

---

## Approaches to Gender-Based Undervaluation in Australian Industrial Tribunals: Lessons From Recent Childcare Cases

*Gillian Whitehouse and Tricia Rooney*

Strategies that have emerged in Australia to address the undervaluation of work traditionally or predominantly performed by women have taken distinctive forms in different jurisdictional and historical contexts. They have been shaped by embedded principles and practices and by actors who have sought pathways within often restrictive frameworks to identify and redress gender bias in the valuation of work. In this analysis we seek to illustrate how strategy and context influence the scope for redress even when similar arguments are accepted about the nature of the problem.

We examine three childcare cases determined in 2005-2006. The first was heard in the federal jurisdiction, under what we term a 'traditional work value' approach – designed not for gender pay equity purposes but more broadly as a means to deliver appropriate wage relativities across industries and occupations. The second and third cases were heard, in New South Wales and Queensland respectively, under equal remuneration principles developed in the aftermath of State-level pay equity inquiries. These principles were designed to facilitate the identification and redress of gender-based undervaluation, and to do so in a manner that retained the gender pay equity benefits of relatively collectivised wage-setting arrangements.

The three cases provide a 'natural experiment': they applied to groups in the same occupation operating under essentially the same industry framework, but were heard in different wage-setting jurisdictions under different approaches to (under)valuation. By examining the decisions in these cases we aim to provide a deeper understanding of how barriers to addressing gender-based undervaluation are shaped by wage-setting contexts, and to draw out implications for the capacity to address this matter in the context of Fair Work Australia.

This is a preview. Not all pages are shown.

the identification and redress of gender-based undervaluation in industrial tribunals.

## Acknowledgments

Research for this chapter has been supported through Australian Research Council Linkage grant LP0775131: *Industrial Relations, Gender Equity and Work/Family Balance: Assessing the Impact of Changing Law and Practice in Queensland*. The project has also been supported by the Queensland Government's Office of Fair and Safe Work Queensland and Office for Women.

## References

- Armstrong P and Armstrong H (1991) Limited Possibilities and Possible Limits for Pay Equity: Within and Beyond the Ontario Legislation. In: Fudge J and McDermott P (Eds) *Just Wages: A Feminist Assessment of Pay Equity*. Toronto: Toronto University Press.
- AIRC (Australian Industrial Relations Commission) (2005) *Child Care Industry (Australian Capital Territory) Award 1988 and Children's Services (Victoria) Award 1998* (PR954938), Decision, 13 January.
- AIRC (2009) *Health and Welfare Services (Remainder) – Children Services Comparison – Federal Awards – Wage rates – Adults and Health and Welfare Services (Remainder) – Children Services Comparison – NAPSAs – Wage rates – Adults* / <[www.airc.gov.au/awardmod/research/children.htm](http://www.airc.gov.au/awardmod/research/children.htm)> (accessed August 2011).
- Baker M and Fortin N (2004) Comparable Worth in a Decentralized Labour Market: The Case of Ontario. *Canadian Journal of Economics* 37(4): 850-878.
- Beechy V (1987) *Unequal Work*. London: Verso.
- Bennett L (1988) Equal Pay and Comparable Worth and the Australian Conciliation and Arbitration Commission. *Journal of Industrial Relations* 30(4) 533-545.
- Bourgeault IL and Khokher P (2006) Making a Better Living from Caregiving: Comparing Strategies to Improve Wages for Care Providers. *Canadian Review of Sociology and Anthropology* 43(4): 407-425.
- Brennan D (2007) Babies, Budgets and Birthrates: Work/Family Policy in Australia 1996-2006. *Social Politics: International Studies in Gender, State and Society* 14(1): 31-57.
- Burton C (1988) *Gender Bias in Job Evaluation*. Affirmative Action Agency Monograph No 3. Canberra: Affirmative Action Agency.
- Department of Family and Community Services (2005), *2004 Census of Child Care Services*. Canberra: Commonwealth of Australia.
- England P (1992) *Comparable Worth: Theories and Evidence*. New York: Aldine de Gruyter.
- England P, Budig M and Folbre N (2002) Wages of Virtue: The Relative Pay of Care Work. *Social Problems* 49(4): 455-473.
- Fair Work Australia (FWA) (2011) *Decision, Equal Remuneration Case, Australian Municipal, Administrative, Clerical and Services Union & others*. C2010/3131. Melbourne, 16 May.
- Figart D, Mutari E and Power M (2002), *Living Wages, Equal Wages: Gender and Labor Market Policies in the United States*. London/New York: Routledge.

- Fudge J (2000) The Paradoxes of Pay Equity: Reflections on the Law and the Market in Bell Canada and the Public Service Alliance of Canada. *Canadian Journal of Women and the Law* 12(2): 313-344.
- Fudge J and McDermott P (Eds) (1991) *Just Wages: a Feminist Assessment of Pay Equity*. Toronto/ Buffalo/ London: University of Toronto Press.
- Gaskell J (1989), Gender and Skill. In: Livingstone DW (Ed) *Critical Pedagogy and Cultural Power*. South Hadley, MA: Bergin & Garvey.
- Gregory R (1999) Labour Market Institutions and the Gender Pay Ratio. *Australian Economic Review*, 32(3): 273-278.
- Hall P (1999) The NSW Pay Equity Inquiry: a New Approach for a New Century. *Labour and Industry* 10(2): 33-52.
- Hunter R (2000), *The Beauty Therapist, the Mechanic, the Geoscientist and the Librarian: Addressing Undervaluation of Women's Work*. Sydney: ATN WEXDEV.
- IRC of NSW (Industrial Relations Commission of New South Wales) (2006) *Re Miscellaneous Workers Kindergartens and Child Care Centres &c (State) Award*. IRC Nos 5757 and 5600 of 2004. Award of the Commission, 7 and 16 March.
- Lyons M and Smith M (2007) WorkChoices and Pay Equity. *Hecate* 33(1) 81-93.
- OECD (2008) The Price of Prejudice: Labour Market Discrimination on the Grounds of Gender and Ethnicity. *OECD Employment Outlook*. 2008: 139-202.
- Phillips A and Taylor B (1980) Sex and Skill: Notes Towards a Feminist Economics. *Feminist Review* 6: 79-89.
- Pocock B and Alexander M (1999) The Price of Feminised Jobs: New Evidence on the Gender Pay Gap in Australia. *Labour and Industry* 10(2): 75-100.
- QIRC (Queensland Industrial Relations Commission) (2001) *Worth Valuing: A Report of the Pay Equity Inquiry*. Brisbane: Queensland Industrial Relations Commission.
- QIRC (2006), *Liquor, Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees and Children's Services Employers Association Queensland Union of Employers and Others*. B/2003/2133. Decision, 27 June.
- Rafferty F (1994) Equal Pay: The Evolutionary Process 1984-1994. *Journal of Industrial Relations* 36(4): 451-467.
- Smith M and Lyons M (2007) 2020 Vision or 1920s Myopia? Recent Developments in Gender Pay Equity in Australia. *International Employment Relations Review* 13(2): 27-39.
- Smith M and Stewart A (2010) A New Dawn for Pay Equity? Developing an Equal Remuneration Principle under the Fair Work Act. *Australian Journal of Labour Law* 23: 152-168.
- Steinberg R (1990) Social Construction of Skill: Gender, Power and Comparable Worth. *Work and Occupations* 17(4): 449-482.
- Steinberg R (1992) Gendered Instructions: Cultural Lag and Gender Bias in the Hay System of Job Evaluation. *Work and Occupations* 19(4): 387-423.
- Whitehouse G and Rooney T (2007) The Queensland Dental Assistants' Equal Remuneration Case: Advancing Gender Pay Equity at State Level? *Labour and Industry* 18(2): 85-104.
- Wooden M (1999) Gender Pay Equity and Comparable Worth in Australia: a Reassessment. *Australian Economic Review* 32(2): 157-171.