

INTRODUCTION

The Council of Action for Equal Pay seeks to intervene in the Review of the 1983 Wage Fixing Principles to bring to the attention of the Commission the plight of a large number of women who are suffering pay discrimination in contravention of the 1969 and 1972 Equal Pay Cases.

During the 1983 hearing, when the current wage fixing principles were set the Commission received submissions from the Women's Electoral Lobby, the Union of Australian Women and the National Council of Women requesting that any centralised system introduced should contain provision for the re-evaluation of women's wages in occupations which are traditionally undertaken by women. The Commission responded that:-

"such large scale work value inquiries would clearly provide an opportunity for the development of additional tiers of wage increase, which would be inconsistent with the centralised system which we propose for the next two years and would also be inappropriate in the current state of unemployment especially among women. Moreover, many of the problems which the WEL has raised are a matter for the management, unions and governments rather than for award provisions."

Two years have passed since that time and gender pay inequities are still great in this country. In June 1985 women's total weekly average earnings were 66.7% of the earnings of men. Women averaged \$262.60 per week while the male average was \$398. (1) A closer analysis of the rates paid to women and a comparison of those paid to men reveals several causes for this large discrepancy in remuneration between Australian men and women. And whilst we may agree that some of these causes may be a "matter for management, unions and governments rather than for award provisions" we intend to show that there are nevertheless areas of discrimination in the pay rates accorded to women which can only be corrected by award provisions and further that the current wage fixing principles appear to prevent the necessary changes being made and therefore would, if maintained, continue to prevent wage justice being granted to a large number of Australian women.

(1) ABS Cat.No. 6301, June 1985.

The Federal Government have made it quite clear that discrimination in award provisions is beyond the jurisdiction of their Anti-Discrimination Legislation

- Quote -

Therefore matters of discrimination within awards must be dealt with by the Commission. Two years ago the Commission also claimed that it would be inappropriate to undertake any large scale work value inquiries which might lead to tiers of wage increase would be inappropriate in the current state of unemployment. We believe that it is inappropriate to punish employed women because of the state of unemployment.

Many more women work part-time than men. In August 1985 79% of all part-time workers were women. 37% of all employed women worked part-time compared with only 6% of men. (2) Clearly this accounts in part for pay discrepancies between men and women but if we eliminate the earning of part-time workers the discrepancy still remains high. In June 1985 the average total weekly earnings of full-time women workers was \$343.00 just 78.6% of men's (\$436.30). (3)

There are also large differences in the amount of overtime worked by men and women, in May 1981 men earned an average of \$29.00 per week in overtime whilst women averaged only \$5.90. However even when overtime payments are deducted from pay rates the earnings for ordinary hours in the June 1985 still showed men taking an average of \$405 compared with only \$334.30 taken by women - 82.5%. (4)

We are therefore faced with an 18% pay discrepancy between men and women for hours worked, some of which could, as suggested in the 1983 Guidelines, be removed by management unions and governments. Discrepancies in over award payments, discrimination in promotional structures and inequalities in bonus's, penalty rates and superannuation schemes are all contributing factors which may be rectified through Government Anti-Discrimination Legislation and Affirmative Action Schemes. However the largest single contributory factor to the low paid rates of women workers caused by the rigid gender division of occupations in this country and an undervaluing of the jobs traditionally occupied by women.

2. ABS Cat. No. 6203, August 1985
3. ABS Cat. No. 6301, June 1985
4. Ibid.

It is this factor we wish to see addressed by the Commission in its Review of the 1983 Guidelines and our submission will deal entirely with the wage inequality of women who are employed in traditional female occupations.

SUBMISSION

Gender segmentation in the Australian Workforce

The Australian workforce is divided by rigid gender segmentation of occupations. According to an OECD Study in 1982 Australia has the most sex segregated labour market by occupation of all advanced OECD countries. (5) Women workers are concentrated into a small number of occupations. In February 1985 34.6% of all employed women worked in the clerical occupational category. (6) 53% of all employed women work in either the clerical or professional/technical occupational groups (7). If we include the service, sport and recreation area and sales we find that these four major occupation categories employ 82.2% of all women workers. (8)

Over the last twenty years this segmentation has not decreased rather it is increasing. In 1966 the proportion of women workers who were employed in these same four major occupational categories was only 70.7%. (9)

Furthermore, if we look at the minor occupational categories within each of these groups we will find that women are most often confined within each of them to occupations which are predominantly filled by women. That is, occupations which have a greater proportion of women in them than the overall participation rate of women workers. (10)

In August 1985 women comprised 38.5% of all employed persons. (11) Among clerical workers at the same time there were 888,000 women and 321,100 men. Nearly one quarter of women employed in clerical occupations are listed as stenographers and typists, a group which includes virtually no men at all. In the Service, Sport and Recreation group there are nearly twice as many women employed as men and again they are concentrated into two minor occupations, housekeepers, cooks, maids and related workers and caretakers, cleaners, buildings. The latter category also accounts for a large number of men, however it is common knowledge that among caretakers, cleaners, buildings, the occupations are further divided by gender. Men are more likely to hold jobs as caretakers and women as cleaners. In the sales area most women fall into the minor group which includes shop assistants.

Notes

5. O.e.c.d. Women and Employment, 1980, p.44-46.

6. ABS, Labour Force, February 1985.

7. Ibid.

8. Ibid.

9. CBCS Censuses, 1966.

10. See Appendix 1.

11. ABS, Labour Force, August 1985

The extent to which the gender segmentation of occupations in Australia is rigid is clearly evident when we consider that only 9% of occupations have more than 25% of both sexes in them. (12)

It is our concern that the wages of this large proportion of women workers have not been affected by the Equal Pay decisions to date and who therefore have continued to suffer a great injustice, which has been contrary to the sentiments of the Commission in the 1972 Equal Pay Case which ruled that equal pay was deserved for work of equal value regardless of the sex of the worker. We will show that the women employed in traditional female occupations earn wages which are significantly less than those of men, that this disparity is not justified and that this situation has not improved since the introduction of the 1969 and 1972 Equal Pay decisions, rather it has been worsened. The current Wage Fixing Guidelines appear to preclude the redressing of this injustice and we therefore seek that they be amended to allow such redressing to take place.

Equal Pay in Australia

The 1969 Equal Pay Case granted equal pay for equal work. It ensured that women working in jobs alongside men received the same rates of pay as those men. However the number of employed women who were entitled to receive pay increases as a result of this case was limited, in fact only 18% of all employed women received increased pay.

The arguments which were brought forward to support the case are even more valid today than they were in 1969 were:-

- that society had undergone "significant technological and sociological changes in the post war era" (13)
- that women have performed an essential role in the development of the economy, and
- that the largest percentage increase in the workforce during the 1960's was married females.

There can be no doubt that society has continued to undergo enormous technological and sociological changes since 1969. The proportion of the workforce who are women has continued to increase since that time. In the 1966 Census women were 29.5% of the total workforce and in the 1971 Census they were 31.7. (14) In June 1985 women were 38.6% of the workforce (15) showing that their contribution to industrial growth has increased greatly. The largest percentage increase in the workforce has continued to be that of married women.

12. Marles, F. "Where are Women in the Workforce?", Equal Opportunity Forum, Number 6, September, 1981.
13. 127 CAR., p.1147
14. CBCS Census 1966, 1971.
15. ABS June, 1985.

In a review of the history of wage fixing in Australia by the Commission in the 1969 Equal Pay Case the Commissioners stated:

'There is no real dispute as to the origins of basic wage fixations, namely, that the male basic wage was fixed as a family wage and that the female basic wage was fixed as a wage for a single woman without dependants. This was based in one sense on sex discrimination inasmuch as it was only to a male head of a household that a family wage was awarded, (16)

They also said:

'The most we are able to say is that there is still a relic of the concept of the family wage in most of the present total wages. It is an amount which has been arrived at for varying reasons and in varying ways, but we consider it no longer has the significance, conceptual or economic, which it once had and is no real bar to a consideration of equal pay for equal work.' (17)

It was further stated that:

'If there were no history of wage fixation in this country and if we were starting afresh we might well not approach male and female rates as they were approached in the beginnings of the Federal arbitration system. This is in no sense intended as a criticism of the eminent Judges of the past but is merely a reflection of the fact that in our view changes have occurred in social thinking.' (18)

It is clear from these statements that the Commission was aware the 1969 Case that women had suffered wage injustice as a result of social attitudes which had no longer any relevance to the situation in 1969. With the injustices of the past in mind, the Commission ruled that women should be granted equal pay for equal work. But in 1972 this concept was broadened because it was clear that it was too narrow and only covered a very small number of women workers.

16. 127 C.A.R. P1152
17. Ibid. P1153
18. Ibid. p1156

In the 1972 Equal Pay Case the Commission said:

'In our view the concept of 'equal pay for equal work' is too narrow in today's world and we think the time has come to enlarge the concept to 'equal pay for work of equal value'. This means that award rates for all work should be considered without regard to the sex of the employee.' (19)

We understand that the new principle set was intended to encourage women in a wide range of occupations to seek to have their pay rates re-valued in light of the new principle. However for whatever reasons the concept of equal pay for work of equal value was still regarded as narrowly as the previous concept of equal pay for equal work had been and the wages of women working in traditional female occupations maintained their low relativity.

In fact it would seem that the relativity of the wages of women in traditional female occupations have barely improved at all since the 1950 decision to increase the female basic wage from 54% to 75%.

In 1974 the minimum wage was extended to women and the Commission spelt out that:

"We have decided that the family component should be discarded from the minimum wage concept." (20)

The introduction of the minimum wage for women however, still left the question of the total wages paid women working in traditional women's occupations untouched. The relativity of these workers remained unchanged, and the gender-bias which inherent in these rates because of the need concept has remained intact.

This bias must be redressed and although in the 1972 case the Commission attempted to make allowances for such a redressing, it did not development any means of doing so. The situation is even more difficult since the 1983 National Wage Case principles have been adopted, for they restrict the possibility of developing means to rectify this situation.

19. 147 CAR p178

20. 157 CAR p299

Although the average ordinary hours full-time rate for women is currently 82% of the same rate for men we must remember that this average includes the rates of women who have received the benefits of the 1969 and 1972 Decisions. If we look at the comparative wages of men and women in different occupational categories we get a more realistic idea of the

actual difference in wages between women in traditional female occupations and men in traditional male occupations.

Wage Relativity between Women and Men in Gender Concentrated Occupations (21)

The Australian Bureau of Statistics breaks the workforce into nine major occupational groups each of which is further divided into a number of minor occupational groups. An annual survey of the average ordinary time earnings of male and female full-time non-managerial employees is available for these categories. It is worth noting that figures are only provided for the earnings of women in six of the major categories because their numbers in the other three categories are too insignificant to warrant printing. This in itself is clear evidence of the extent to which women are concentrated in a small range of occupations.

A review of the full-time male and female average ordinary time earnings in minor occupational categories illustrates the extent to which women in traditional women's occupations receive much less than men in traditional men's jobs within the same major occupational category. To show this we will deal separately with four of the major occupational categories. Within each major category we will compare the average wage of women working in minor categories which employ a majority of women with the average earnings of men in the same major category but employed in minor categories which employ more men than women. However only four of the major categories are relevant for our purposes here. The other five employ a majority of men or women in all minor categories. One of these categories, that of clerical workers, employs more women than men in all its minor categories and the other four major categories employ more men than women in all minor categories.

In the first major category, that of Professional, technical etc. there are two categories which employ more women than men. The average full-time earnings for ordinary hours of the two were \$368.95 in May 1983, and the earnings of the men working in categories which employ a majority of men are \$423.65 or 13% more than that received by women. However this

21. The rates of pay used in this section come from ABS Cat. No. 6306 - Distribution and Composition of Employee Earnings and Hours - Australia, May 1983. The distribution of men and women in occupations is taken from ABS Cat. No. 6203, The Labour Force, Australia, August 1985. Both are included in this submission as Appendix 1 and 2.

category includes teachers who are recipients of Equal Pay and if we remove them we find that women in traditional women's jobs receive 80% of the wages of men in occupations which are predominantly filled by men.

Within the major category of Sales the differences are much more pronounced. There are three minor occupational categories, the first covers Insurance, retail estate salesmen, auctioneers and valuers and the second covers commercial travellers and manufacturers agents. Both these categories employ a large proportion of men - 87% of employees in the first category are men and 83.5% in the second. The average full-time earnings for ordinary hours in these two groups were \$338.10. The third minor category within the sales grouping covers Proprietors and shopkeepers, workers on own account, n.e.c. and retail and wholesale trade; salesmen, shop assistants etc. and this group employs 62% women and their average full-time earnings for ordinary hours are \$237.50 - just 70.2% of the earnings of men in male dominated occupational categories.

In the major occupational group of Tradesmen, Production-Process Workers and Labourers, N.E.C. we find that in twenty minor categories only three employ a majority of women and that their average weekly rate for ordinary hours was \$231.75. The remaining seventeen categories employ a majority of men and their average rate is \$314.25. In this grouping too the difference in the rates for ordinary hours of full-time workers is much greater than the overall average for all employees, women in female dominated occupations earn only 73% of that earned by men in male dominated occupations.

In the fourth major category which covers Service, Sport and Recreation Workers the differences in rates between men and women are the most drastic. Only one minor category has a majority of men and they earn an average of \$415.20 per week for ordinary hours. In the remaining five categories women earned an average full-time wage of \$252.64 just 60.8% of that earned by the men.

We have chosen to deduct the average wages of men and women employed within major occupational categories because it must be assumed that since the ABS has seen fit to break the workforce up in this way the minor groups within each major must have several similarities as occupations. These groupings are not industry based and so the similarities must relate to the components of the job itself and yet as we have shown the wage rates earned by women working in female dominated areas and those earned by men working in male dominated areas are very divergent.

This information provides overwhelming evidence that a large contributing factor to the wage disparity between men and women has an occupational base which forms the essence of the problem we are wanting to see addressed. It is clear that the

wages of women working in traditional women's occupations receive less pay than men and there can be no wage justice for women in this country unless the Commission is able to accept cases for the re-evaluation from unions on behalf of women members employed in traditional female occupations.

Current Guidelines

Detail sections of the 1983 Guidelines which restrict comparable worth cases being accepted -

Undervaluing of Women's Work

To date women in Australia have had difficulty in gaining equal pay for work of equal value because the Conciliation and Arbitration Commission has compared the depressed wages of one female dominated occupation with the depressed wages in another female dominated occupation. The wages of women in traditional female occupations were set with "needs based" criteria uppermost in the reasoning of the early Commissioners and they have never been revalued along with the revaluing of many gender based economic and social issues.

The Guidelines set in the 1983 National Wage assumed that wages at that point in time had an equitable base, whereas, in fact, the wages paid to women working in traditional female occupations are not equitable because the basis for their original fixing was that of needs, at a time when women were considered to 'need' only 54% of what men 'needed'. This matter has never been redressed.

Alongside the 'needs base' for wage fixing which discriminated against women's wages has grown a general acceptance that the work done by women is not as valuable, or seen to be as valuable as that performed by men. This is an irony because when the original differentials between men's work and women's work were set because of a perceived difference in needs it was never stated that the value of women's work was less than the value of men's. But as the notion of value has become increasingly the determining factor in wage fixing an assumption has developed that because women are lowly paid their work must contain little value.

Many jobs performed by men are accorded more prestige in society than those performed by women and this prestige is usually accompanied by a social belief that the actual value of high-prestige jobs is necessarily higher than those of low-prestige. This is often in despite the fact that the tasks performed, responsibilities, skills and training involved in the jobs are the same. For example a woman working in a shop is called a shop assistant whereas a man working in a shop would often be called a salesman. The two jobs are identical, they would be likely to sell different items, but the work performed, the skills necessary and the amount of responsibility could well be identical. A man who sells insurance is called a salesman and his job takes a different form from that of a shop assistant, but it is doubtful that the value of his work in terms of wage fixing criteria is all that different at all. Yet the social status and the pay rates of the one are much higher than the other.

Another factor which is often given high value is physical strength. This is involved in many men's jobs, but there seems no real reason why it should be valued more highly than the manual dexterity involved in many women's jobs, e.g. typing.

Being responsible for machinery is another factor accorded high value in many men's jobs whereas responsibility for people which many women have in their work is not so highly valued. For example a mechanic receives much higher ordinary wages than a child care worker.

Often where women perform work which has been deemed to involve abilities 'natural' to women these abilities are undervalued and jobs requiring such abilities have been deemed unskilled. This is an extremely subtle and pervasive form of job discrimination which relates to the traditional view of women's position in western society as a whole. An example of this is nursing. Nurses have a pay rate which was set in accordance with rates typically paid to women yet they often have tertiary training. Their low rates of pay are often justified on the assumption that nurses undertake tasks which are 'natural' to women such as caring, nurturing and ministering. Yet why should these qualities not be regarded so highly as qualities which are assumed natural for men, such as physical strength.

This pattern may be seen to emerge in many traditional 'women's jobs', from the undervalued 'natural' manual dexterity of female process workers to the undervalued 'natural' conscientiousness of female cleaners.

The idea that the skills involved in women's work are inherently inferior is deeply entrenched but it is not sacrosanct and work and could easily be corrected.

For real wage justice to be applied to women in traditional women's occupations it will be necessary to do two things. Firstly the value of the work performed in these occupations needs to be compared to the value of work performed by men in comparable male occupations. Secondly the criteria which are used for this comparable valuation must be carefully scrutinized to ensure that they are free of any generalized and historical social gender-bias towards the traditional value of women's work. Both can be obtained by the adoption of the concept of Comparable Worth, a new concept in wage fixing in Australia but one which has already gained a substantial credence overseas.

Comparable Worth

We submit that if the Australian Conciliation and Arbitration Commission included this concept of Comparable Worth in its approach to reviewing women's wages, wage justice would be

achieved by a large proportion of women workers. We further submit that the amended guidelines which emerge from the current review of the 1983 Guidelines make allowances for cases to be brought before the Commission immediately to avoid any further perpetration of this injustice.

Comparable Worth entails a comparison between one occupation and another, using an established set of value criteria. The wage discrimination suffered by women working in traditional women's occupations can be redressed if the occupation is compared to a male occupation which is believed to comprise similar value. Once the comparison in the value criteria has been made then the difference in wages can be redressed accordingly.

However it is very important that the value criteria which are used are themselves free of any inherent gender-bias.

In the Australian situation the closest any industry has come to work evaluation is what has traditionally been called a work value inquiry. These have usually been carried out by the Arbitration Commission. The criteria which have traditionally been used to evaluate work in Australia are demonstrated in the Vehicle Industry Award of 1968 when Senior Commissioner Taylor stated that a work value inquiry should give regard to:

1. The qualifications necessary for the job.
2. The training period required
3. Attributes required for the performance of the work.
4. Responsibility for the work, material and equipment and for safety of the plant and of other employees.
5. Conditions under which the work is performed such as heat, cold, dirt, wetness, noise, necessity to wear protective equipment, etc.
6. Quality of the work attributable to and required of the employee.
7. Versatility and adaptability (e.g. to perform a multiplicity of functions).
8. Skill exercised.
9. Acquired knowledge of process and of plant.
10. Supervision over others or necessity to work without supervision; and,
11. Importance of work to overall operations of plant. (17)

However the criteria listed by Senior Commissioner Taylor are important for they indicate the sort of methodology which can be employed to evaluate women's work in a non-discriminatory manner and they closely resemble some of the factors taken into consideration in overseas work evaluation studies which are based on the concept of Comparable Worth.

Comparable worth basically involves comparing the worth of a traditionally female dominated occupation with a traditionally male dominated occupation in an objective manner, using accepted criteria of work value. The commitment to objectivity requires that job worth be evaluated solely on the basis of the nature of the work performed and means that assumptions which are potentially sexist or discriminatory are rejected, e.g. the assumption that women tolerate boring, repetitive tasks better than men and so need not be paid at a rate to compensate for them, is clearly sexist and based on unproven preconceptions about differences between men and women.

Comparable Worth Overseas

Comparable worth has been used overseas in determining wages for women in traditional occupations and has been accepted as a legitimate wage fixing mechanism. It is clear that in Australia too, we must adopt a new method of non-sexist work evaluation and comparable worth provides the basis for this to take place.

We include this information about the developments of comparable worth overseas to show how the problem has been approached. We realize that the nature of the Australian Arbitration and Conciliation Commission is unique to the Australian situation. However we believe that it is useful to know what has taken place overseas so we can develop a way to redress wage discrimination within our own system.

In the United States over the past few years, test cases claiming equal pay for work of comparable value have been prepared and met with some success.

The consultancy firms of Hay Associates of San Francisco and Norman P. Willis and Associates of Tacoma, Washington have been the leaders in devising job evaluation methodology in the U.S. Both companies rely on a points rating system of job evaluation whereby the relevant components of a job are identified and given a point value according to a number of criteria. For example, the Hay Associates work evaluation scheme identifies four criteria by which a job is judged - know-how, problem solving, accountability and working conditions. Similarly, the Willis method identifies knowledge and skills, mental demands, accountability and working conditions.

These four factors, however, do not receive the same potential point value but are weighted, either due to the number of components to a factor (such as the scope and depth of required knowledge) or due to the considered value of a factor; for example, in the Willis method the knowledge and skills factor has a potentially larger point value than the working conditions factor.

Some forms of evaluation have adopted a rating system, according different points for different criteria and totalling them to achieve an overall value for a job. An example of this method was used in the U.S. for the employees of the City of San Jose, for example, under this system a painter receives a total of 173 points and a secretary receives a total of 177 points. The evaluation included the following criteria:

	<u>Painter</u>	<u>Secretary</u>
Know-how	115	115
Problem Solving	22	29
Accountability	22	33
Working Conditions	14	0
<u>Total Point Value</u>	173	177 (20)
Salary	\$24,518 p.a	\$17,784 p.a.

In August 1983 the U.S. District Court in Washington heard a case prepared by the American Federation of State, County and Municipal Employees (AFSCME) representing nine Washington State employees claiming pay equity with males although the women all worked in predominantly female jobs. The case was based on the concept of comparable worth. The main components of value which were considered were of effort required, skill employed and responsibility. In November 1983 Judge Jack Tanner ruled that the women, must be given substantial pay increases because they had the same level of skills and handle comparable responsibilities as men who have more highly paid jobs. The decision to grant pay rises was reached on the basis of a work evaluation study which compared the job requirements of typists with those of a traditional male occupation - the one which was chosen in this case was that of truck driver. On the basis of a work evaluation study the AFSCME claimed that clerical workers had the same 'job value' as truck drivers. In other words their job was of comparable worth.

20. Bunzel, J.H. "to Each According to Her Worth', The Public Interest, Spring, 1982., p 80.

The work evaluation study had originally been commissioned in 1974 by the State of Washington in response to demands for equal pay by the AFSCME and was carried out by Norman Willis and Associates. The evaluation of work value used four basic criteria which had a number of components.

1. Knowledge and Skills, including the components of Job Knowledge, Interpersonal Communications Skills, Coordinating Skills;
2. Mental Demands, including the components of Independent Judgement, Decision making, Problem solving requirements;
3. Accountability, including the components of Freedom to take action, Nature of the job's impact;
4. Working Conditions, including the components of Physical Efforts, Hazards, Discomfort, Environmental conditions.

After the work evaluation study had been completed the two jobs of clerical worker and truck driver emerged with a similar 'score', despite the fact that truck drivers were paid \$300 dollars a month more than secretaries.

The State of Washington accepted the findings of the study but then continually deferred action on the grounds that they could not afford to bring female employees' salaries up to that of male employees'. As a result of this failure to do so, the AFSCME instituted legal proceedings. Consequently the State of Washington was found have discriminated against the plaintiffs and the court ruled that the cost of correcting sex-based wage discrimination was not a defence.

The Washington case affected the position of 15,000 women who worked for the State of Washington. As a result of the case these women were granted an immediate 30% pay rise, they were also awarded several years back pay.

In Minnesota a work evaluation of State employees conducted by the State Council on the Economic Status of Women found that four female dominated jobs - clerk typist, clerk, pharmacy technician, employment services assistant, are of comparable worth to the male dominated jobs of car mechanic and delivery van driver. This job evaluation study was instrumental in the passing of a Minnesota Act which provided for equal pay for work of equal value to all State employees. (22)

21. County of Washington v. Gunther, 452, US 161, 170, 101 S.Ct. 2242, 2248, 68 L.Ed 2d 751 (1981)
22. Information taken from, Morris J. No More Peanuts: An Evaluation of Women's Work, National Council of Civil Liberties, Great Britain, 1983

The U.S. District Court also granted equal pay in the case of Thomson v. Government Printing Office. (23) The Court accepted that 300 women who operated large sewing machines in the State bindery were entitled to equal pay with men who operated cutting and gathering machines. The women had been classified as bindery workers and the men had been classified as journey man bookbinders at a wage of approximately \$3.00 more per hour than the women.

A Brief Review of International Law on Equal Pay: Europe and Canada

In response to the need for a re-evaluation of women's work many Western countries have legislated to formally institute equal pay for work of equal value as determined by work evaluation studies based on the concept of comparable worth.

This legislation varies widely between countries as regards such details as the burden of proof but each is intended to make it easier to bring a claim for higher pay based on comparable worth. The various equal pay cases brought in the United States been heard under various pieces of legislation with the most significant cases such as the Washington case being heard under existing Civil Rights legislation. In other countries it has been necessary to introduce legislation specifically designed to deal with the issues raised in comparable worth cases.

Britain: In 1970 the British Equal Pay Act was passed, however it was not proclaimed until 1975. It restricted equal pay to situations where women could show that they performed "like work" or work that was "rated as equivalent" to that of a man. However, after an initial period in which women's pay started to catch up to men's, a decline set in and in 1982 women were still receiving only 73.9% of male earnings. (24)

In 1982 the European Economic Community (EEC) brought Britain before the European Court of Justice over its failure to comply with the EEC's 1975 Equal Pay Directive (EIRR). (25) The Directive requires Member States to legislate to ensure that women receive equal pay to men "for the same work or for work to which equal value has been attributed." (26) The EEC claimed that Britain had "failed to fulfill its obligations fully under the EEC's 1975 Equal Pay directive." (27)

24. Townshend-Smith, R. "The Equal Pay (Amendment) Regulations 1983, Modern Law Review, 74, 161, 1984.
25. Commission of the European Communities v. United Kingdom, Case 61/81 (1982) ICR 578; (1982) IRLR 333.
26. "Revising Equal Pay Legislation", European Industrial Relations Review, 111, April 1983, p10
27. Ibid., p 10.

It was also claimed that Britain had failed to provide a remedy for women receiving unequal pay for work which when compared with a man's work in the same employment "equal value had been attributed". (28)

In response to this criticism the UK passed the Equal Pay (Amendment) Regulations in 1983. The new regulations aim to provide a set of procedures by which women can have their work compared with men's and thereby gain equal pay for work of equal value.

The procedure to take a case operates as follows. A woman must claim before an Industrial Tribunal that her work is of equal value to that of a man with the same employer. Equal value is defined as existing "where a woman is employed on work which is, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment. (29)

There have been many criticisms made of the UK legislation. The Equal Opportunities Commission (EOC) claims that the changes still do not fully comply with EEC directives and that "in several respects equal pay applicants will be in a worse position under the proposed Order than they are at present. (30)

The major concerns of the EOC about the UK Regulations are:

- there is to be a delay of 12 months in bringing the changes into force;
- equal value cases are to effectively be barred where there are already job evaluation schemes in operation which have rated men and women differently;
- the onus will be on women claiming equal value to prove that it is because of their sex that they are being paid less;
- the proposals do not make clear how equal pay is to be assessed;
- the complicated procedure proposed by the government for making equal value claims will deter many women from beginning the process;
- the proposals do not provide enough power to amend any relevant provisions in collective agreements. (31)

However if a British woman does not receive justice under British legislation she may appeal to the European Court of Justice which has proved more progressive than British Industrial Tribunals. (32)

28. Townshend-Smith, R. op. cit. p201

29. "Revising Equal Pay Legislation", op. cit. p11.

30. Ibid., p11.

31. Ibid., p11.

32. Morris, J. No More Peanuts: An Evaluation of Women's Work, National Council of Civil Liberties, Great Britain, 1983.

An interesting equal pay case was heard by a British Industrial Tribunal in Manchester; (33) this case illustrates the efforts which some employers will make to avoid their obligation to institute equal pay and it demonstrates the pervasiveness of the entrenched discrimination which operates to devalue the skills involved in traditionally female dominated occupations.

This case involved the employees of a computer firm. Prior to the British Equal Pay Act (1970) men and women in this factory had performed the same work but the men had been paid more. With the introduction of the Equal Pay Act the pay of the women was upgraded to the male rate. The employers then undertook a work evaluation study and as a result of this the male workers were classified as fabrication assemblers and they were again paid more than the women - the rationale for this upgrading was that the male employees would receive parity with men doing similar work in other factories.

Ms. McCabe, a machine shop operator, brought a claim for equal pay based on comparable worth. The two job classifications were outlined as below:

<u>Fabrication Assembler</u>	<u>Machine Shop Operator</u>
Male dominated (100%)	Female dominated (100%)
heavier work	lighter work
responsibility to set	ability to set own
flexibility of job description	drills but not allowed
less dexterity	no flexibility
training available	more dexterity
	no training available

The employers claimed that the two jobs were materially different and that the higher pay rates for the men were therefore justified. The Industrial Tribunal rejected this argument deciding that the only material difference between the two jobs was the fact that the males performed heavier work, this was compensated for, however, by the greater manual dexterity involved in the women's work; the Tribunal therefore granted the female machine shop operators equal pay with the fabrication assemblers.

Cook. More recently in England an industrial tribunal ruled unanimously that a woman cook in a works canteen must be paid the same wage as skilled shipyard craftsmen. The case was brought by Ms Julie Hayward, an employee of Cammell Laird, the Merseyside shipbuilder. She successfully claimed comparable worth with a joiner, a painter and a thermal insulation engineer working in the same shipyard and consequently received a 33% pay increase. This case has been the first of

33. Ibid.,

its kind in Britain and is expected to set an important precedent for the future working of the British Equal Pay Act. (34)

Northern Ireland: The original Irish Equal Pay Act was amended in 1984 to properly implement equal pay for work of equal value. This law is highly significant and it contains provisions which are designed to ensure that a woman's claim for wage justice is taken seriously.

Unlike the British legislation the Irish Act allows women to bring a case claiming discrimination on the basis that her work value has been evaluated unfairly. The Irish legislation recognises point evaluation schemes based on the demands of the job as the only valid method of determining job worth (these point evaluation schemes are similar to those used in the various US cases of comparable worth). (35)

However the legislation limits job comparisons to workers of the same employer, that is, to the one company or its subsidiaries and related companies.

The Irish legislation mainly differs from similar legislation of other countries in that the burden of proof falls upon the defendant - that is, the onus is clearly upon the employer to show that any pay differences are not due to discrimination. (36)

The legislation is also particularly effective due to its strict definition of proof. The employer is required to show that any justifications for different pay rates are based on decisions which were taken prior to the determining of pay rates; and that these decisions were based on empirical evaluations of differences in job worth. This means that it is particularly difficult for employers to attempt to justify pay differences on the basis of analyses of job worth performed subsequent to the hiring of an employee at a specific pay rate.

The Irish Labour Court not only has the jurisdiction to hear cases of discrimination in the basic pay rate but also cases alleging discrimination in merit pay, shift pay, overtime pay, liability pay, commissions, production bonuses and piece rates. The jurisdiction of the Court is particularly broad and employers must be able to demonstrate not only that overaward payments are determined on the basis of non-discriminatory data, e.g. that workers in one job get production bonuses because of statistical evidence of their higher productivity compared to workers in other jobs, but also that women have genuinely equal access to jobs which may

34. Financial Times, 31 October 1984.

35. Speirs, D. Make It a Woman's World Too!, Equal Opportunities Commission for Northern Ireland, 1984.

36. Ibid.

provide overaward payments. This means that unlike Australian equal decisions the Irish legislation is concerned to ensure not only that discrimination in the basic wage is eradicated but that discrimination in the total wage package of women is eradicated.

In 1977 women making breast prostheses were compared to male moulders who received higher pay. The men's work was heavy] they were continually on their feet in hot, noisy conditions and had some responsibility for the quality of the finished product. The women did various jobs - inspecting, sanding, shaping and cementing. The Irish Transport and General Workers (ITGWU) argued that the women's work should be evaluated as at least equal in value to the men's work on the basis that:

1. The women needed greater flexibility in their work, i.e. they did a number of different jobs.
2. The women were responsible for actually making the final product, this included supervising and inspecting the men's work.
3. The women were responsible for training newcomers over a three month training period; they required greater on the job experience compared to the men.
4. The men's work was unskilled whereas the women's work was semi-skilled.
5. The men performed their work under worse conditions than the women but this was compensated for by the greater responsibility required of the women.

The Irish Labour Court accepted the above arguments of comparable worth and granted the women equal pay to the men on the principle that the manual dexterity of the women was at least as valuable as the strength of the men.

In 1981 in the Irish case of Borg-Warner (Ireland) Ltd. and the ITGWU (37) 128 women claimed that their jobs were of equal value to a utility maintenance worker. The women performed a variety of jobs but there was a difference of approximately five pound per week in the pay of a utility maintenance worker and the highest paid woman. It was decided that the work of utility maintenance required greater physical effort and had poorer working conditions than any of the female dominated occupations however the Court granted equal pay to the women who performed the job of assembly demonstrators and trainers on the grounds that this job required greater skill, job knowledge and responsibility than the better paid utility maintenance job.

36. Borg-Warner (Ireland) Ltd. v. 128 Female Employees, Equality Officer's Recommendation, EP 10/82.

Canada: In Canada equal pay for work of equal value is a provision of the Human Rights Act which is implemented by the Human Rights Commission. (37) The Commission carries out work evaluation studies based on the concept of comparable worth following a complaint of sexual discrimination in wages. It would seem in fact, that the Canadian equal pay provisions are designed to specifically recognise equal pay based on comparable worth for a complainant must be a member of a female dominated occupation and the occupation with whom her job is compared must be male dominated. A limiting factor however is that the Act only allows comparisons within the one workplace and this means that workers in poorly organised or small industries without union representation may find it difficult to institute a case. This provision has led to several comparable worth claims in Canada being achieved by collective bargaining.

However equal pay based on comparable worth has been granted in a number of cases heard by the Human Rights Commission:

- nurses have been awarded the same pay as hospital technicians working in Federal prisons.
- Government librarians were granted the same pay as historical researchers.
- public health nurses were granted equal pay to that of male physician assistants, this meant an upgrading in pay of \$500 per month.

All of the above cases were won using work evaluation studies based on the concept of comparable worth. (38)

The problem has been dealt with overseas by a number of different bodies, the different approaches made in each country have depended on the different forms of legislation and arbitration systems which operate in those countries. In Australia however it is the jurisdiction of the Arbitration and Conciliation Commission to alter award rates and this is what is required for comparable worth to become effective in Australia. The Federal Anti-Discrimination Legislation has made it clear that anything to do with award rates is outside its jurisdiction and is the responsibility of the Commission.

- Quote -

37. Morris, J Op Cit.

38 Ibid.

Changes in Social Attitudes Towards Gender Bias

Since the 1969 and 1972 Equal Pay Cases there have been many changes made throughout society, in Australia and overseas in an attempt to eradicate all sorts of gender bias. In its 1972 Decision the Commission stated:-

'The broad issue we have to decide is whether in the present social and industrial climate it is fair and reasonable that the 1969 principles should remain unaltered. This involves us in making an assessment of what, if anything, has happened in the area of equal pay since 1969.' (1c)

In 1974 ILO Convention No.100 concerning Equal Remuneration for men and women workers for work of equal value was ratified by Australia. This Convention clearly accepts the principle of comparable worth. It states in its articles 2 and 3:

'Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.....

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

The Convention, in its recommendation No.90 says:

'Where appropriate for the purpose of facilitating the determination of rates or remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for 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; such methods should be applied in accordance with the provisions of Article 2 of the Convention. (2c)

1c. 105 147 CAR p.177

2c. I.O. International Labour Conventions and Recommendations, 1919-1981, Geneva, 1982

In July 1983 Australia ratified the United Nations Convention on the Elimination of all forms of Discrimination against Women.

Legislation has been passed by federally and by three states since the 1972 Equal Pay Case. In all cases this legislation was intended to remove discriminatory practices against women in employment.

However it has been recognised by the formulators and interpreters of all these peices of legislation that the question of award rates must be properly dealt with by the Arbitration and Conciliation Commission and we therefore submit that if women's wages are to be brought into line with other developments which are working to eliminate sex discrimination the Commission must make allowances for cases of comparable worth to be brought before it.

- to be included - summary of affirmative action programmes -

23. IBID.

CONCLUSION

In this submission we have shown:

1. That women working in female dominated occupations suffer a pay disparity with men for the same hours worked which is much greater than the overall average. The percentage of all full-time employed women's earnings for ordinary hours is 80% of men's, whereas women working full-time in female dominated minor occupations within the four major occupational groups we have studied earn for ordinary hours 73%, 70% and 61% of the rates paid to men working in male dominated occupations.
2. That the extent to which women are confined to a small range of occupations compared with men gives them little room to escape from low paid 'women's' jobs and that the situation has not improved since the introduction of Equal Pay in 1969/72, in fact it has become more pronounced.
3. Despite the intention of the Commission to eliminate pay disparity on the basis of gender in granting Equal Pay in 1969/72 this has not been achieved because of the gender segmentation of the workforce and the low rates paid to women working in female dominated occupations.
4. That the work traditionally performed by women is undervalued because of an inherent gender-bias in assessments of work-value criteria. This has grown alongside the perpetration of a needs concept in Australian wage fixing which was discriminatory to women, and neither of these discriminations has been redressed.
5. That overseas this issue has been treated as a serious injustice to women and attempts are being made by wage fixing bodies to redress it.
6. That the pay discrimination suffered by women in female

dominated occupations could be erased if the concept of Comparable Worth was employed. That is, that a non-sexist set of value criteria be developed and form the basis for a comparison between women working in female dominated occupations with men working in comparable male dominated occupations.

7. That although other forms of wage discrimination against women may be dealt with most efficiently by governments, unions and management the question of the undervaluing of women's work and the subsequent low rates of pay to women working in female dominated occupations is a matter for award provision.

8. That the Guidelines set in the 1983 National Wage Case restrict the ability of the Commission to deal with cases which would redress this pay inequity.

We therefore submit that when reviewing the Wage Fixing Guidelines the Commission amends the current Guidelines to enable cases which would redress this wage discrimination against women to be dealt with.