

Legal milestones: equal pay

First Equal Pay Case under the Fair Work Act 2009

Australian Municipal, Administrative, Clerical and Services Union (ASU) and others, C2010/3131

Follow the case at <http://www.fwa.gov.au/index.cfm?pagename=remuneration&page=introduction>

Or the ASU website <http://www.asumembers.org.au/equalpay>

The following summary is from Workplace Express 8 June 2010:

There is a direct link between the large number of women employed in social and community services and the undervaluation of work in the sector, according to the ASU, which today filed its outline of contentions in the SACS equal pay case.

The ASU, HSU, AEU and LHMU also lodged 50-odd witness statements – from employees, union officials and researchers – with FWA in support of their claim for an average 25% pay rise for 200,000-plus SACS workers.

A substantial part of the ASU's submission is directed towards explaining the development of equal pay principles in NSW and Queensland, where tribunals have applied provisions similar to those in the Fair Work Act.

The union argues FWA should follow the approach adopted by the Queensland IRC in the Queensland SACS Case, where Commissioner Glenys Fisher awarded pay increases of between 18% and 37% on equity grounds.

It says there are three determinations FWA must make if it is to make an equal pay order – that the SACS industry is women-dominated, that work in the sector is undervalued, and that there is a link between the two.

On the first point, it says at least 80% of SACS employees are women and that the sector has all the characteristics – including low visibility and work described as “creative, nurturing, caring” – of women-dominated occupations.



The undervaluation of SACS work is demonstrated by a number of factors including:

- data showing workers in the sector are low-paid compared to the rest of the community;
- the characterisation of SACS work as “caring work”, which can lead to (for example) a failure to appreciate the high-level skills required to deliver services successfully;
- changes in the skills and knowledge required to carry out the work – because of increased compliance requirements or new models of service delivery – not matched by a lift in work value;
- limited union activity and related lack of opportunity for enterprise bargaining – instead, wages have largely been set via consent awards and agreements;
- high levels of casual and part-time employment; and
- reliance on government funding that is often highly conditional in nature or for a limited duration.

“The nature of the work including its contribution to society, the associated outcomes and opportunity costs of the work is undervalued. The contribution that the work makes is not recognised or adequately reflected in employees’ remuneration,” the outline says.

The ASU continues that if FWA finds that work in the SACS industry has been undervalued, it will then have to make a determination on the effect it has had on employees, employers, and the industry as a whole and on what is required to rectify the situation.

It argues its proposed classification structure and pay levels (see page 9 of its application) must be inserted into the Social, Community, Home Care and Disability Services Award to address the undervaluation.

The Federal Government, employer groups and other parties intervening in the matter or opposing the application have until August 6 to file their submissions and evidence.

The agreement between the ASU and the Government about how the transfer into the federal jurisdiction, some aspects of the case, and funding implications of the case would be managed is at <http://www.asumembers.org.au/downloads/SACS/Heads-of-Agreement-signed.pdf>

Equal Pay Case Table

Early Equal Pay Cases		
Date	Case	Details
1907	Harvester Case. Ex parte HV McKay (Harvester Case) (1907) 2 CAR 1—Higgins J, Judgment, 8 November 1907	Women's pay set at 54% of men's – assumed male breadwinner, wife, three children, to live in "modest comfort"
1972	Equal Pay Cases: 1969 and 1972; 127 CAR 1142, 19 June, 1969; 147 CAR 172, 15 December, 1972	Equal pay for work of equal value; Equal pay for equal work
1985	Therapists' Case, 299 CAR 533, Print G1499, December 1985	Therapists' work equal value to scientists
1987	Nurses' Case, Print G7200, 1987	Rates set for nursing as traditionally female-dominated*; under-recognised value of work
1990	Childcare Workers Case, Print J4316, 14 September, 1990	Training and competency equivalent to engineering trades
1993	Family Court Counsellors' Case, Print K5613, 24 November, 1992; Print K8020, 11 June, 1992; Print KK8931, 24 August 1993	Counsellors under-classified relative to engineering and science professions
Cases under new 1993 Industrial Relations Act provisions		
1996	Christie v QANTAS Airways, (1996) 138 ALR 19, Industrial Relations Court of Australia	
1995	Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU) v. HPM Industries, Case No. 239333 (1995)	Compared work of women process workers and packers to men general hands and storemen – claimed women's jobs under-classified and had lower over-award payments – difficulties in establishing work value, proving discrimination – resulted in new enterprise agreement improving women's rates
1999	AMWU v The Age, Print R3273	Compared call centre workers to printing trades workers – bargaining led to equalising clerical and trades rates by over-awards
Cases after Pay Equity inquiries, new equal remuneration principles		
2002	C2002-27 Crown Employees (Librarians, Library Assistants, Library Technicians and Archivists) Interim Award	Librarians' work undervalued on a gender basis, compared with various other public sector professions
2005	Dental Assistants (Private Practice) Award – State (the Dental Assistants' Award)(2005) 180 QGIG 187	Undervalued on a gender basis
2009	Social and Community Workers Case 2009 (Qld)	Undervalued on a gender basis
On-going	Child Care Workers' Cases (2006) 182 QGIG 318	Undervalued on a gender basis
First Case under FWA Part 2-7		
2010	Administrative, Clerical and Services Union, C2010/3131	Undervalued on a gender basis; seeking a new equal remuneration principle; and a new national wage and classification structure. Claimed the work is historically and currently undervalued and underpaid for nature of work, demands, skills and responsibilities, conditions (including sleepovers) Underpayment also said to arise from lack of capacity for enterprise bargaining, conditions of government funding, industrial characteristics of workers and workplaces

For further information on the history of pay equity cases in Australia, see:

- History provided in the NSW Pay Equity Inquiry Report Matter 6320 of 1997:
http://www.industrialrelations.nsw.gov.au/About_NSW_IR/Issues_and_policy/Archive/Pay_equity_inquiry.html
http://www.industrialrelations.nsw.gov.au/About_NSW_IR/Issues_and_policy/Archive/Pay_equity_inquiry/Equal_Remuneration_Principle.html
- See also Philippa Hall's paper, Lessons from Australia,
<http://www.nacew.govt.nz/about/history/conference2004/papers.html>

