female-dominated work.

The Commission also noted historical lack of recognition of the skills of female-dominated work and work value tests and assessments that emphasis and value technical and visible skills (for example in manufacturing) over relational and human services skills, especially in more recently emerging human services work. In some cases, qualifications requirements have increased without recognition of increased value of the work. There has often been lower levels of control over entry into female dominated occupations which has affected labour supply and the ability to claim a wages premium. The Commission also noted that occupational segregation itself can contribute to undervaluing of female-dominated occupations.

This analysis is relevant in general to criteria for considering whether particular female-dominated work has been adequately and appropriately valued without the valuation being affected by the sex of the workers, as is required by the International Labor Organization Convention 100. In many female-dominated occupations, there has not been an “objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex” (ILO Convention 100 clause 3 and Recommendation 100, clause 5).

Historically assessment of work value has been understood to require analysis of skills, responsibilities and working conditions. There is an extensive history of work value concepts and cases in the report of the NSW Pay Equity Inquiry (Matter IRC6320 of 1997) which demonstrates this and the various approaches that have been taken to assessing the value of work.

It is likely that some female-dominated occupations and including some occupations in the aged care industry have some of the characteristics associated with gender-related undervaluation and have not been the subject of a full and fair evaluation of the work currently being performed in those occupations. While some female-dominated professions have been the subject of detailed consideration of work value, some other female-dominated occupations have not, including roles assisting professionals, and service workers (such as cooks, cleaners etc.).

Skill and Status:

In a recent study conducted by Grimshaw and Rubery for the European Work and Employment Research Centre 'Undervaluing women's work':-

Low valuation and visibility of skill and status. Skill or pay status attached to a job or occupation reflects the status of the occupants as well as influencing their current social position. Skill status is socially constructed, by social actors. A particular dimension to this argument is the link made by social actors between work performed in the home and similar work performed in the wage economy. Thus care work in the labour market may attract a low valuation, since care work in the home is performed by women and for free. The related issue is the lack of visibility of women's skill. Numerous studies have pointed to the fact that occupational classification schemes have much more finely defined categories for men's work than for women's work. (2007:21).

Unrecognised skills in the Aged Care Industry.

The Health and Allied Services – Private Sector – Victoria Consolidated Award 1998 [AP783872 – Fed] provides an indication of the range of classifications of employees at aged care services (nursing homes, hostels, special accommodation, supported residential units, retirement villages and other aged/extended care services, and basic hourly rates established by the Fair Pay Commission to apply from 1 October 2007. They fall into four main streams –

- administrative/clerical (\$15.96 to \$18.66) - for example ward clerk, casualty clerk, medical audio typist, private secretary
- general services (\$15.15 to \$18.66) – for example maintenance/handyperson, driver, gardener, general services supervisor
- food services \$15.15 to \$18.66 – for example diet cook, second cook, food services supervisor
- technical, clinical and personal care \$15.15 to \$18.66). – for example nursing attendant, welfare aide, physiotherapy assistant, personal care worker. Junior rates, starting at 70%, suggest that the work takes three years to learn.

We submit that both skills and responsibility in this industry are under-valued, Healy and Richardson (2003) point out that in the 1996-2001 intercensal period, the workforce of aged care facilities was reconfigured, with a significant increase in personal care assistants, and a decline other forms of employment. We submit that the work value of this relatively new and emerging occupation may not have been properly assessed, particularly given the increased responsibility for aged care facilities other than nursing homes, after 1997, for managing higher levels of care need in situ. From a large 2003 survey, Richardson and Martin (2004) estimated that 57% of the direct care workforce in aged care facilities, and 64% of new hires were personal carers.

Formal qualifications of personal carers may be rising. Healy and Richardson (2003: 24) reported that at the 2001 Census, 22% of personal care assistants and nursing assistants held a Certificate III or IV qualification, with another 10% holding a bachelors degree, advanced diploma or diploma. Richardson and Martin (2004: 27) estimated that in 2003, 40.5% of the aged care workforce and 42.7% of recent hires had completed Year 12 at school, and 18.7% (25.2% of new hires) were currently studying. They estimated that 80% of personal carers had a Certificate III in aged care. Nearly 30% had other qualifications, such as nursing qualifications instead or as well.

Over 90% of personal care assistants and allied health workers in the large survey conducted by Richardson and Martin (2004: 35) reported that they had the skills to do their job, and that they used these skills in their work. Just under half of personal carer assistants felt that they had a lot of discretion in how they performed their work, with another 24% neither agreeing or disagreeing. Nearly 80% of allied health workers agreed that they had a lot of discretion (Richardson and Martin 2004: 36). These are classic indicators of skilled work.

Despite these intrinsic sources of satisfaction, there was a high level of dissatisfaction with pay – over 60% of personal carers and nearly 50% of allied health workers were dissatisfied. In particular, nearly a third of personal carers were very or totally dissatisfied. (Richardson and Martin 2004: 41).

Recent New Zealand research suggests that formal qualifications register only some of the skills of aged care workers (Junor, Hampson and Smith 2008). The researchers found that:

- 1) The skills are *not easy to name* for reasons of -
 - Tact: there are cases in aged care work where the more skilled an aged care worker is, the more invisible will be her/his skills. For example the worker will skilfully hide the support being provided to a frail person or a person with a disability, in order to foster a sense of independence.
 - Taboos: For elderly clients or their families, procedures that might provoke fear or shame, will need to be dealt with through the use of skilful discretion;
 - Tactility: There maybe no words to describe the skills of responsive interpretation that are practised in one's muscles

- or fingertips, in gauging a client's need for comfort or reassurance
- Tacitness: It may be necessary to read small warning signs, or to pick up and send signals, and to exchange information non-verbally, often in rapidly-changing situations (care assistants for example have reported being more highly attuned than nurses or doctors to when a resident or patient is about to begin the dying process, providing time to contact the family; therapy assistants spoke of picking up minute signs of improvement in a client's mobility, and so on)

2) There are certain *second-order* skills of coordination that are not well understood – these are the skills

- used to mobilise and monitor the use of other skills,
- used in learning from experience,
- involved in practice and reflection,
- used to guide personal and team learning.

3) There are skills that are under-valued when their use is seen as 'normal' or expected', but highly valued when their performance is less expected

- emotional intelligence may be seen as 'natural' to low-paid women but a significant achievement in senior medical or administrative men. Or the
- the risk-management skills of women dealing with psycho-geriatric disturbances may be noticed less and valued less highly than (for example) the risk-management skills of firefighters.

We submit that such unrecognized skills can be defined as 'work process skills'- They

- exist alongside and additionally to the knowledge that is recognized in formal qualifications
- are required to turn knowledge into proficient practice.

We submit that these skills, of applying experience and building on it in solving workplace problems, may be required independently of levels of formal knowledge, and certain jobs may call for higher levels of such skills than of formal knowledge.

We submit that in mapping the daily work of care assistants, the New Zealand research produced a long list of activities and their underpinning skills (Appendix 2).

We submit that the skills in question are work process skills. They are the skills used to turn formal knowledge and experience into expert work practice. We submit that that long lists of activities requiring work process skills, such as those in Appendix Two need to be put into a manageable format for the purposes of skill recognition, and suggest such a format.

Techniques for identifying under-recognised skills

We submit that a classification framework is now available for identifying the work value of the skills required in the aged care industry. This framework is based on just three main sets of skills, containing nine elements:

A. <u>Shaping awareness:</u> <i>Capacity to develop, focus and shape awareness of work situations, by</i> A1 Sensing contexts A2 Monitoring reactions (own and others') A3 Judging impacts
B. <u>Interacting and relating:</u> <i>Capacity to negotiate inter-personal, organisational and inter-cultural relationships by</i> B1 Negotiating boundaries B2 Communicating verbally and non-verbally B3 Connecting across cultures
C. <u>Coordinating:</u> <i>Capacity to organise your own work, link it into to the overall workflow and deal with disruptions, by</i> C1 Sequencing and combining your own activities C2 Interweaving your activities with others' C3 Maintaining and restoring work-flow Source: NZ Department of Labour (unpublished draft 2008)

We submit that in any determination of work value, these three skill sets need to be considered alongside knowledge content (e.g. qualifications) or behavioural outcomes (competency standards) as indicators of work value.

We submit that to be operational in work value terms, the skills in these sets need to be further classified into levels, and that an economical framework for doing so is now available (New Zealand Department of Labour unpublished draft 2008).

The five levels are:

1. Familiarisation – a level of conscious reflection and learning
2. Fluent automatic practice – a level at which the skill has become automatic and is carried out without having to think about it;
3. Proficient problem-solving – a level at which the skill is used so automatically that the job holder can concentrate on solving problems in the course of carrying out normal activities ;
4. Creative problem-sharing – a level at which solutions start to be fed into workplace practice, as job holders share idea and techniques to create new and changed approaches;
5. Expert system-shaping – a level at which job holders are working to embed new expertise within workplace systems.

These levels are designed to provide a framework within which the under-specified skills of all jobs, at all levels, can be identified and classified.

- This framework is specific to the nine work process skill elements outlined above
- It avoids over-reliance on criteria such as technology/tool use that were developed before the emergence of the service economy.
- It supersedes the distinction between ‘hard’ and ‘soft’ skills, which is increasingly inappropriate to jobs where work with tools, ideas and people is intertwined. It is no longer tenable to see work with sentient beings as less difficult than work with inanimate objects.
- It provides a new precision to criteria such as autonomy, complexity and routine. The daily routines of a nursing home are maintained only through the humane and dignified management of life and death issues and this requires the unspoken exercise of initiative on the part of aged care workers.

This approach to identifying under-specified skills was based on a research project undertaken between 2005 and 2008 and funded by the New Zealand Department of Labour. This research built on literature on emotional labour (Bolton 1985) and articulation work (the integrative work of care-giving, Strauss et al 1985), as well as Steinberg and others’ (1990, 1991, 1992, 1999) Ontario based analysis of aged care jobs and Charlesworth’s 1993 study of community care in Victoria. In-depth qualitative interviews were conducted in jobs with a range of requirements for work with technology, people and data, including a number of jobs in the ‘assistant’ or support worker category. 12 in-dept interviews from the health sector yielded 400 pages of transcript, cross-referenced to 45 further interviews and 94 position descriptions inside and outside the health sector (1600 pages of transcript altogether). The data were subject to rigorous computer-based analysis using the ‘contexts and consequences’ approach to abstracting findings (Glaser and Strauss 1967; Strauss and Corbin 1998) in studying health sector processes.

The interviews were not used to generalise about the jobs studied, but to abstract a taxonomy that can be used as a tool for testing the skills and skill levels of service jobs in general.

The list of skills in Appendix 2 refers only to the skills identified as being required in the work of Personal Care Assistants. This job was studied, as part of a spectrum ranging from nursing aide, ward assistant, rehabilitation outpatient receptionist, occupational therapy assistant, pharmacy assistant, community links coordinator, psycho-geriatric nurse, imaging technician, anaesthetic technician, enrolled nurse, disability support worker, as well as higher level nurses, up to Director of Nursing and nurse education coordinator. A framework of nine skill elements and five skill levels was developed by classifying the skills identified in these health sector jobs, as well as jobs in education and public administration. More recently, the taxonomy has had some early testing in the community care sector. As Appendix 2 indicates, a very extensive list of examples of the nine skills is required, at a range of levels, in order to meet the job requirements of personal care assistant.

It is important to emphasize that this approach to identifying under-specified skills does not offer to provide a complete account of the skills required in a job. It is simply a straightforward way to organize **extra information** about three sets of hitherto poorly-defined applied skills that appear to explain many of the qualitative aspects of caring and other service jobs.

As Appendix 2 shows, the three skill sets are used in personal care work at level 3 (problem-solving) and even at level 4 (solution-sharing). Thus these work process skills may be found in jobs requiring formal qualifications at Certificate III level.

Work process skills will certainly not replace formal qualifications, which will continue to grow in importance. But we submit that they need to be considered in addition to, and alongside the use of indicators of formal knowledge, in order to pinpoint under-specified sources of work value. This is particularly so in cases where there is prima facie evidence of undervaluation, such as manifestly high rates of dissatisfaction with remuneration. .

Form of work Contract:

Another reason why the skills of the aged care workforce are likely to be undervalued is the high incidence of part-time work in the sector. According to the Aged Care Workforce Census and Survey only 11 per cent overall are permanent full-time employees, with this percentage highest for Registered Nurses at 18% and lowest for personal carers at 8%. Casual and contract staff comprised 19.5% of the workforce. (Richardson and Martin 2004:20) Part-time work performed by women is often undervalued. According to Grimshaw and Rubery:-

'Part-time work and part-time workers are often undervalued. This is because part-time work is often vulnerable work, may part-time workers enjoy little control over their works hours, women in part-time work experience a persistently large pay gap, work for many part-time workers has intensified, often through manipulation of scheduling by employers to avoid paid breaks and female part-time workers have a weak career opportunities and face constraints in transferring to full-time jobs'. (2007: pxi)

Changing Nature of Work:

There has also been significant change in the required competencies and work performed in the Industry as a result of legal change, changes in technology and the delivery of care in health, increasing community expectations and demographic change.

We have already noted the change in composition of the workforce, the decline in those with Nursing qualifications and the three-fold increase in personal carers. There has been an increased role for assistants while other more qualified workers take on higher more specialist tasks. This in itself raises issues of who is doing the work and at what level of payment.

The reduction in the aged care workforce and the increase in personal carers have made work intensification a serious issue. According to Healy and Moskos many workers felt that they were under pressure to work harder on the job (2004:p21). The added workload also resulted in workers performing unpaid overtime to complete their tasks. This was often linked to the increased level of 'paperwork' now required in the industry.

Reporting requirements and legal protections now operating in the health sector have resulted in workers developing new competencies. For instance workers must be alive to changes in Privacy Laws, Mandatory Reporting requirements and end of life programs and policies.

Changes in the delivery of health care and technology and the move to multi-disciplinary care have had far reaching effect on aged care workers. Higher incidence of chronic disease such diabetes, dementia, cancer and stroke have placed heavy and changing workloads on aged care workers.

According to Australia Health Policy Institute:

'As the population ages the proportion of patients with multiple or complex health care needs will increase. Each patient needs to be managed by a form of case manager who is able to co-ordinate a team of multi-interdisciplinary care providers and establish a care plan by consultation and then ensure it is delivered. These managers can be more generalist health care workers because they will not actually be providing service delivery, just managing it. (Productivity Commission 2005:19).

Technological advances have a range of effects on aged care workers and their skill requirements. For example surgical fitting of complex prostheses requires an understanding of engineering concepts (2005:22). Changing E-Health with greater use of electronic health records and patient information for primary and emergency care changes skill requirements.

Consequences of Low Pay for Participation and Retention

We would submit that in order to address impending labour market shortages pay must reflect contemporary notions of value. To encourage women's workforce participation and to attract and retain workers, workers must feel satisfied with work and reward.

HSUA Survey of members 'found that the majority of respondents were working between 27-37 hours per week, 90% felt that they were poorly paid, and over two thirds felt staffing numbers were inadequate at their workplace. (Healey and Richardson 2003:37)

While many women in the aged care industry feel satisfied with their work, many, especially personal care workers are dissatisfied with their pay and feel that they are low paid. Healy and Moskos in **'How do the Aged Care Workers Compare with**

Other Australian Workers' argue that 'in relations to the work itself we showed that aged care workers are generally satisfied with the nature of their job over half of all aged carers were unhappy with their financial remuneration, and on in five nurses and personal carers said the they totally dissatisfied with pay.

Richardson and Martin examine HILDA data on job satisfaction of aged care workers and find that on 'pay satisfaction' 'the overall message s conveyed where we can clearly see the dissatisfaction of female aged care workers compared with all employed women' . The figure of 17 per cent for all women employed compared with 58 per cent for women in the aged care industry. Female carers are more than three times as likely as all employed women to be unhappy with their current pay. Female carers with lower hourly wages are substantially more likely to be dissatisfied with their pay and the rate of dissatisfaction declines as hourly earnings increase. (p19)

In a further survey of the Aged Care workforce conducted by National Institute of Labour Studies, '**What's Best, What's Worst? Direct Carers' Work in their own Words**', Moskos and Martin found that the most frequently mentioned dislike of working in aged care was pay (p27).

'The pay. 20 years experience, six years study and I could earn more as a barmaid. And I have with a lot less stress involved'.

'The pay is pathetic for the responsibilities we are given, not much of an incentive to work in this field'

'With the amount of money we get an hour (\$12.98)for the work we do is not near enough. I believe AIN is the lowest paid job in Australia.'

'Need to work weekends in order to earn flat \$500.00 and to be able to maintain living standards. Rent, bills etc.'

As mentioned above, according to Census data taken in 1996 and 2001 there was a 14% reduction in the aged care workforce however during that time there was a rapid expansion of employment for personal care assistants. In the five year period the number of PCA's more than doubled in nursing homes and in aged accommodation facilities. One in every six carers in nursing homes was a PCA, compared to one in sixteen in 1996. (Richardson & Martin 2004:20)

As yet, this growing occupation is one without a career path. As potential labour supply problems grow across the Australian workforce, the aged care industry will struggle to retain staff providing various forms of direct personal care, and to compete for new staff, unless it pays closer attention to the present strong disjuncture between remuneration and the demands of the job. This disconnect is starkly obvious in the divergence between intrinsic job satisfaction and strong dissatisfaction with pay levels (Richardson and Martin 2004, pp. 42-43; Moskos and Martin 2005). As the labour market becomes tighter, the incentive to look for better-paid work elsewhere will increase. The employment 'crunch' will be exacerbated as growing numbers of highly articulate baby-boomers, with high expectations of service quality, reach the age when they will become consumers of aged care services. The industry is very

largely comprised of women, many of whom are approaching the end of their main years of workforce participation (Healy and Richardson 2003:23)

The costs of attrition and turnover are heavy. For each direct carer who leaves the industry, tangible turnover costs can be estimated conservatively at the equivalent of eight months' salary, made up of separation costs; vacancy costs, replacement costs, induction costs, and performance differential of new hires. Intangible turnover costs add a further 6 months' salary equivalent. Made up of colleagues' workload increases, stress, impact on morale; decreased productivity due to loss of work group synergy, and loss of intangible intellectual capital (work process knowledge, client contacts, external relationships, and goodwill. (Fitz-enz 1997; Cascio 2000, EOWA c 2006). Such costs are likely to outweigh the costs of recognising the true value of the work being performed.

In New Zealand, the problem of improving staff retention in the health sector has been recognised through a Career Framework project, which has looked at ways of recognising formal and informal learning in areas where competencies are shared across service domains and occupational groups (Ministry of Health and District Health Boards New Zealand Workforce Group 2007). Recognition of the types of hidden work process skills suggested above will provide a broader skill basis for career progression.

Direct personal care work is apparently a growth occupation, it is important that it be set up in a way that will provide stability and prevent 'churn'. Healy and Richardson comment:

'Attention should be given to an apparent lack of career paths in the industry. Unlike most of the workforce, longer job tenure for females in the aged care industry does not appear to have any steady association with higher hourly earnings. Without the prospect of a higher wage in exchange for their commitment to the job workers slowly lose interest and the incentive to attain higher skills. In aged care we see a pattern that is not repeated in the workforce at large: workers with longer service have lower job satisfaction. At the same time, pay dissatisfaction is rife among those who have hourly earnings. Each of these problems is inter-related. If there were more structured opportunities for advancement and promotion to higher wage, tenure would bring higher earnings to some, increasing their overall job satisfaction, and reducing the number who are stuck in dissatisfying low wage jobs (p. 24)

We submit that addressing the issue of low pay and appropriate classification structures that reflect the true value of work will assist in increasing participation and retention in the aged care industry. It will go some way in addressing future labour market demands.

PART FIVE

Conclusion

In this submission we have argued many women workers in the Aged Care Industry are low paid and that this is a result of gender-related undervaluation of their work. We have identified factors that contribute to this undervaluation and suggest that a contemporary reassessment of work skills and value would assist in correcting for equal remuneration for work performed. We have acknowledged the importance of the award system in determining women's wages. We have attached in Appendix One the New South Wales Equal Remuneration Principles and Practice Direction which we submit provides a good framework for assessing equal remuneration.

We submit that the parties to modern awards be required to provide affidavits setting out whether and to what extent the awards meet equal remuneration and anti-discrimination requirements consistent with the ILO Conventions 100 and 111. The NSW Equal Remuneration principle and the similar Queensland principle) provide guidance about assessing equal remuneration. Where the proposed award does not satisfy the equal remuneration and anti-discrimination requirements, the affidavit should set out the steps parties will undertake during the life of the award to meet the requirements. Where an "objective appraisal" of the value of the work has not been undertaken, industrial parties may need to determine the methods by which an objective appraisal of the work is to proceed, consistent with clause 3 of the ILO Convention 100.

We submit that the application of contemporary principles of equal remuneration for work of comparable value in the award modernization process will satisfy the objects of the Act and create a truly modern award system that will benefit Australia's economic prosperity.

PART SIX

Appendices

Appendix One: Framework for assessing equal remuneration:

We submit that the New South Wales Equal Remuneration Principle (C2000-52) provides a useful framework for assessing whether an award provides equal remuneration for men and women workers for work of comparable value. The Principle is set out below.

Equal Remuneration and Other Conditions

- (a) Claims may be made in accordance with the requirements of this principle for an alteration in wage rates or other conditions of employment on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis.
- (b) The assessment of the work, skill and responsibility required under this principle is to be approached on a gender neutral basis and in the absence of assumptions based on gender.
- (c) Where the undervaluation is sought to be demonstrated by reference to any comparator awards or classifications, the assessment is not to have regard to factors incorporated in the rates of such other awards which do not reflect the value of work, such as labour market attraction or retention rates or productivity factors.
- (d) The application of any formula, which is inconsistent with a proper consideration of the value of the work performed, is inappropriate to the implementation of this principle.
- (e) The assessment of wage rates and other conditions of employment under this principle is to have regard to the history of the award concerned.
- (f) Any change in wage relativities which may result from any adjustments under this principle, not only within the award in question but also against external classifications to which the award structure is related, must occur in such a way as to ensure there is no likelihood of wage leapfrogging arising out of changes in relative positions.
- (g) In applying this principle, the Commission will ensure that any alteration to wage relativities is based upon the work, skill and responsibility required, including the conditions under which the work is performed.

- (h) Where the requirements of this principle have been satisfied, an assessment shall be made as to how the undervaluation should be addressed in money terms or by other changes in conditions of employment, such as reclassification of the work, establishment of new career paths or changes in incremental scales. Such assessments will reflect the wages and conditions of employment previously fixed for the work and the nature and extent of the undervaluation established.
- (i) Any changes made to the award as the result of this assessment may be phased in and any increase in wages may be absorbed in individual employees' over-award payments.
- (j) Care should be taken to ensure that work, skill and responsibility which have been taken into account in any previous work value adjustments or structural efficiency exercises are not again considered under this principle, except to the extent of any undervaluation established.
- (k) Where undervaluation is established only in respect of some persons covered by a particular classification, the undervaluation may be addressed by the creation of a new classification and not by increasing the rates for the classification as a whole.
- (l) The expression 'the conditions under which the work is performed' has the same meaning as in Principle 6, Work Value Change.
- (m) The Commission will guard against contrived classification and over classification of jobs. It will also consider:
 - (i) the state of the economy of New South Wales and the likely effect of its decision on the economy;
 - (ii) the likely effect of its decision on the industry and/or the employers affected by the decision; and
 - (iii) the likely effect of its decision on employment.
- (n) Claims under this principle will be processed before a Full Bench of the Commission, unless otherwise allocated by the President.
- (o) Equal remuneration shall not be achieved by reducing any current wage rates or other conditions of employment.

The President of the Industrial Relations Commission also issued a Practice Direction as to how the Commission would satisfy its obligation under s.23 of the industrial Relations Act that an award the Commission is asked to make meets the equal remuneration requirements (F. L Wright, *J. President* 14 July 2000).

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

PRACTICE DIRECTION No 6

Pursuant to Rule 89 of the Industrial Relations Commission Rules 1996

Applications for Consent Awards having regard to section 23 of the *Industrial Relations Act 1996*

The purpose of this Practice Direction is to provide an appropriate procedure for the making of consent awards having regard to:

- (a) the requirements of section 23 of the *Industrial Relations Act 1996*, and
- (b) the decision of the Full Bench of the Industrial Relations Commission of 30 June 2000 in *Re Equal Remuneration Principle* [2000] NSWIRComm 113.

- 2. This Practice Direction will become effective 14 days after it is published in the New South Wales Industrial Gazette.
- 3. In the Full Bench decision in *Re Equal Remuneration Principle*, the Commission said at 155:

"Operation of s23 of the Act

Finally, and having in mind the cases advanced by the parties as to the proper construction of the Act which we have dealt with, we announce that a Practice Direction *will* in due course, issue to require parties seeking a consent award to file with the application an affidavit stating the basis upon which it is contended that the proposed award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value. This material will form the evidentiary basis upon which the Commission will in future base its consideration of the requirements of s23 of the Act."

- 4. When application is made for a consent award, the parties shall file an affidavit setting out the basis upon which it is contended that the proposed award provides for equal remuneration and other conditions of employment for men and women doing work of equal or comparable value.
- 5. The affidavit referred to in paragraph 4 of this Practice Direction will usually form the evidentiary basis upon which the Commission will consider the requirements of s23 of the *Industrial Relations Act 1996*.
- 6. In the absence of agreement between the parties, the obligation to file the affidavit referred to in paragraph 4 of this Practice Direction will be the responsibility of the applicant.

7. The affidavit is to be filed either with the application for the consent award or within seven (7) days of the date on which the application for the consent award is filed.

Appendix Two

Research-based list of activities reflecting some under-specified skills of personal care assistants in the aged care industry

- Understand and observe the boundaries of scopes of practice, managing demarcation lines between scopes of practice;
- Interpret the subtle unspoken needs of clients who can't express them;
- Maintain constant alertness and vigilance for safety of residents, looking out for hazards and 'watching behind one's back';
- Monitor slight variations in physical condition of clients;
- Assess residents' emotional well-being or progress, to give feedback to nurses,
- Evaluate the client's environment for safety, accessibility and impact on mood,
- Use reasoning and problem-solving skills to work out what is going on with patients who cannot express themselves;
- Monitor small situational changes and engage in ongoing informal discussion and interpretation with colleagues as to how a situation is going,
- Control one's reactions to frightening or disgusting situations or events;
- Manage one's own and others' distress, fear, grief, and anger;
- Provide informal guidance to colleagues, sharing working knowledge (including the tactful provision of practical advice to those in more senior positions) ;
- Daily making the best of a situation by handling disappointment and frustration at barriers to delivering the standard of service needed, and at lack of acknowledgement of ones 'input and advice;
- Manage conflict, distrust, confusion among clients and between clients and staff ;
- Mediate and advocate appropriately on behalf of clients;
- Interact effectively with people who are confused, disoriented, or in shock or trauma (residents, family);
- Manage issues relating to client privacy, physical shame, distress at disfigurement, loss of capacity etc;
- Deal with ethical protocols, for example around disclosure,
- Maintain one's own currency of information on legislation, standards, regulations, policies and procedures;
- Take notes and write up minutes of interdisciplinary meetings; developing sufficient understanding of 'technical' language to interpret discussions,

- Provide receptionist services, clear phones, do paperwork, take deliveries, handle mail;
- Understand nurses' codes, charts. interpret record;
- Bring together ideas and information from various sources to solve problems;
- Search out information that is hard to find in short time-frames;
- Manage inventory, accession and manage the flow of supplies, maintaining goodwill with suppliers to ensure speedy delivery;
- Keep track of supplies and equipment to ensure economical use,
- Maintain residents' and organizational oral history;
- Transmit organizational know-how to new staff;
- Help customise equipment to assist with daily living, and train people with disabilities in adapting to its use;
- Assemble and adjust mechanical and electronic equipment to individual use;
- Learn the safe use of a range of motorized and electric equipment and coach clients in using or accepting their use (eg hoists);
- Patiently provide explanation, or find ways to model required behaviour;
- Provide encouragement;
- Console;
- Help people cope with major life transitions;
- Convey unwelcome news;
- Rebuke patients nicely;
- Convince patients to do things they don't want to do, through a lot of persuasion;
- Negotiate with service providers, for example transport services;
- Advocate and make representations on behalf of others;
- Interpret language of clients;
- Interpret for clients/patients;
- Communicate across language and communication barriers, for example with stroke patients or using a language board;
- Work with people from a diverse range of cultures and social backgrounds;
- Organise social events to maintain morale;
- Maintain aesthetic appearance of place as a contribution to morale;
- Switch language between clients, adapting communication style to clients;
- Set firm boundaries and learn to say no acceptably;
- Judge when to remain silent;
- Manage own safety eg with erratic clients;
- Show broad-mindedness;
- Negotiate ongoing progress of work with busy colleagues;
- Manage one's own feelings to avoid over-involvement;
- Use motivational skills with older people who have reverted to childhood;
- Learn to let clients do things for themselves by 'sitting on your hands' although it takes longer and they are struggling;
- Work to a range of different supervisors who have different expectations;

- Provide specialized advice in own area of expertise within team to people who have higher professional qualifications;
- Shift gear emotionally, according to whether a resident wants to have a bit of fun, or talk very seriously;
- Adjust communication style to varying clients and community groups;
- Build up client self-esteem and help them get back to as normal as possible without being condescending;
- Constantly learn ways to build up client self-esteem and independence;
- Adopt a holistic approach to working with stroke victims psychologically and physically;
- Exercise diplomacy in advising less experienced but more highly qualified staff;
- Learn time management skills by saying no to requests from more senior colleagues;
- Put together a mental map of how to manage the day;
- Constantly prioritise when no two days are ever the same;
- Keep track of own work whilst being on demand to constant requests for help from other staff and patients;
- Use intense concentration when dealing with very sick or frail people;
- Deal with emergencies (eg cardiac arrest);
- Safely work around the rules to get things done;
- Resolve many different calls on one's attention at once;
- Respond to competing requests from different nurses and 34 residents , 'making sense of the muddle' and bringing order into the day;
- Learn the tricks of the trade-who to contact to get things done;
- Manage malfunctioning equipment without calling for help;
- Coach colleagues in solutions to technical problems and short-cuts one has developed;
- See what needs to be done and get on and do it;
- Do a range of things at once – manage technology, think about information, talk to people at the same time;
- Manage several situations at once (have up to four activities going at once) – patient in the shower, help a nurse, do something else;
- Make rapid responses through quick decision-making;
- Follow up, follow through;
- Respond to complex time demands and unpredictable deadlines;
- Balance time pressures against the need for quality service;
- Decide which processes need more time and when it is time to move on;
- Work with people who have an approach to time that clashes with the organisation's;
- Put things back on track;
- Fit in little emergencies that constantly pop up whilst keeping on task and on schedule;
- Plan the week and then make constant readjustments to plans as new client priorities arise. (Unpublished data, New Zealand Department of Labour 2006)

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