INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

CORAM: GLYNN J

14 DECEMBER 1998

MATTER NO. IRC6320 OF 1997

PAY EQUITY INQUIRY
Reference by the Minister for Industrial Relations pursuant to section 146(1)(d) of the Industrial Relations Act 1996

APPENDICES TO THE REPORT TO THE MINISTER

APPENDIX NO. 1.

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Treaty of Rome 1957

United Nations:	Convention on the Elimination of all Forms of Discrimination against Women

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APPENDIX NO. 3.

LIST OF APPEARANCES

WALTON, Mr M	-	Counsel Assisting (with P Lowson)
GREGORY, Ms G	-	Labor Council of New South Wales
BENSON, Mr S	-	Crown in the right of the State of New South Wales, Public Employment Office of NSW, President of Anti-Discrimination Board, Health Administration Corporation, Home Care Services of NSW, Department of Education and Training.
McDONALD, Mr T	-	Employers' Federation of NSW and its affiliated organisations, including Professional Hairdressers Association, the Aged Services Association, the Restaurant and Catering Association, the Registered Clubs Association.
NETTHEIM, Mr D	-	Chamber of Manufactures (Industrial).
BRITT, Mr A	-	The ACM New South Wales, Catholic Hierarchy of New South Wales Province of Sydney, Motor Traders' Association of NSW, Road Transport Association, Local Government & Shires Association and Metal Trades Industry Association.
* SEYMOUR, Ms B	-	NSW Teachers' Federation.
* MANIATIS, Mr G	-	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, NSW Branch.
* MACDONALD, Mr A	-	Federated Clerks' Union of Australia, NSW Branch.
* DUNCAN, Ms J	-	Shop, Distributive and Allied Employees' Association.
SMALL, Ms R	-	Public Service Association of NSW.

SENCZAK, Mr B	-	Local Government and Shires Association, NSW (later represented by Mr A Britt of counsel).
✳ KERRIGAN, Mr S	-	Textile Clothing and Footwear Union.
✳ SMITH, Ms P	-	Independent Education Union, NSW ACT Branch.
✳ ALLPORT, Ms C	-	National Tertiary Education Union.
✳ KRUSE, Mr B	-	Municipal Employees' Union.
✳ DOUST, Ms	-	Construction, Forestry & Mining Employees Union, Mining and Energy Division.
✳ KLEPAC, Mr D	-	Australian Workers' Union.
✳ MILLANE, Ms R	-	Australian Liquor, Hospitality & Miscellaneous Workers Union, Miscellaneous Workers Division.
JOST, Ms R	-	National Pay Equity Coalition and Business and Professional Women.
RICHTER, Ms J	-	Womens Electoral Lobby.
O'CONNELL, Ms K	-	Human Rights & Equal Opportunity Commission.

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✳: Organisations not in regular attendance at the Inquiry.

APPENDIX NO. 4.

EMPLOYERS' FEDERATION OF NEW SOUTH WALES - AFFILIATED ORGANISATIONS

ACROD Limited NSW Division

Aged Services Association of NSW (Industrial)

Amalgamated Milk Vendors Association Inc

Association for Disability Employment Placement and Training Limited

Association of Childrens Welfare Agencies

Association of Consulting Surveyors NSW Inc

Association of Major Community Organisations

Australian Association of Broadcast Monitors

Australian Council of Independent Business Colleges Limited

Australian Environmental Pest Managers Association Limited (NSW Branch)

Australian Mushroom Growers Association Limited

Australian Optometrical Association (NSW) Division)

Australian Physiotherapy Association

Banana Growers Federation Co-Operative Limited

Boating Industry Association of New South Wales Limited

Bus & Coach Industrial Association of New South Wales

Cemeteries & Crematoria Association of NSW

Clay Brick & Paver Association of New South Wales

Country Children's Services Association of New South Wales Inc

Country Press Association of New South Wales Inc

Crushed Stone & Sand Association of NSW

Dive Industry & Travel Association of Australia

Dry Cleaning Institute of Australia NSW

Evening and Community Colleges Association

Family Day Care Sponsors (Non-Local Government) Association Inc

Floor Coverings Association of NSW Inc

Hardware Association of New South Wales Limited

Horological Guild of Australia (NSW)

Housing Industry (Industrial Relations) Association

Landscape Contractors Association of NSW Limited

Master Painters Australia NSW Association Inc

Master Plumbers & Mechanical Contractors Association of New South Wales

National Electrical Contractors Association, New South Wales Chapter

Natroad Limited (formerly Long Distance Road Transport Association)

Newcastle Chamber of Fruit & Vegetable Industries Co-operative Limited

NSW Cane Growers' Association

NSW Credit Union Employers' Association

NSW Dairy Farmers' (Industrial) Organisation

NSW Farmers' (Industrial) Organisation

NSW Meals on Wheels Association Incorporated

Nursery Industry Association of NSW Limited

Optical Distributors & Manufacturers Association

Oyster Farmers Association of NSW Limited

Printing and Allied Trades Employers Association of New South Wales

Professional Hairdressers' Association

Quality Child Care Association of NSW Inc

Registered Clubs Association

Restaurant and Catering Industry Association of New South Wales

Retirement Village Association of NSW & ACT Inc

Rural Marketing & Supply Association Inc

Stock & Station Agents Association of NSW Inc

Textile Rental & Laundry Association of New South Wales

The Association of Consulting Architects NSW Branch

The Association of Wall & Ceiling Contractors of New South Wales

The Australian Commercial Dental Laboratories Association (NSW)

The Australian Dental Association (NSW Branch) Limited

The Funeral Directors' Association of New South Wales Limited

The Institute of Chartered Accountants in Australia

The Master Builders' Association of New South Wales

The New South Wales Branch of the Australian Medical Association Limited

The New South Wales Chamber of Fruit and Vegetable Industries Incorporated

The New South Wales Pharmacy Guild

The NSW Retail Tobacco Traders' Association

The Professional Photographers Association of Australia

The Real Estate Employers' Federation of NSW

The Refrigeration & Airconditioning Contractors Association of Australia Incorporated

The Showmen's Guild of Australasia

Timber Trade Industrial Association

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APPENDIX NO. 5.

WITNESSES

Name and Date	Transcript Reference and Exhibit Numbers	Description
9 March 1998		
RONDELL MILLANE	T270 - 291 Exhibit Nos. 36 & 37	Branch Organiser, Australian Liquor, Hospitality & Miscellaneous Workers Union, NSW Branch.
BRIAN JOHN RUSSELL	T292 - 296 Exhibit Nos. 38 & 39	Manager, Human Resources, KU Children's Services.
JOAN PATRICIA HOLMES	T297 - 310 Exhibit No. 42	Owner/Operator of Budgewoi Jelli Beanz Kindergarten and Blue Haven Jelli Beanz Kindergarten.
EDGAR JOHN FORD	T310 - 312 Exhibit No. 43	Honorary Secretary, Uniting Church Engadine - Helensburgh Multipurpose Children's Services Management Committee.
SANDRA BELL	T312 - 318/322 Exhibit Nos. 44 & 45	Centre Co-ordinator, Randwick Open Care for Kids Inc.
SHARON HEGNER	T324 - 331 Exhibit No. 46	Advanced Child Care Worker (Qualified), KU Children's Services (KIRA Child Care Centre).

CHRISTINE WEDD	T331 - 333 Exhibit Nos. 40 & 41	Advanced Child Care Worker (Qualified), Lady Gowrie Child Centre, Erskineville.
10 March 1998		
IAN LAURENCE ALCHIN	T337 - 372 Exhibit No. 48	Executive Director, Blacktown Kindergarten Association Incorporated.
GABRIELA MARTIRENA	T377 - 394 Exhibit Nos. 51 & 52	Advanced Child Care Worker (Qualified) Kanga's House Child Care Centre Inc.
MEROPY KONITSAS	T394 - 408 Exhibit No. 53	Advanced Child Care Worker (Qualified), Sydney Day Nursery and Nursery Schools Association Redfern Centre.
JUDITH CATHERINE KYNASTON	T408 - 413 Exhibit Nos. 54 & 55	Executive Director, Country Children's Services Association of NSW Inc.
11 March 1998		
ROSEMARY LOUISE KELLY	T416 - 491 Exhibit Nos. 56, 57, 59 & 60	Consultant & Adviser, FB & RL Kelly Pty Ltd Employment Relations Advisers & Specialist Research Services.
12 March 1998		
INGRID ZOEBE	T499 - 507 Exhibit Nos. 62, 63 and 64	Manager, Accreditation & Registration, Educational Development Directorate, Department of Education & Training (formerly NSW TAFE Commission).
WENDY ANNETTE LINDGREN	T508 - 518 Exhibit No. 65	Consultant in Work Based Education & Training (formerly with TAFE NSW Child Studies - 22 years).

PETER STAFFORD WRIGHT (Witness recalled - see 23/3/98).	T518A - 534 Exhibit Nos. 66 & 67	Director, Manufacturing and Engineering Educational Services Division NSW TAFE.
TONIA LESLEY ASHCROFT GODHARD	T542 - 564 Exhibit No. 68	Executive Officer, Sydney Day Nursery & Nursery Schools Association Incorporated.
JULIE CHRISTINE KILLIBY	T566/567 - 574 Exhibit Nos. 69, 70, 71 & 72	Program Manager, Child Studies, Community Services, Health, Tourism and Hospitality Educational Services Division, Department of Education and Training (formerly NSW TAFE Commission)

13 March 1998

AWA Plessey, 5 Talavera Road, North Ryde

BRUCE RODNEY DINNELL	T578 - 624 Exhibit Nos. 76, 77, 78, 79, 80, 81, 82, 83, 84 & 85.	Manufacturing Manager, Plessey Asia Pacific Pty Limited.
JASON ARNOLD	T627 - 637 Exhibit Nos. 84 & 85.	Production Test Team Leader, AWA Plessey Asia Pty Ltd.
LONG LI	T638 - 644 Exhibit Nos. 86, 87, 88, 89, 90 91, 92, 93, 94, 95 and 96.	Technician, AWA Plessey Asia Pty Ltd.

19 March 1998

ROBERT GEORGE GREGORY	T648 - 712 Exhibit Nos. 98, 99, 100, 101, 102, 103 and 104.	Head of Divison, Division of Economics & Politics, Research School of Social Sciences, Australian National University.

20 March 1998

MARK PETER WOODEN	T716 - 769 Exhibit Nos. 101, 107 and 108.	Professor and Deputy Director, National Institute of Labour Studies, Flinders University of South Australia.

23 March 1998

PETER STAFFORD WRIGHT (Recalled)	T775 - 778 Exhibit No. 114	(See 12 March 1998)
JUDI APTE	T788 - 802 Exhibit No. 115	Senior Project Officer, Community Services and Health Training Australia.

24 March 1998

GILLIAN MARGARET WHITEHOUSE	T813 - 865 Exhibit Nos. 118, 119 and 120.	Senior Lecturer, Department of Government, University of Queensland.

25 March 1998

KATE DUNDAS IRVINE	T891 - 910 Exhibit No. 141	Senior Librarian Grade 2, Information Technology Access & Support, State Reference Library, State Library of NSW.
KATHERINE BURNHAM	T911 - T927 Exhibit 142	Senior Librarian Grade 2, Client Services, Attorney General's Department Library.
JANET PAMELA GOOD (Witness recalled - see 26/3/98)	T928 Exhibit 138.	General Secretary, Public Services Association of NSW>

26 March 1998

JANET PAMELA GOOD (Recalled)	T934 - 949	(See 25 March 1998)

DAGMAR BARBARA SCHMIDMAIER	T950 - 967 Exhibit No. 145.	State Librarian and Chief Executive, State Library of NSW.
GEORGE STUDLEY GIBBONS	T969 - 995/998 Exhibit No. 147	Director, Corporate Services, Department of Mineral Resources.
GEOFFREY MICHAEL OAKES (Witness recalled - see 1/4/98)	T1001 Exhibit No. 148	Senior Geologist, Land Use/Resource Assessment Section of the Geological Survey of NSW (a division of Department of Mineral Resources).

30 March 1998

Heinz Greenseas,
Cattle Bay Road, Eden

BRIAN JON HORNER (Witness stood down)	T1013 Exhibit No. 149	Controller of Finance & Administration, Greenseas Division of H J Heinz Australia.
SALLY ANNE CATHERINE COOK	T1027 - 1036 Exhibit No. 152	Level 4 Butchery Section, Heinz Greenseas.
BRIAN JON HORNER (Recalled)	T1039 - 1060	(See above)

31 March 1998

Heinz Greenseas,
Eden continued

MICHELLE BEATTIE	T1062 - 1070 Exhibit No. 153	Butchery Section, Heinz Greenseas.
DENISE LEANNE McDONALD	T1070 - 1076	Trimmer, Heinz Greenseas.

1 April 1998

GEOFFREY MICHAEL OAKES (Recalled)	T1082 - 1088	(See 26 March 1998)

DIANNE KAYE FRUIN	T1089 - 1132 Exhibit Nos. 159, 132, 133, 134, 158, 160, 161 and 162.	Acting Assistant Director, Policy in the Office of the Director of Equal Opportunity in Public Employment.
2 April 1998		
VERN WILLIAM ROBERTS	T1149 - 1167 Exhibit No. 171	Hairdresser and Partner in V & G Roberts Hair Design
JOHN ALBERT PARADEE	T1171 - 1190 Exhibit No. 173	Managing Director, Milman International Australia Pty Ltd
PAIGE LOUISE BARRAND	T1192 - 1197 Exhibit 174	Third Year Beauty Therapy Apprentice, The Ritz Beauty Salon.
SHIRLEY ANNE DUNGATE (Witness recalled - see 20/4/98)	T1197 Exhibit Nos. 172, 175 and 176	Manager, Hairdressing, Beauty Therapy Programs, Educational Services Division, TAFE NSW.
6 April 1998		
SARAH JANE KAINE	T1200 - 1211 Exhibit No. 177.	Organiser, Australian Workers' Union.
PETER CORDONEY	T1213 - 1227 Exhibit No. 178.	Proprietor, Liberty Hairdressers & Everblades Hairdressers.
MARY THERESE DOYLE	T1229 - T1250 Exhibit Nos. 179 & 182.	Part-time Hairdresser, Hair Enterprise.
VINCENT TROPIANO	T1256 - 1280 Exhibit No. 180.	General Service Manager, Eagle Ford Pty Ltd.
ANDREW MARCZENKO	T1283 Exhibit No. 181.	Automotive Technician, Thomson Ford (Automotive).

7 April 1998

MEG SMITH (Witness recalled) - see 8/4/98 and 10/6/98)	T1284 - 1337 Exhibit Nos. 183 & 184.	Director & Co-owner, Labour Market Alternatives Pty Ltd.

8 April 1998

KATHIE MARIE MARTIN	T1351 - 1358 Exhibit No. 187.	Owner/Manager, The Ritz Beauty Salon.
GREGORY JOHN HATTON	T1358 - 1382 Exhibit No. 188.	Director, Industrial Relations and Training, Motor Traders' Association of NSW.
ENRICO FRANCESCO MICHAEL PEROTTI	T1390 - 1393 Exhibit No. 190.	Automotive Technician, Thomson Ford (Automotive).
MEGAN SMITH (Recalled)	T1395 - T1414	(See 7 April 1998)

20 April 1998

SHIRLEY ANN DUNGATE (Recalled)	T1420 - 1460 Exhibit No. 172.	(See 2 April 1998)
WILFRED ARTHUR TAYLOR	T1460 - 1476 Exhibit No. 191.	Secretary, Vehicle Division and Assistant State Secretary, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, NSW Branch.

21 April 1998

MAINTRAIN, Manchester Road, Auburn.

COLIN EDWARDS	T1488 - 1529 Exhibit Nos. 194 & 195.	Organisational Development Manager, Maintrain (a division of A Goninan & Sons).

MICHAEL EDWARD BRADY	T1533/1534 - 1549 Exhibit No. 196	Team Leader, Freight Bogie Section, Maintrain.
DIAN PAMELA RAYNER	T1552 - 1556 Exhibit No. 197.	Clerical Worker, Maintrain.
LAWRENCE PECH	T1556 - 1558 Exhibit No. 198	Yard/Storeman, Maintrain.

22 April 1998

DEBORAH JANE MAY	T1561 - 1564 Exhibit No. 200.	Executive Officer, NSW WRAPS.
MARY MARGARET KAY	T1565 - T1579 Exhibit No. 201.	Committee Member, Advanced Association of Beauty Therapists, Secretary & Industrial Officer, Employers Association of Beauty Therapy (NSW) and Employers Association of Beauty Therapy Australia.
MARYANNE PETERSEN	T1581 - 1583 Exhibit No. 202.	Industry Training Manager, Automotive Training Board, NSW.
ROSS NASH PARTON	T1584 Exhibit No. 203.	Program Manager, TAFE NSW Construction and Transport Educational Services Division.

23 April 1998

SUSAN WALPOLE	T1593 - 1643 Exhibit No. 209	Federal Sex Discrimination Commissioner 1993-1997.
RONALD CLIVE McCALLUM	T1645 - 1658 Exhibit No. 210.	Blake Dawson Waldron Professor, Industrial Law, Faculty of Law, University of Sydney.

24 April 1998

CAROLINE ALCORSO	T1681 - 1698 Exhibit No. 217.	Director, NSW Working Women's Centre.

5 May 1998

ROSEMARY CLAIRE HUNTER	T1706 - 1749 Exhibit Nos. 228 & 229.	Associate Professor of Law, University of Melbourne and Principal Researcher, Justice Research Centre, Sydney.

6 May 1998

LAURA ELEANOR BENNETT	T1752 - 1808 Exhibit Nos. 233 & 234.	Senior Lecturer in Labour Law, School of Industrial Relations, Griffith University until 1996.
ALICK MacFARLANE	T1810 - 1812 Exhibit No. 235.	Project Officer, Manufacturing & Engineering Educational Services Division, NSW TAFE.

7 May 1998

CHRISTOPHER JOHN GUELPH PUPLICK	T1820 - 1841 Exhibit No. 236.	President, Anti-Discrimination Board of NSW, Chairman, Privacy Committee of NSW, Central Area Health Service, AIDS Trust of Australia, National Council on AIDS & Related Diseases & National Task Force on Whaling.
SARA CATHERINE MARY CHARLESWORTH	T1842 - 1858 Exhibit No. 237	Consultant, Flexible Work in Education Project, Department of Education, Victoria and Consultant, Deakin University Work & Family Needs Study.
ROSS LESLIE McLELLAND	T1860 - 1883 Exhibit Nos. 238 & 239.	Principal, Performance and Reward, William M Mercer Pty Ltd, Management Consultants.

8 May 1998

RAYMOND BEEKMAN	T1886 - 1888 Exhibit No. 241.	Director, Nam-Keeb Pty Ltd t/as Beekman Automotive.
CLARE MARGARET BURTON	T1889 - 1925 Exhibit No. 242.	Independent Researcher And Consultant, Employment Equity. Visiting Fellow, Public Policy Program, The Australian National University.

18 May 1998

STEPHANIE MARY SHEAN	T1954 - 1991 Exhibit No. 258.	Industrial Officer, NSW Nurses' Association.
AMANDA JANE KERR	T1992 - 1994 Exhibit No. 259.	Nursing Unit Manager, Ward 9B, Orthopaedic Ward, Royal North Shore Hospital.

19 May 1998

ANURA SURINDRA RATNAPALA	T1999 - 2021 Exhibit Nos. 262 & 263.	Reader in Law, TC Beirne School of Law, University of Queensland.
NIALL EYRE	T2022 - 2031 Exhibit No. 264.	Consultant, HayGroup, Management Consultants.

20 May 1998

ROY HERBERT GREEN	T2042 - 2073 and T2082 - 2089 Exhibit Nos. 270 & 271.	Director, Employment Studies Centre, University of Newcastle.

25 May 1998

RICHARD PHILLIP COX	T2117 - 2153 Exhibit No. 277.	Director of Economic Research & Forecasting, NSW Treasury.

HELEN SPENCER	T2157 - 2170 Exhibit No. 278.	Manager Organisation, Mount Thorley Operations Pty Limited, Coal & Allied Industries Limited.
RODNEY VINCENT STINSON (Witness recalled - see 3/6/98)	T2171 - 2178 Exhibit Nos. 279 & 280.	Principal Analyst, Occupational Analysis, Consultancy Firm.
28 May 1998		
NATASHA DEREVNINA	T2250 - 2279 Exhibit Nos. 289 and 290.	Ethnic Liaison Officer, Textile Clothing & Footwear Union of Australia, NSW Branch. Workers Compensation and Safety Officer, Textile Clothing and Footwear Union of Australia, NSW Branch.
BARRY TUBNER	T2254 - 2275 Exhibit No. 292.	Secretary, Textile, Clothing and Footwear Union of Australia, NSW Branch.
1 June 1998		
LINDEN SWAN	T2361 - 2386 Exhibit No. 300.	Executive Director, Professional Hairdressers Association of NSW.
ALISTAIR WILLIAM MACDONALD	T2393 - 2410 Exhibit No. 301.	Senior Industrial Officer, Federated Clerks' Union of Australia, NSW Branch.
ANTHONY RICHARD WOOLGAR	T2412 - 2422 Exhibit Nos. 302 & 303.	National Secretary, Textile Clothing and Footwear Union of Australia.

2 June 1998

SATINDER MOHAN SINGH	CONFIDENTIAL TRANSCRIPT T2431 - 2459 Exhibit Nos. 305 & 306.	Director and Company Secretary of Medirite Australia Pty Ltd.
MAI TUYET THI DOAN	T2433 - 2468 Exhibit Nos. 307 & 311.	Lisa Nguyen Fashions Pty Ltd.
THI LAN ANH NGUYEN	T2469 - 2484 Exhibit Nos. 308 & 309.	Lisa Nguyen Fashions Pty Ltd.

3 June 1998

RODNEY VINCENT STINSON (Recalled)	T2490 - 2523 Exhibit No. 326.	(See 25 May 1998)

9 June 1998

HELEN HUGHES	T2531 - 2573 Exhibit No. 329.	Professor Emeritus, Australian National University.
RAYMOND BENNETT	T2581 - 2608 Exhibit No. 331.	Business Consultant, Intra Business Information & Training Pty Ltd (formerly Head of Department, Business Studies, NSW TAFE).

10 June 1998

BONDS, 253 Nolan Street, Unanderra.

ROBERT MAURICE COWLISHAW	RESTRICTED & CONFIDENTIAL T2612 - 2626 and T2634.	Factory Manager, Bonds, Unanderra.
SLAVICA RATAJKOSKA	T2628 - 2629 Exhibit No. 332.	Machinist, Bonds, Unanderra.
KATRINA MIHALOPOULOS	T2630 - 2632 Exhibit No. 333.	Utility Operator, Bonds, Unanderra.

JON NOLAN	T2636 - 2637 Exhibit No. 334.	Human Resource Manager, Bonds Industries
BARBARA JOAN JENSON	T2637 - 2644 Exhibit No. 335.	Organiser, Textile, Clothing and Footwear Union of Australia, NSW Branch.
MEG SMITH (Recalled)	T2645 - 2646A and T2654 - 2660. Exhibit No. 336.	(See 7 April 1998)
BHP CONFERENCE CENTRE, Warrawong.		
GEOFFREY JAMES GRAHAM	T2650 - 2654	First-class Machinist, BHP, Port Kembla.
11 June 1998		
SALLY ANNE PEMBROKE	T2664 and T2700 - 2713.	Proprietor, Pembroke Australia Pty Ltd.
CHRISTOPHER JOHN RICHARDSON	T2665 and T2670 - 2693 Exhibit Nos. 338 & 339.	Partner and Director, Access Economics.
KERRIE LEE FALTING	T2669 and T2695 - 2699.	Partner, Two Designers On Paddington.
SINIKKA POLLARI	T2714 - 2717 Exhibit No. 342.	Outworker.

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OW6	Confidential Transcript
OW2	
OW4	
OW7	
OW1	

OW5

OW3

Chinese Community
Worker.

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Witnesses (Statement only - not required for cross examination)

BATTY, Ian, Senior WorkCover Inspector (Ex 345)

BUTLER, David Edward, Deputy Commissioner, Small Business Income of the Australian Taxation Office (Ex 322)

CARSTENS, Debra Janet, Co-ordinator of Asian Women at Work, Inc. (Ex 321)

CAVENAGH, Raymond Hugh, retired teacher, immediate past position - a Deputy President of the NSW Teachers Federation (Ex 432)

IRVING, Richard Paul, General Manager of Personnel, NSW Department of Education and Training (Ex 431)

LAVER, Gary Douglas, General Manager, Sales and Marketing of Target Australia Pty Ltd (Ex 317)

LISTER, Paul Clive, General Manager of Done Art and Design (Ex 319)

RIORDAN, The Hon. J M, former Senior Deputy President of the Industrial Relations Commission of Australia (Ex 347)

SEYMOUR, Brenda Jean, industrial officer, NSW Teachers Federation (Ex 430)

THOMAS, Barrie Neil, Director of Adidem Pty Ltd t/a The Body Shop (Ex 346)

TODHUNTER, Timothy Lempriere, Manager of JGL Investments Pty Ltd (confirming evidence given by him on 16 April 1996 in his capacity as the President of the Council of Textile and Fashion Industries of Australia to the Commonwealth Senate Economics Reference Committee in relation to outworking in the garment industry (Ex 320)

TOOHEY, Anthony John, Director of the Office of Business and Technology at the University of NSW (confirming evidence given by him in his then capacity as the Director of the Industry Development Branch, Worksafe Australia to the Commonwealth Senate Economics Reference Committee in relation to outworking in the garment industry) (Ex 318)

TURNER, Sharren Nance, clerical assistant attached to the Office of Counsel Assisting the Pay Equity Inquiry (in relation to her recording of interviews conducted by Ian Batty, WorkCover inspector, of persons in the clothing industry) (Ex 348)

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APPENDIX NO. 6.

SUMMARY OF NOMINATION OF OCCUPATIONS AND INDUSTRIES

Canteen Industry

- Nominated by - Australian Liquor, Hospitality & Miscellaneous Workers Union
- Supported by - Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW
  Australian Chamber of Manufactures

Catering Industry

- Nominated by - Australian Liquor, Hospitality & Miscellaneous Workers Union
- Supported by - Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW
  Australian Chamber of Manufactures

Child care workers engaged in long day care centres in the private sector

- Nominated by - Labor Council of New South Wales
  The Crown
  KU Children's Services
- Supported by - The nominating parties
  Australian Chamber of Manufactures
- Opposed by - Employers' Federation of NSW

Child care workers in Local Government

- Nominated by - Crown
  Municipal Employees Union (MEU) (late nomination)
- Supported by - Labor Council of New South Wales
  The Crown
- Opposed by - Local Government & Shires Association
  Employers' Federation of NSW
  Australian Chamber of Manufactures

Clerical workers at level 3 employed under the Clerical and Administrative Employees (State) Award

- Nominated by - Labor Council of New South Wales
- Supported by - Australian Chamber of Manufactures
  The Crown
  Labor Council of New South Wales
- Opposed by - Employers' Federation of NSW

Clerical officers employed under the provisions of the Clerical Officer Agreement No 2515 of 1988

- Nominated by - Public Service Association
- Supported by - Australian Chamber of Manufactures
  Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW

Clothing Industry - specifically outworkers

- Nominated by - Textile, Clothing and Footwear Union of Australia
- Supported by - Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW
  Australian Chamber of Manufactures

Confectionary Industry

- Nominated by - AMWU
- Supported by - Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW
  Australian Chamber of Manufactures

Hairdressers and beauty therapists

- Nominated by - Labor Council of New South Wales
  The Crown
- Supported by - The nominating parties
  Australian Chamber of Manufactures
- Opposed by - Employers' Federation of NSW

Higher Education Industry

- Nominated by - National Tertiary Education Union
  (Nomination withdrawn by NTEU by facsimile of 29 January 1998)

Home Care Workers, excluding Health Care Professionals

- Nominated by - Labor Council of New South Wales
- Supported by - Australian Chamber of Manufactures
  The Crown
  Labor Council of New South Wales
- Opposed by Employers' Federation of NSW

Librarians - Public Sector

- Nominated by - The Crown
  Public Service Association
- Supported by - Australian Chamber of Manufactures
  Labor Council of New South Wales
  The Crown

- Opposed by - Employers' Federation of NSW

Mannequins and Models

- Nominated by - Labor Council of New South Wales
- Supported by - Australian Chamber of Manufactures
  Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW

Nurses in Public Hospitals

- Nominated by - Australian Chamber of Manufactures
- Supported by - Labor Council of New South Wales
- Opposed by - The Crown
  Employers' Federation of NSW

Poultry process workers and hand packers

- Nominated by - Labor Council of New South Wales
- Supported by - Australian Chamber of Manufactures
  Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW

Product Assemblers in the Machinery and Equipment Manufacturing Industries

- Nominated by - Labor Council of New South Wales
- Supported by - The Crown
  Labor Council of New South Wales
- Opposed by - Employers' Federation of NSW

Restaurant Industry

- Nominated by - Australian Liquor, Hospitality & Miscellaneous
  Workers Union

- Supported by - Labour Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW
  Australian Chamber of Manufactures

School Ancillary Staff

- Nominated by - Labor Council of New South Wales
  Public Service Association
- Supported by - Labor Council of New South Wales
  Public Service Association
  The Crown
- Opposed by - Employers' Federation of NSW
  Australian Chamber of Manufactures

Seafood process work performed by women

- Nominated by - Labor Council of New South Wales
- Supported by - Labor Council of New South Wales
  The Crown
- Opposed by - Employers' Federation of NSW

Social and Community services industry

- Nominated by - Council of Social Service of NSW
  Nomination withdrawn by NCOSS by facsimile of 23 January 1998

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APPENDIX NO. 7.

PRECIS OF THE DEVELOPMENT OF WORK VALUE PRINCIPLES

Main Distinctions and Developments

- Commonwealth jurisdiction applied/affirmed NSW *Metalliferous Miners* principle in two 'developmental' cases in terms of that jurisdiction's development of work value principles: 1958 *Ship Painters and Dockers Case* and 1961 *Professional Engineers Case.*

- Metalliferous Miners principle Modified in 1972 (Legal Officers Case)

- Commonwealth jurisdiction set down case based principles until 1975 whereupon changes to the principle were largely driven by NW Cases.

NSW

1929 Metalliferous Miners - like work to be compared with like and the rate of pay in one industry did not stand as a comparator to the rates in another unless the work done was 'fairly comparable' ([1928] AR 466 at p 471.8)

1949 Legal Officers Case - similar awards and agreements were not to be followed as precedent even though occupations may appear comparable. This was only acceptable where very special circimstances were present ([1949] AR 825 at 831.8-832.4)

1960 Clerks Case - limited the application of Metalliferous Miners principle and held the view that 'community values' could be ascertained and allied in work value cases - broadening approach to work value ([1960] AR 217 at 224.4)

1962 Scientific Officers Case - overturned Clerks Case, narrow sense of work value
- unwilling to depart from Metalliferous Miners principles and there was no ground for saying that a new doctrine had developed warranting departure ([1962] AR 250 at p 282.3)

- community values could not be ascertained and relied upon for assessing work value (at p 282.9)

1963 Forestry Officers Case - two sense of valuing work
- broad and general sense applied and narrow sense

rejected ([1962] AR 324 at p 340.5-341.2)

1967 Electrical Inspectors Case - consideration of dissimilar work not prohibited when there was a reasonable relationship to the work under consideration ([1967] AR 515 at p 524.5)

Scientific Officers affirmed with modification to incorporate the consideration of dissimilar work ([1967] AR 515 at p 525.2)

1970 Teachers Case - outlines adoption of new principles affirmed relating to economic factors: *Agricultural Employees Case* [1967] AR 656 affirmed, and *Industrial Arbitration Amendment Act* 1967 noted ([1970] AR 347 at p 514.2)

1972 Legal Officers Case - modification of Metalliferous Miners principles ([1972] AR 376 at p 388.3)
Electrical Inspectors Case disapproved with respect to application of Metalliferous Miners.
Assessment of dissimilar work allowed ([1972] Ar 376 at p 386.6) on a limited basis (at p 391.9)

1979 SWC - [1980] AR 270 - adoption of principle 7(a)

1981 Crown Solicitors Case - 1979 SWC principles applied (Principle 7(a) - Work Value Changes)
- sets out process of 'significant net addition' (strict test) and measured in terms of money ([1981] AR 488 at p 498.9)
- guidelines set down for "comparisons in appropriate circumstances" (at p 502.3)

1982 ELCOM Award - No 2 - ([1982] AR 508 at 512.6) work value grounds within indexation guidelines only (although indexation abandoned in 1981, so no future application of this principle NOT possible)

1986 Bridge's Case (unreported) - CWJ no longer a basis for resolving issues under the wage fixing principles (at p 8.8)

1987 SWC - Work value principle to be read as a code ([1987] 17 IR 105 at p 110.1)

1988 Toll Collectors Case (unreported) - re-evaluation of matters which have long been features of the work disallowed on several counts ([1988] 23 IR 254 at p 262.9 - 293.7)

1988 BHP Dispute - affirms strict criteria and strict test as: "the change

in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification" (unreported judgment of *Fisher* P, *Cahill* VP, *Varnum* DP and *Harrison* CC, 87/1006; 26/10/88 at p 10.2)

- changes in routine do not constitute work value changes (at p 10.2)

1997 SWC - Current standing - tests set out in paragraph (a) of principle

COMMONWEALTH

1958 Ship Painters and Dockers Case - Commonwealth applies NSW Metalliferous Miners principle ([1960] 94 CAR 579 at 612.2)

1967 Metal Trades Case - factors contributing to work value set out: qualifications, training, attributes (physical and mental), responsibility including responsibility for safety of others, any inherent conditions of unpleasantness (set out at [1967] 1121 CAR 587 at p 753.8)

1968 Vehicle Industry Award - set down list of factors to consider 'just and fair rates' (at [1968] CAR 295 p 308.2)

1972 Commonwealth Equal Pay Case - criteria for work value comparisons set out in determining equal pay claims ([1972] 147 CAR 172 at p 179.9 - 180.6)

1974 Merchant Service Guild Case - new principle cross-award comparisons allowed if work performed comparable ([1974] 158 CAR 949 at p 951.9)

1975 NWC - increases allowable outside indexation on limited basis (Principle 7) at [1975] 167 CAR 18 at p37.8)

1976 NWC -criteria added to 7(a) for increases to be granted [1976] 177 CAR 335 at p 346.7)

1978 NWC - criteria for 'proper job evaluation' to be undertaken removed from 7(a) ([1978] 211 CAR 268 at p 314)

1979 NWC - concerns for 'averaging' raised and addressed ([1979] IASCR 122 at p 127.2) averaging at odds with wage fixing principles (at 127.9)

1981 Transport Workers Award - in response to an argument that there were no work value principles, those applied during 1975-1981 set out (at [1981] 261 CAR 664 at p 669.3)

1983 NWC - substantial alterations to work value principle - Principle 4 set down: ([1983] 4 IR 429 at p 472.9)

1986 NWC - clarification of operation: concerns raised as to the impact of 'averaging over 1978-1980 period and flow-ons: (at p 220.9 - 221.3)

1986 Nurses Case - equal pay for equal work to be implemented BY work value inquiries ([1986] 18 IR 455 at p 4561.8)

1987 NWC - SEP differentiated from work value: SEP encourages sufficient improvements in efficiency which may *or may not* involve changes in skill and responsibility sufficient to *meet the tests of the work value Principle*. ([1987] 17 IR 65 at p 79-80)

1987 Nurses Case (No 2) - Seven matters considered in context of determining work value: "Seven matters were put forward for consideration in connection with work value. These were the assessment of change of work value; new categories of work; revised career structure; transfer of education to colleges; the effect of shortages on the work value for nurses; the national character of nurses; and the need for in service and continuing education programmes." ([1987] 20 IR 420 at p 441.4)

1994 NWC - strict test added to paragraph 1(a) of the Work Value principle: prohibiting leapfrogging ([1994] 55 IR 144 at p 175.2)

1998 NWC - no simplification of principle: set out at [Australian Industrial Relations Commission, Full Commission, April 1998, 98/457, Print Q1998 at p 65)

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APPENDIX NO. 8.

This Appendix reproduces Exhibit 32 as tendered to the Inquiry by counsel assisting:

HISTORY OF EQUAL PAY

HISTORY OF INDUSTRIAL JURISPRUDENCE AND LEGISLATION

Background

I. This submission is produced to the Commission as part of the opening Submission of counsel assisting in order to assist the Commission in its considerations of the Terms of Reference and in particular Term 2 of the Terms of Reference.

II. The submission identifies key developments in industrial law (whether developed in statute or in industrial jurisprudence) concerning pay equality and developments in the wage fixation system over time which appear to be relevant to the matters raised in the Terms of Reference and in particular the notion of pay equity.

III. The paper is necessarily preliminary as it is only provided as part of an opening submission and in part is designed to provide a structure for the development of further submissions and analysis which will assist the Commission in approaching the Terms of Reference. For example, there will be further refinements to the submission as to the consideration of particular cases or trends. One matter which will be further developed in the submissions is the actual application in industrial precedents of the equal pay decisions.

IV. So far as is possible the submission traces the concurrent developments at both the Federal and State level in considering the development of the relevant industrial law. Clearly, there is an interconnection between the development of Federal and State law although it is important to identify that there are sometimes different or significant developments at state level which should be taken into consideration.

V. A general starting point for the analysis of this history is the overview of the history of wage fixation which was given in the Commonwealth *Equal Pay cases* of 1969. This judgment is reported in (1969) 127 CAR 1142 and we propose to extract the whole of that part of the judgment appearing at pages 1152 and 1153 which sets out the Commission's overview of the history:

> "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 concept was based in one sense on sex discrimination in as much as it was only to a male head of a household that a family wage was awarded, but in another sense it was not because by and large heads of households were males. The real argument arises as to what has happened to that wage since, particularly in concept. We do not think it necessary to examine in detail what was said and done until World War II because generally speaking a relativity was established and retained that the female basic wage was approximately 54% of the male basic wage. This relationship was interfered with, first by the decision of the Women's Employment Board which awarded rates for females varying from 75% to 100% of the male rates, and later by the National Security (Female Minimum Rates) Regulations which set a 75% rate. The Court was called upon to consider the relationship between the two basic wages in the 1949-50 Basic Wage Case 68 CAR 698 which in our view is a critical one in this history and was so considered by the parties.

All members of the Bench in that case declined to award the full male basic wage to females, but the majority moved that the female basic wage from the 54% which generally applied, to 75% of the male basic wage. The Judgement of Foster J, which gives the most detailed reasoning for this change, refers to the desirability of retaining a greater male basic wage because of social or family considerations. Nevertheless, His Honour was prepared to change the relativity of 54% which had existed for many years to 75%, mainly upon the ground that 75% was being paid in industry generally. The real significance of the 1950 decision lies not in what was said but in what was done. Despite discussion about social and family responsibilities of the male, the Court was prepared to change substantially the relationship between male and female rates and to improve substantially the relative position of females on the basis on what was in fact happening principally as a result of decisions of the Women's Employment Board and the effect of the National Security (Female Minimum Rates) Regulations. Whatever may have been the position earlier, this decision caused an erosion in the concept of the family wage because if before the decision it had been desirable for family considerations that there should be a 54% relationship, the mere fact that industry was paying more should not have caused the Court to change the percentage, any more than the Court was prepared to change the percentage in the Munitions Workers Case 50 CAR 191, unless the Court was departing from the concept of a social wage.

In the 1952-53 Basic Wage and Standard Hours Inquiry Case 77 CAR 477 the employers' sought a reduction of 75% to 60%, but the Court rejected this contention on the basis that there was no

material before it which enabled it to say that 75% was too high. There has been no real overall examination of the relationship between male and female rates either as basic wage awards or total wage awards since. In adjustments of the basic wage since 1953 amounts were added on purely economic grounds to the male basic wage and 75% of each amount was added to the female basic wage. This persisted until the basic wage disappeared in 1967 when the Commission introduced the total wage and at the same time awarded the same increase to both males and females. It did the same increase to both males and females it did the same in the 1968 National Wage Case 124 CAR 463.

An examination of the history of the secondary wage for females produces an even more confused result. In some instances females doing the same work as males receive the same secondary wage as males and in the Commonwealth Public Service this is normal. In some instances in private industry they do not. In other cases, such as the Metal Trades Award, they received what might be described as a composite margin to cover a range of classifications. So that when in 1967 the Commission introduced total wages by combining the basic wage and margins the results and money differences between males and females were due to a variety of reasons but were referable, at least in part, to the old basic wage differences. The pattern is even more confused when to this already complex situation is added the fact that in a number of awards females have for many years received the full male wage as the result of attempts to prevent what was regarded as unfair competition as men.

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 that 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."

VI. Additional to this summary of the history of wage fixation it is useful to consider a number of the most relevant case from the early period.

EARLY CASES

1. The comparator starting point for historical analysis of pay equity is the decision *Ex parte H.V. McKay (The Harvester Case)* (1907) 2 CAR 1 where Justice Higgins, President of the Commonwealth Arbitration Court, in determining fair and reasonable conditions of remuneration of unskilled labour stated:

"The provision of fair and reasonable remuneration is obviously

> designed for the benefit of employees in the industry; and it must be meant to secure to them something which they cannot get by the ordinary system of individual bargaining with employers. . . and I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community." (1907) 2 CAR 1

2. In ascertaining the minimum wage that could be treated as "fair and reasonable" it was held that:

> ". . .as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards. This then, is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as "fair and reasonable" in the case of unskilled labourers".(1907) 2 CAR 1 at p3-4

3. The *Harvester Case* did not consider at all the question of female wages.

4. The first time female labour was directly contemplated was in 1912. The Commonwealth Court of Conciliation and Arbitration considered the question of wage parity between men and women in *Rural Workers' Union and United Labourers' Union v. Mildura Branch of the Australian Dried Fruits Association* (*The Fruitpickers Case*) (1912) 6 CAR 61. In rejecting arguments that the basic wage for men and women be the same, the phrase "equal pay for equal work" was dealt with in the following terms:

> ". . .where a woman produces as good results as a man in the same kind of work, she ought not to get less remuneration. But the phrase is really ambiguous. If it means equal pay for those who turn out the same result in quantity, it means piece-work. . .If, however, the phrase means that there shall be equal pay given to men and women for work of the same character, its meaning is consistent with the prescribing of a minimum wage under section 40 of the Act". ((1912) 6 CAR 61 at p 70-71)

In applying the test prescribed in the *Harvester Case*, Justice Higgins differentiated the "needs" of men and women on the following basis:

> "I fixed the minimum in 1907 at 7s. per day by finding the sum which would meet the normal needs of an average employee, one of his normal needs being the need for domestic life. If he has a wife and children, he is under an obligation - even a legal obligation - to maintain them. How is such a minimum applicable to the case of a woman picker? She is not, unless perhaps in very exceptional circumstances, under any such obligation. The minimum cannot be

based on exceptional cases." ((1912) 6 CAR 61 at p 71)

6. Within this context, Justice Higgins established two principles. Firstly, His Honour granted equal pay to those occupations where men could be driven out by cheaper female labour (ie. that women and men should be paid equal wages if women were employed to do a man's work). Secondly, in relation to women working in areas where men did not, His Honour granted a lower rate, finding that while women had to find their own food and shelter, they did not have to support a family ((1912) 6 CAR 61 at p71) - thus establishing the concept of a "female wage".

7. For application of the principle see also: *The Australian Theatrical and Amusement Employees' Association v. JC Williamson Ltd & Ors* (1917) 11 CAR 133 and *The Federated Clothing Trades of the Commonwealth of Australia v. JA Archer & Ors* (1919) 13 CAR 347.

EARLY PERIOD - NEW SOUTH WALES

8. In the NSW jurisdiction a contrary position to that expressed in *Fruitpickers* can be found in a number of cases.

9. In 1910, in an appeal to the Industrial Court of New South Wales, the then President was asked to determine, in *Re Brewery Employees' Union* ([1910] AR 258), whether in an award where females were employed, they should be paid equal wages to males. The purpose of the appeal was to preserve male employment which would otherwise be threatened by an influx of females who could be employed more cheaply than their male counterparts ([1910] AR 258 at p260-1). The Court disallowed the appeal and stated that:

> ". . .it is not business of this Court to protect men against women any more than to protect women against men. Wage boards represent the whole community, and the rights of all workers are entitled to equal consideration." ([1910] AR 258 at p 261)

10. In the same year, in *Re Shop Assistants' Union* [1910] AR 279 at 287 the President reiterated this position, stating:

> "I must lay it down for the information of all Boards that though they have the power to fix wages, they must be guided in doing so by legitimate principles, and the protection of one sex against the competition of the other in fields of industry proper for them both is not a legitimate principle. Wage scales must, therefore, not be drawn up for the purpose of excluding either sex".

11. This apparent conflict between the Federal and State jurisdictions was seemingly resolved by the introduction of legislation in NSW in 1926. (see the *Industrial Arbitration (Amendment) Act*, Act No. 14, 1926)

12. In the NSW jurisdiction another consideration arose, namely the risk that wage increases for women (particularly to equal male wages) would reduce the employment of women.

13. In *Re Shop Assistants, &c. (Metropolitan) Award* ([1927] AR 23) the Industrial Commission of New South Wales considered an appeal against a new clause in the *Shop Assistants &c. (Metropolitan) Award* pursuant to which female shop assistants employed in certain circumstances were to be paid the male rate less 20%, thereby increasing the women's wages.

14. The Commission upheld the appeal and deleted the clause:

> "Whatever the intention of the Committee may have been, there is no doubt, in my mind, that the effect of this paragraph will be to prevent the employment of women in the departments named. This may or may not be a wise policy to adopt in this industry, but as it so seriously affects the rights of the women workers it should only be attempted after a thorough and exhaustive inquiry by a committee or other tribunal consisting of male and female members.
>
> By the amending Act of 1926, the Legislature gave power to committees to award the same wage to persons of either sex performing the same work or producing the same return of profit or value to the employer. This power, in my opinion, should not be exercised unless the Committee is satisfied beyond all doubt as to the value of the work performed, and furthermore the Committee in the exercise of this power should have regard to the intention of the Legislature to do justice to the woman worker and not to injure her by forcing her out of employment." ([1927] AR 23 at p 25)

15. Although not expressed strictly as a principle, this decision exposes the Commission's concern that an increase in women's wages would act as a barrier to the employment of women.

16. What is clear from the previously quoted extract from the *Shop Assistants' Award Case* is that the amending legislation, although expressed in terms of equal pay, is not intended to achieve equal pay for women, but rather to allow the Commission to order equal pay for women where male work would otherwise be threatened. At this point the NSW jurisdiction appears to come into line with the Federal decision in *Fruitpickers*.

NSW LEGISLATIVE CHANGE

17. The *Industrial Arbitration (Amendment) Act* 1926 abolished the Board of Trade set up in 1918 and conferred upon the Commission the power to determine a standard of living and an appropriate living wage for both male and female employees.

18. Importantly, it also provided for equal pay for the sexes to become an "industrial matter", therefore coming within the purview of the Conciliation Committee and Commission.

19. The relevant sections of the 1926 *Amendment Act* are as follows:

> "7.(1) The powers and functions of the Commission shall include the following:
>
> . . .
>
> (b) not more frequently than once in every six months to determine a standard of living and to declare what shall for the purpose of this section Act and the Principal Act be the living wages based upon such standard for adult male and female employees in the State.
>
> . . .
>
> 15.(1) Section five of the Principal Act is amended -
>
> . . .
>
> (iii) by inserting at the end of the definition of "Industrial matters" the following new paragraphs: -
>
> . . .
>
> (g) any claim that the same wage shall be paid to persons of either sex performing the same work or producing the same return of profit or value to their employer."

HAIRDRESSERS CASE

20. As noted previously, the Commission considered this legislation in the *Shop Assistants' Award Case.* It gave a fuller consideration to the effect of the legislation in *Re Hairdressers Female (State) Award* [1929] AR 39. This case established that the Commission must exercise its discretion in determining how to apply the "equal pay" clause. ([1929] AR 39 at p40)

21. After observing the difference between male rates and female rates within the base rate, the Commission applies the principle of equal pay for both sexes doing the same work , at least so far as the margin for skill was concerned. ([1929] AR 37 at p44).

22. In doing so, the Bench stated:

"Now, apart from special circumstances, the usual method of fixing the amount of the wage to be awarded to any particular class of employees, is to assess the amount which is to be taken as an adequate margin over and above the current living wage, either for the skill involved in the work or for its nature or the conditions under which it is carried out, and by adding that determined margin to the current living wage an amount is obtained which is regarded as the minimum fair wage to be awarded. This principle is applied both to wages for male employees and wages for female employees, but as the Act requires a separate living wage to be fixed for female employees, and that wage has always been fixed at an amount less than the living wage for adult males, this system has resulted in generally lower wages being awarded to females. That the Legislature contemplated a differentiation is clear by the fact of the provision for a male living wage and a female living wage. By the amending Act of 1926 the definition of "industrial matter" in section 5 of the Principle Act was amended by adding subclause (g) thereto in the following terms:-

"any claim that the same wage shall be paid to persons of either sex performing the same work or producing the same return of profit or value to their employer"

Now this section only permits such a claim to be regarded as an industrial matter, and therefore within the competency of a committee or this Commission to determine, but no indication is given by the Legislature as to how the discretion of the committee or this Commission is to be exercised. The female living wage is still retained as an integral part of the system of wage fixation, and in our view this method described above still remains the prima facie method of determining the amount of any wage to be awarded to females". [1929] AR at p 42.

23. The *Hairdressers'* application arose out of the making of a new award which awarded female rates of pay equivalent to male rates. In the result the Commission in fact reduced the female rate of pay, relying on evidence that the employment of females had declined upon females being granted the same overall rate as males. ([1929] AR 39 at p43)

24. The Commission instead awarded a rate of pay using the female base wage and adding a margin. In adding the margin, the Commission decided that the female skills were equal to the male skills and awarded a margin equal to the male margin.

It held:

"This wage results from following (as is the practice of all arbitration tribunals in Australia) the principle of distinction contemplated by Parliament between the living wage for males and that for females,

> and from applying, after observing that basis of difference, the principle for equal pay for both sexes doing the same work, so far as the margin for skill at least is concerned." ([1929] AR 39 at p44)

25. By 1930 the principle had well been established that the margin for a particular job should be determined in light of the requirements of the job, without regard for the sex of the employee concerned, and such a margin should be added to the living or basic wage for males or females, as the case may be. This continued to be the principle until later amendments to the Act in 1958.

26. The *Hairdressers' Case* post dated another significant NSW case, *Re Metalliferous Miners, General (State) Award* [1928] AR 466.

METALLIFEROUS MINERS

27. *Re Metalliferous Miners, General (State) Award* (1928] AR 466), establishes the principle of "comparative wage justice" in New South Wales (a concept which is described in the Hairdressers case, but without citation of the Metalliferous Miners case). The tribunal determined that primarily, the aim should be to establish fair and reasonable wages for the work, according to the duties to be performed by the employees in the classifications under consideration, and by having regard to all aspects of the work. These principles turned upon the following statement:

> "It must always be remembered that the rate of pay awarded in one industry is not to be accepted as a guide to the rate to be awarded in another unless the tribunal is satisfied that the work done is fairly comparable. Even when similarity of work has been established it is not enough to look merely at the rates awarded apart from the other conditions of the award in which they are found. It is also necessary to have regard to the circumstances under which the award in question was made and to examine in detail the conditions as well as the wages awarded and to consider carefully the principles upon which these rates and conditions were fixed in that particular award". ([1928] AR 466 at p471)

28. For a long period of time, the Commission applied this principle and consistently affirmed it, entrenching the fixation of like wages to only that of like work. (See particularly, *Re Plasterers (State) Award* [1954] AR 606; *Re Marine Motor Drivers, Coxswains (State) Award* [1960] AR 250; *Re Australian Wire Rope Works General Award* [1961] AR 396; *Re Crown Employees (Scientific Officers - Division of Science Services, Department of Agriculture) Award* [1962] AR 250 - "a sheet anchor to the system which we are not prepared to let go"; *Re Iron & Steel Works Employees AI&S Ltd - Port Kembla) Award* [1964] AR 350) It is of obvious significance in this Inquiry, referring as it does to "comparable" in relation to work.

THE LIVING WAGE AND BASIC WAGE

29. In the *Basic Wage Inquiry* of 1934 (1934) CAR 144, the Commonwealth Arbitration Court developed a basic wage principle based firmly on the economic capacity of industry to pay, thus discontinuing the *Harvester* principles.

LEGISLATIVE CHANGES IN NEW SOUTH WALES

30. Prior to 1937 in New South Wales, all but a few awards and industrial agreements fixed rates of wages, which had from time to time been varied by reference to fluctuations in the adult male living wage or the female adult female living wage was declared or adjusted under the Industrial Arbitration Act.

31. The enactment of section 5 of the *Industrial Arbitration (Amendment) Act,* No. 14, 1936 provided for the Commission to declare the living wage for adult female employees of the State at 54 per cent of the living wage for adult males. This provision read as follows:

> "The Industrial Arbitration (Amendment) Act, 1926, is further amended by inserting in paragraph (b) of subsection one of section seven, after the words "fourteen years" the words -
>
> "The Commission shall declare the living wage for adult female employees in the State at fifty-four percentum (calculated to the nearest sixpence) of the living wage declared for adult male employees on the requirements of a man and wife with one child under the age of fourteen years."

32. The following year, the *Industrial Arbitration (Amendment) Act*, No 9, 1937, served to restrict the jurisdiction of the New South Wales Industrial Commission with respect to wage fixation. Under the amendments the Commission would assess wages for all employees in New South Wales uniformly adopting the basis used by the Commonwealth. (See sections 4(2) and 7). These amendments effectively meant that during the period from 1937 to 1959, notwithstanding the passage of the *Industrial Arbitration Act,* 1940, the State tribunal had no discretion in determining the amount of the basic wage for its awards, and was restricted to fixing margins according to principles the Commission determined. (It should be noted that the *Industrial Arbitration Act (1940),* No.2, 1940 was assented to on 19 April, 1940, consolidating the Acts relating to Industrial Arbitration in New South Wales. No significant changes affected the operation of the wage fixing principles as described in this paragraph.) The 1937 Amending Act and the 1940 Act both continued to provide for the female basic wage to be 54 per cent of the male basic wage with the appropriate fixed loading addition. (See ss4(2)(a)(ii) *Industrial Arbitration*

Amendment Act, No.9, 1937, consolidated into ss54(2)(a)(ii) *Industrial Arbitration Act,* No.2, 1940.)

33. An example of the manner in which the New South Wales Commission applied these margin-fixing principles is found in *Re Shop Assistants (Metropolitan)and (Northumberland) Conciliation Committee*[1937] AR 456. In this case, a Full Bench awarded the same margin to male and female employees, stating:

> "So far as the positions rated above or outside the scales are concerned, we considered the awards generally as quite unsatisfactory. We were told that many of the provisions had been inserted by consent. We found it extremely difficult to ascertain, either from examination of the rates of pay or otherwise, upon what principle, if any, some of the rates for males and females had been assessed, or to gather from the language used what was really intended to be covered. Generally, the material placed before us relating to these positions was very scanty, and we had to do the best we could with such information as we had in our possession. However, both the terms in which the definitions were couched and the rates of pay prescribed have now been reviewed, and we have acted upon the principle that the same margins should be awarded to both male and female employees."([1973] AR 456 at p472-473)

34. This practice continued until the Commonwealth Arbitration Commission abandoned the practice of incorporating the basic wage in its awards in 1967.

EFFECTS OF WORLD WAR II

35. The circumstances of World War II meant that there was an increase in the demand for female labour, leading to higher actual rates as well as higher award rates. Women's Employment Boards set up outside the scope of the established industrial relations system with the task of setting women's wages at a sufficiently high proportion of the male rate to attract women to work in areas suffering from labour shortage.

36. The increase in women's wages via the Women's Employment Board led to applications by women employed under pre-war agreements at a lower rate of pay, seeking parity with their male counterparts.

37. One such case was heard by the Full Court of the Commonwealth Court of Conciliation and Arbitration in *The Arms Explosives and Munition Workers Federation of Australia v. The Director-General of Munitions* (1943) 50 CAR 191. At p201 this decision provides a useful summary of the principles, demonstrating in particular that work value has played a

role in the determination of the skills margin, (and not in the basic wage):

> "We think it necessary to explain here the method which the industrial tribunals, constituted under the laws of the Commonwealth or of the States, have adopted and followed in the matter of assessing minimum wage rates. It can be said that wages for both male and female adult employees have in general been assessed by adding to a foundational amount, called the basic or living wage, whatever sum has been regarded as just or proper by way of special remuneration for such matters as skill, experience, unduly irksome or difficult conditions attending the particular work in question, intermittency of employment, unavoidable losses of working time and such like incidents of the particular occupation. For the skilled worker whose work does not involve any such considerations, the basic or living wage has been generally deemed to be the appropriate minimum. Whilst in the assessment of the added sums, usually referred to as either loadings or margins or sometimes as secondary wages, some regard has been paid to the relative work-values as between workers possessing varying degrees of skill or experience or incurring varying degrees of irksomeness, difficulty, intermittency or loss of time, &c., in their employment, work-value has not been adopted as a measure in the assessment of the foundational or primary or basic wage. This has applied in the assessment of the basic or living wage ingredient of all wages whether of men or women. Reference to the decisions of this Court and of the State industrial authorities will provide ample demonstration of this fact." ((1943) 50 CAR at p201)

FEMALE MINIMUM RATES

38. In the *Female Minimum Rates Case* of 1948 (1948) 60 CAR 1405, a Full Bench of the Commonwealth Conciliation and Arbitration Court considered granting an application to alter the rates of remuneration for all adult female employees covered by the Metal Trades Award. Prior to this decision there had not been: *". . .any standard equivalent to the male basic wage laid down by the Court, fixing the basic remuneration of adult females."* (per *Foster J* at p1417) In noting the absence of standards, Foster J observed the variety of methods adopted within awards for prescribing female wages:

> "There are a large number of awards in which female rates are prescribed; some prescribe no minimum except in the sense that all prescribed rates are minimum rates - the least amount that may be paid to a female worker of a given age and classification. Others prescribe in express

> terms a minimum rate as e.g. Agricultural Implement Making Award [56 CAR p722] "the minimum rate of wage for females shall be the undermentioned percentages". And many others. While others, such as the Food Preservers Award [58 CAR p561] prescribe "the minimum payment. . .to adult female employees shall be at the rate of the total industry basic wage" which is made up of a basic wage adjustable and two loadings. Others again fix weekly rates of pay for females at a prescribed money sum e.g. Liquor Trades (NSW) Award [40 CAR p1], while others prescribe a percentage of the male rate, sometimes of the "needs basic wage" plus a loading of some kind; sometimes "the total base rate" varying from 54 per cent to 100 per cent. Some fix a flat rate for all female workers and some fix piece or task rates. . .
>
> Thus it is true to say the adult female minimum rate of remuneration in the sense of a foundational rate upon which an arbitrator may build his wage structure does not exist, it has neither been found nor fixed by the Court nor can it be ascertained from the awards."
> ((1948) 60 CAR 1405, per Foster J at p1417)

39. It was concluded that although both the principles and an amount of a female minimum were yet to be laid down, the Court's power was constrained by the *Commonwealth Conciliation and Arbitration Act* 1940, to a power to *alter* only and not *create* or originate. Therefore, individual Conciliation Commissioners should, in the first instance, work out the appropriate principles and apply them in awards.

40. This process continued until somewhat redressed by the *Basic Wage Inquiry* of 1949 - 1950 (1949-1950) 68 CAR 792, where it was stated, per *Foster J*:

> "After this Court's decision in the Female Minimum Rates Case delivered on 29th July, 1948, [60 CAR 1405], deciding that the female minimum rate meant in effect a female basic wage, and as in point of fact there was no such wage fixed by this Court and so none to "alter" the Act was amended to empower the Court to determine or alter the basic wage for adult females, but the power with respect to males remained to alter only and not determine."
> (1949-1950) 68 CAR 792 at p795)

41. Rejecting the notion of full equality in wages, the Conciliation and Arbitration Court couched its rationale in the following terms:

> "If, as has been suggested, there is a wage fund, i.e. a percentage of the national dividend absorbed by or

> represented by wages and salaries, then an increase in female rates must be at the expense of other wages and salaries and result in a lower amount for males both as basic wage and as margins. While some approach to equality might be justified and accepted, the complete equality immediately and without a complete recasting of our wage structure would be, in my opinion, socially undesirable." ((1949-1950) 68 CAR 792 at p817)

42. It followed from this decision that the adult female basic wage was set at 75 per cent of the basic wage payable to the adult male (1949-1950) 68 CAR 792 at p840).

43. The impact of the war was still being felt in 1950 and the Court considered the role of the Women's Employment Board in fixing rates relative to efficiency and productivity of females:

> "The Women's Employment Board under its special character to fix rates according to the relative efficiency and productivity of females and at not less than 60 per cent. or more than 100 per cent. of the male rate, fixed at a rate generally about 90 per cent.; further, by regulation (Female Minimum Rates) a rate of 75 per cent. was fixed for females in the "vital" industries, and a rate of 75 per cent. (flat) by this Court in the Clothing Trades industry.
>
> These rates have spread widely through industry and though both the Women's Employment Board and the vital industry rates have ceased to be binding and effective, the evidence shows that "the relatively great shortage of male labour has placed female workers in a uniquely favourable situation in the labour market",. . .so that their actual rates have not fallen back to the award rates. I believe it would be hard to find today any adult female in Australia working on the 54 per cent. level." (Basic Wage Inquiry (1949-1950) 68 CAR 792 at p817-818)

44. In the *Basic Wage and Standard Hours Inquiry* (1952-53) 77 CAR 477 the employers unsuccessfully sought a reduction of the female basic wage to 60% of the male rate. The Court held:

> "Upon the evidence presented of the employment of women, the Court finds it impossible to say that the higher ratio of the women's basic wage to the men's , adopted by the 1950 decision, has resulted to date in either a significant degree of unemployment amongst women or, generally speaking, in a comparatively greater cost burden having to be carried, at the expense of reasonable profit, by enterprises employing a relatively higher proportion of women workers." (1953) 77 CAR 477 at p504.

EQUAL PAY LEGISLATION - EARLY DEVELOPMENTS

45. In 1958, the first explicit statutory direction on equal pay was inserted into the New South Wales *Industrial Arbitration Act* by the *Industrial Arbitration (Female Rates) Amendment Act,* No.42, 1958. Specifically, a new section, s88D was inserted into the principle Act:

> "3. The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is further amended by inserting next after section 88C the following new section:-
>
> 88D.(1) The commission or a committee shall upon applications made therefor insert (by way of variation or otherwise) in any award or industrial agreement which fixes rates of wages for male and female employees performing work of the same or a like nature and of equal value provisions for equal pay as between the sexes based upon the principles set out in this section.
>
> (2) Where the commission or a committee is satisfied that male and female employees are performing work of the same or a like nature and of equal value the same marginal or secondary rates of wages shall be fixed irrespective of the sex of the employees. For the purpose of determining whether female employees are performing work of the same or a like nature and of equal value as male employees the commission or committee shall in addition to any other relevant matters take into consideration whether the female employees are performing the same work or work of a like nature as male employees and doing the same range and volume of work as male employees and under the same conditions.
>
> (3) Where the same marginal or secondary rates of wages have been fixed under and in accordance with subsection two of this section the rates of wages applicable to female employees to whom such fixation applies shall be fixed by adding to such marginal or secondary rates of wages the percentage of the appropriate basic wage for adult males set out in the second column of the Schedule hereto opposite the year specified in the first column of the Schedule hereto during which the same marginal or secondary rates of wages have been fixed as aforesaid.

SCHEDULE

Year	Percentage of the appropriate basic wage for adult males
Commencing 1st January 1959	Eighty per centum.
Commencing 1st January 1960	Eighty-five per centum.
Commencing 1st January 1961	Ninety per centum.
Commencing 1st January 1962	Ninety-five per centum.
Commencing 1st January 1963 or any subsequent year	One hundred per centum.

. . .

(7)(a)Nothing contained in this section shall limit or in any way affect the powers, authorities, duties and functions conferred or imposed on the commission or a committee by or under this Act in respect of rates of wages for adult females:

Provided that in the exercise or performance of such powers, authorities, duties or functions the commission or a committee shall not in any award or industrial agreement, which fixes rates of wages for male and female employees performing work of the same or a like nature and of equal value, insert any provisions relating to rates of wages for adult females less favourable to the female employees than the provisions prescribed by this section.

(b) Subsection two of this section shall not be construed as requiring the same marginal or secondary rates for male and female employees to be fixed only where such male and female employees are performing work of the same or a like nature and of equal value within the meaning of that subsection.

(9)(a). . .

(b) This section shall not apply to an in respect of those provisions of any awards and industrial agreements

> which are applicable to persons engaged in work essentially or usually performed by females but upon which male employees may also be employed."

46. In response to its enactment, a Full Commission heard applications by various industrial unions of employees for variations of awards and industrial agreements in *Re Industrial Arbitration (Female Rates) Amendment Act,* 1958. ([1958] AR 55)

47. The Commission did not consider equal pay *per se*, but deliberated on the basis upon which wages applicable to females in both in awards and industrial agreements were to be assessed. In seeking to determine the proper interpretation to be given of the new Division 2B, inserted in Part V - "Basis of Assessment of Rates of Wages" - of the principle *Industrial Arbitration Act*, the Full Bench stated:

> "The key to the problem of interpretation arising is to be found in the fact that Parliament's principle purpose in enacting the new Division 2B, as disclosed by the language used in the statute are -
>
> to abrogate the principle of the true foundational basic wage for adult females applied in the 1950 decision, as expounded in the judgment,
>
> to give effect to that abrogation in relation to existing and future awards and industrial agreements.
>
> Accordingly, in interpreting the provisions of the new Division, it is proper for us to ascribe to the legislature an intention that, in so far as the rates of wages for adult females prescribed by awards or industrial agreements in force at the commencement of the Female Rates Act have been assessed in relation to the true foundational basic wage for adult females declared in the 1950 judgment, they should now be varied to the extent that, in lieu of being fixed in relation to that basic wage, they will be fixed in relation to the new true foundational basic wage for adult females declared by the Female Rates Act." ([1959] AR 55 at 78-79)

48. The Commission emphasised that not all rates in all awards and agreements had been fixed in relation to the true foundational basic wage for adult females as declared in the 1950 judgment. The Commission held the view that the doctrine was never expressed to be applicable to *all* awards and agreements. In distinguishing the State tribunal's approach, from that of the Commonwealth Court, the Commission provided examples of where the true foundational basic wage for adult females had *not* been the primary point of reference in fixing female wages:

"Counterpart awards are an example of this. For many years it has been the practice in this jurisdiction, in regulating wages and conditions of employment in industries where the majority of the employers concerned are bound by Federal awards, to make awards containing, as far as may lawfully be done, terms identical with those of the relevant Federal award. Since 1950, the tribunals under the Commonwealth Conciliation and Arbitration Act, in prescribing wages for female employees, have generally adopted as a foundational basic wage for adult females the amount - being 75 per cent. of the basic wage for adult males - declared by the Commonwealth Court in 1950 as the basic wage for adult females; and, on that foundation, have fixed total rates by adding thereto amounts in respect of marginal or secondary considerations. When a tribunal under the Industrial Arbitration Act adopts by award a rate fixed in that manner, it is clearly not applying the 1950 doctrine of the true foundational basic wage . On the contrary it is using a basic wage, and its award, having already been made in accordance with the principle declared in Section 61P, now calls for no alteration.

Awards containing rates of pay fixed on the principle that female employees are entitled to the same wages as male employees doing the same work provide another clear example of rates not fixed in relation to the true foundational basic wage for adult females referred to in the 1950 judgment. There are a considerable number of instances of awards made on this principle.

And a third category of award containing rates for adult females not fixed in relation to that true foundational basic wage are those which contain rates fixed on the principle that female employees are entitled to be paid a percentage of the rates prescribed for males performing the same or similar work. Such a method of fixation has been adopted in a number of industries. It would be quite unreal to regard such rates as having been fixed by adding to a foundational basic wage an amount in respect of marginal or secondary considerations." ([1959] AR 55 at p79-80)

49. An interpretation of these provisions was made by the New South Wales Industrial Commission following the hearing of applications by the Federated Clerks' Union in *Re Clerks (State) Award and Other Awards* [1959] AR 470. This case only relates to the interpretation of Section 88D of the Act ([1959] AR 470 at p472). The main principles are amply set out in the head note to the case which is expressed as follows:

" (1) Section 88D requires the Commission and conciliation committees in certain specified circumstances to insert provisions for equal pay as between the sexes in awards and industrial agreements. Where those circumstances are proved to exist the tribunal must award the same marginal or secondary rates of wages for males and females, and the total rate of wages payable to female employees is to be fixed by adding to such marginal or secondary rates the prescribed percentages of the basic wage for adult males. In those cases where the specified circumstances are not proved to exist, the method to be adopted in the assessment of rates of wages for female employees will remain the same as before the enactment of the amending Act, namely, in relation to the basic wage for adult females.

(2) When considering an application under s88D, a tribunal must restrict its investigations to the work for which rates are fixed or are to be fixed by a particular award or for which rates are fixed by a particular industrial agreement. The restriction contained in the section ensures that a conciliation committee need not enquire beyond the industries and callings assigned to it and makes irrelevant any contention that female employees for whom rates are fixed by one award but whom are not performing the work of the same or a like nature as and of equal value to that performed by males under that award are nevertheless performing work of the same or a like nature as and of equal value to work performed by males for whom rates are fixed by another award.

(3) Section 88D applies only to adult females and does not affect in any way the fixation of wages for females who are not adults.

(4) An application made pursuant to section 88D must be an application to fix marginal or secondary rates not only for females but also for males.

(5) The word "work" wherever occurring in the section is to be interpreted in a fairly precise rather than in a generic sense. As examples, the work of a shop assistant in charge of a shop is different work from that of an ordinary shop assistant and the work of a stenographer is different work from that of a telephonist.

(6) In considering whether work performed by females is "work of the same or a like nature" as that performed by males, it is incorrect to proceed either on the basis of

considering the generic nature of work performed by employees under an award or on the basis that the work of individual employees in a particular establishment only should be considered. The proper approach is to identify and define specific classes of work covered by the one award and then to proceed to compare the work of males and females in each such specific class.

(7) In order to succeed in a claim under the section in a case where the particular award applies to a number of establishments, it is necessary for an applicant to adduce evidence sufficient to prove that the work of the particular nature in question is of the same or a like nature as and of equal value to the work of all males bound by the award and doing work of that nature: it is not sufficient to confine the evidence to a particular establishment.

(8) The section makes it necessary for tribunals to adopt new principles for the purpose of grouping employees covered by an award in respect of which an application under the section has been made. The common practice formerly adopted of grouping together a large number of female employees covered by the one award and fixing a common rate, notwithstanding that the work performed may differ in range, volume, the conditions under which it is performed, and value, will not be appropriate when determining such an application.

(9) The phrase "of equal value" used in the section is not to be interpreted as meaning "of equal value to the employer: in this context the word "value" means the value which the Commission or a conciliation committee places on work and by reference to which it fixes rates of wages. To hold otherwise would require acceptance of an untenable conclusion that the enactment of the section had completely alters the nature of the wage fixing jurisdiction of the Commission and the conciliation committees in cases where males and females perform work of the same nature and of equal value. Furthermore, the phrase in its context must be interpreted as meaning "at least of equal value" so that female employees performing work of the same or a like nature as male employees but of greater value would be entitled to the benefits of the section.

(10) The factors of range, volume and conditions under which work is performed are matters to be taken into consideration when considering both the nature of the work and its value. However, it would be possible for a tribunal to find that the work of females was of equal value to that

> of males notwithstanding that the work performed by the two classes differed either as to its range or volume or the conditions under which it was performed.
>
> (11) When considering the comparative value of work of males and females, such factors such as the shorter working life on an average of females as compared to males, and that females may be less capable than males of ultimately assuming higher responsibilities, are irrelevant.
>
> (12) The section is explicit that equal pay provisions are not applicable "to and in respect of those provisions of any awards and industrial agreements which are applicable to persons engaged in work essentially or usually performed by females but upon which male employees may also be employed" (subsection (9)(b)). Thus, in a case where the one award fixes rates for males and females and their work is of the same or a like nature and of equal value, if the work is "work essentially or usually performed by females but upon which male employees may also be employed" an application under the section could not succeed." ([1959] AR 470 at 470-471)

THE TOTAL WAGE

50. An important step toward the realisation of equal pay at the Federal level was made during the *Basic Wage, Margins and Total Wage Cases* of 1966 (1966) 115 CAR 93, wherein the Commonwealth Conciliation and Arbitration Commission ordered that the basic wage increase afforded adult males accrue proportionately to adult female employees, junior employees and apprentices. ((1966) 115 CAR 93 at p102)

51. The concept of a "total wage" replacing the tradition of the "basic wage" was addressed in the *National Wage Cases, 1967* (1967) 118 CAR 655. A Full Bench of the Commonwealth Conciliation and Arbitration Commission, whilst regarding the basic wage as important in a number of ways, expressed a willingness to take a new approach involving the adoption of the concept of a "total wage":

> "This new approach will ensure that under our awards wage and salary earners will annually have applied to them the increases for economic reasons which it is common ground they may normally expect and the increases will be applied to the whole wage instead of only to part of the wage as at present. We are sure that in work-value cases the fixation of total wages will bring to award-making both greater flexibility and greater reality. The minimum wage will give better protection to those whose needs are greatest, namely, those whose take-home pay would

> otherwise be below the standard assessed by the Commission and will give the Commission more flexibility in assisting them because we will have more scope to give them special consideration." ((1967) 118 CAR 655 at p658)

52. With reference to wage disparity, the Bench regarded the history of gender based wage determination as follows:

> "Although we refer to the total wage, there will for the present be a different total wage for males and females and a number of total wages for many classifications. These result from existing basic wage differentials and from the quite complex history of basic wages particularly those for females, starting many years ago from a concept of differing needs and responsibilities of men and women. Both basic wages have over the years been adjusted in a variety of ways. We are conscious of these apparent anomalies, but consider it not practicable to attempt to deal with either at this time.
>
> The community is faced with economic industrial and social challenges arising from the history of female wage fixation. Our adoption of the concept of a total wage has allowed us to take an important step forward in regard to female wages. We have on this occasion deliberately awarded the same increase to adult females and adult males. Our adoption of the concept of a total wage has allowed us to take an important step forward in regard to female wages.
>
> We have on this occasion deliberately awarded the same increase to adult females and adult males. The recent Clothing Trades decision [118 CAR 286] affirmed the concept of equal margins for adult males and females doing equal work. The extension of that concept to the total wage would involve economic and industrial sequels and calls for thorough investigation and debate in which a policy of gradual implementation could be considered." ((1967) 118 CAR at p660)

1969 - THE EQUAL PAY CASES

53. This matter concerned applications by the Australian Meat Industry Employers' Union and the Professional Officers Association, Commonwealth Public Services.

54. The unions applied for the insertion into the award and determinations an amount of money which would eliminate the difference in current rates represented by the difference between the former male and female basic wages. On a six capital cities basis this represented an increase of $8.20

per week for females under one award. ((1969) 127 CAR 1142 at p1147)

55. The Commission described the issue in the matter as being "the principle of equal pay for equal worth".

56. The Commission also considered the history of wage fixation. ((1969) 127 CAR 1142 at p1152-3) Much of this history is covered in the earlier discussion but it is sufficient to emphasise two points:

    i. The origin of the basic wage fixation was that the male basic wage was fixed as a family wage and the female basic wage was fixed as a wage for single woman. This notion of social and family responsibilities of the male underpinned differential in the basic rate.

    ii. Whilst the concept of total wage was introduced under the Federal system it was clear that this wage as well contained the relic of the concept of a family wage. The Bench considered that the family wage was no longer of significance, conceptual or economic.

57. The Commission sets out the incidence of industrial awards in May 1963 ((1969) 127 CAR 1142 at p1154). It is important to note for present purposes that the percentage of employees affected by state awards at that time in NSW was 46.3% (males) and 3% (males) and 63.9% (females).

    Whilst the decision is known as the *Equal Pay Case* it is important to bear in mind the precise basis for the Commissions decision, which is as follows:

    i. The Commission did not grant the claim as pressed as it was principally concerned with establishing a principle in a case which it described as a test case. ((1969) 127 CAR 1142 at p1156 and 1158)

    ii. The Commission accepted the concept of "equal pay for equal work" implying the elimination of discrimination based on sex alone. ((1969) 127 CAR 1142 at p1156)

    iii. Otherwise the Commission considered that the concept of equal pay was difficult to define and even more difficult to apply with precision ((1969) 127 CAR 1142 at p1156)

    iv. It is clear that the Commission relied upon the passage of equal pay legislation in various States (namely NSW, South Australia, Western Australia and Tasmania for the State Public Section) in coming to its decision ((1969) 127 CAR 1142 at pp1153, 1157 and 1158)

58. As to international considerations, the bench had placed before it the ILO Convention 100 and Recommendation 90 of 1951 and Convention 111 and Recommendation 111 of 1958. The Bench noted that these conventions had not been ratified by the Australian Government at that time ((1969) 127 CAR 1142 at p 1155). The Bench was also not prepared to interpret the meaning of the words of the conventions although it did form a view that the conventions represented international thinking on the question of equal pay for equal work at that time. ((1969) 127 CAR 1142 at p1155) In the broad the Bench considered that the conventions must "carry significant weight in a general way" ((1969) 127 CAR 1142 at p1156). However the Commission introduced the caveat that they had values which in part had been created by their own institutions including a complex wage system. Furthermore the Commission could not escape its own history ((1969) 127 CAR 1142 at p1156).

59. Interestingly the Commission observed that:

> "If the Arbitration system had in the past not concerned itself with a needs or family wage but had fixed a rate for a job irrespective of the sex, marital or parental status of the worker, the probabilities that the rate for the job would lie somewhere between the current male rate and the current female rate".

60. The Commission set down the following principle:

> "(1) the male and female employees concerned who must be adults, should be working under the terms of the same determination or award;
>
> (2) it should be established that certain work covered by the determination or award is performed by both males and females;
>
> (3) the work performed by both the males and the females under such determination or award should be of the same or a like nature and of equal value, but mere similarity in name of male and female classifications may not be enough to establish that males and females do work of a like nature;
>
> (4) for the purpose of determining whether the female employees are performing work of the same or a like nature and of equal value as the male employees the Arbitrator or Commissioner, as the case may be, should in addition to any other relevant matters, take into consideration whether the female employees are performing the same work or work of a like nature as male employees and doing the same range and volume of work as male employees and under the same conditions;

(5) consideration should be restricted to work performed under the determination or award concerned;

(6) in cases where males and females are doing work of the same or a like nature and of equal value, there may be no appropriate classifications for that work. In such a case appropriate classifications should be established for the work which is performed by both males and females and rates of pay established for that work. The classifications should not be of a generic nature covering a wide variety of work;

(7) in considering whether males and females are performing work of the same or like nature and of equal value, consideration should not be restricted to the situation in one establishment but should extend to the general situation under the determination or award concerned, unless the award or determination applies to only one establishment; - appears to be first case where goes outside one establishment.

(8) the expression of 'equal value' should not be construed as meaning 'of equal value to the employer' but as of equal value or at least of equal value from the point of view of wage or salary assessment;

(9) notwithstanding the above, equal pay should not be provided by application of the above principles where the work in question is essentially or usually performed by females but is work upon which male employees may also be employed." [emphasis added] (Equal Pay Cases (1969) 127 CAR 1142 at p1158-9)

61. In order to implement these principles, the Commonwealth Commission set down an incremental scale phasing in the desired equities. This became operative from the first pay period on or after 1 October 1969, and effectively shifted the differential between males and females from 85 per cent of the male rate in 1969, to 100 per cent in 1972.

NATIONAL WAGE AND EQUAL PAY CASES 1972

62. The decision dealt with two matters. Firstly, there was the issue of the minimum wage and secondly, the issue of equal pay.

63. As to whether the male minimum wage should be applied to females, the Commission rejected the argument as follows:

". . .however, the union's now argue as a simple matter of equity that females should receive the same minimum wage as males.

> We reject that argument because the male minimum wage in our awards takes account of the family considerations we have mentioned. The fact that the unions consider the amount of the minimum wage to be too low does not affect the concept behind the wage. Because of the essential characteristic of the male minimum wage we decline to apply it to females and we dismiss that part of the unions' claims." ((1972) 147 CAR 172 at p176)

64. The balance of the judgment concerns equal pay.

65. The starting point for the assessment of equal pay was the 1972 *Equal Pay Decision* (1972) 147 CAR 172.

66. The Commission defined the issue in the case thus:

> "The broad issue we have to decide is whether in the present social and industrial climate it is fair and reasonable that the 1969 principle should remain unaltered. This involves us in making assessment of what, if anything, has happened in the area of equal pay sine 1969 which would make it just and proper for us to alter those principles." (1972) 147 CAR 172 at p176

67. The Commission noted that approximately 18% of females in the work force had received equal pay as a result of the 1969 decision (at p 177).

68. As to international considerations and, in particular, Convention 100 - the Commission did not rely heavily on the Convention although it acknowledged that the Convention may be the genesis upon those things upon which it did rely. ((1972) 147 CAR 172 at p 177).

69. Again important to the Commissions' deliberations was State Legislation. It took into account broad changes of significance that occurred since 1969 including amendments to West Australian and South Australian legislation and support to the claims offered by the Tasmanian Government ((1972) 147 CAR 172 at p 177).

70. The Commission also recognised equal pay legislation developments in the United Kingdom (*Equal Pay Act* 1970) and New Zealand (*Equal Pay Bill* (NZ) 1971). It limited the consideration of overseas legislation to these two instruments although it does note changes in other countries were identified to which constituted additional evidence of a world wide trend towards equal pay for females.

71. Thus the decision was based upon changed circumstances and the Commission summarised its position thus:

> "All of these changes require us to reconsider the 1969 principles and to look at them in the light of present circumstances. We have

given consideration to merely amending those principles but we consider it is better for us to stay positively new principle. 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'. [Emphasis added] ((1972) 147 CAR 172)

72. The Commission laid down a general principle and left the implementation to individual members.

73. The Commission rejected two arguments advanced by the employer parties, namely:

i. That males would seek to restore their pre existing wage relativities with females - there being no evidence after 1969 that this had occurred and in any event this would not be a valid argument for males

ii. The economic costs of the decision as apart from noting the reduction of impact due to the method of implementation the Commission recognises that the decision would result in substantial wage increases. ((1972) 147 CAR 172 at p178)

74. However it nonetheless proceeded because:

"In our view the community is prepared to accept the concept of equal pay for females and should therefore be prepared to accept the economic consequences of this decision" ((1972) 147 CAR 172 at p178).

75. A new principle was introduced by the Commission:

"(1) The principle of "equal pay for work of equal value" will be applied to all awards of the Commission. By "equal pay for work of equal value" we mean the fixation of award wage rates by a consideration of the work performed irrespective of the sex of the worker. The principle will apply to both adults and juniors. Because the male minimum wage takes account of family considerations it will not apply to females.

(2) Adoption of the new principle requires that female rates be determined by work value comparisons without regard to the sex of the employees concerned. Differentiations between male rates in awards of the Commission have traditionally been founded on work value investigations of various occupational groups or classifications. The gap between the level of male and female rates in awards generally is greater than the gap, if any, in the comparative value of work performed by the two sexes because

rates for female classifications in the same award have generally been fixed without a comparative evaluation of the work performed by males and females.

(3) The new principle may be applied by agreement or arbitration. The eventual outcome should be a single rate for an occupational group or classification which rate is payable to the employee performing the work whether the employee be male or female. Existing geographical differences between rates will not be affected by this decision.

(4) Implementation of the new principle by arbitration will call for the exercise of the broad judgment which has characterized work value inquiries. Different criteria will continue to apply from case to case and may vary from one class of work to another. However, work value inquiries which are concerned with comparisons of work and fixation of award rates irrespective of the sex of employees may encounter unfamiliar issues. In so far as those issues have been raised we will comment on them. Other issues which may arise will be resolved in the context of the particular work value inquiry with which the arbitration is concerned.

(5) We now deal with issues which have arisen from the material and argument placed before us and which call for comment or decision.

(a) The automatic application of any formula which seeks to bypass a consideration of the work performed is, in our view, inappropriate to the implementation of the principle we have adopted. However, pre-existing award relativities may be a relevant factor in appropriate cases.

(b) Work value comparisons should, where possible, be made between female and male classifications within the award under consideration. But where such comparisons are unavailable or inconclusive, as may be the case where the work is performed exclusively by females, it may be necessary to take into account comparisons of work value between female classifications in different awards. In some cases comparisons with male classifications in other awards may be necessary.

(c) The value of the work refers to worth in terms of award wage or salary fixation, not worth to the employer.

(d) Although a similarity in name may indicate a similarity of work, it may be found on closer examination that the same name has been given to different work. In particular this situation may arise with generic

classifications. A similar situation may arise with respect to junior employees. Whether in such circumstances it is appropriate to establish new classifications or categories will be a matter for the arbitrator.

(e) In consonance with normal work value practice it will be for the arbitrator to determine whether differences in the work performed are sufficiently significant to warrant a differentiation in rate and if so what differentiation is appropriate. It will also be for the arbitrator to determine whether restrictions on the performance of work by females under a particular award warrant any differentiation in rate based on the relative value of the work. We should however indicate that claims for differentiation based on labour turnover or absenteeism should be rejected.

(f) The new principle will have no application to the minimum wage for adult males which is determined on factors unrelated to the nature of the work performed.

(6) Both the social and economic consequences of our decision will be considerable and implementation will take some time. It is our intention that rates in all awards of this Commission and all determinations under the Public Service Arbitration Act should have been fixed in accordance with this decision by 30th June, 1975. Under normal circumstances, implementation should take place by three equal instalments so that one-third of any increase is payable no later than 31st December, 1973, half of the remainder by 30th September, 1974, and the balance by 30th June, 1975. This programme is intended as a norm and we recognize that special circumstances may exist which require special treatment.

(7) Nothing we have said is intended to rescind the 1969 principles applicable to equal pay for equal work which will continue to apply in appropriate cases. We have taken this step because an injustice might be created in cases based on equal pay for equal work where females could become entitled immediately to male rates under those principles." [Emphasis added] (National Wage and Equal Pay Cases 1972, (1972) 147 CAR 172 at p179-180)

76. Some specific observations about the decision may be made:

(a) There is clearly a departure from the previous principle of equal