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Pay Equity – The Industrial Relations Act Amendment Bill 2001 (Qld)

Women represent 44.9% of Queensland's employees and make up 55.66% of Queensland's casual workforce. It is reported that the gender wage ratio between men and women in non-managerial employment has improved since the introduction of the Industrial Relations Act 1999 (Qld), increasing from 83.6% of average weekly ordinary-time male earnings in May 1999 to 87.1% in May 2001.

Concerns about the continuing disparity between male and female wages in Queensland led to the Queensland Government commissioning the Queensland Industrial Relations Commission (QIRC) to undertake a Pay Equity Inquiry. The Inquiry, which reported in March 2001, follows, and significantly draws upon, the 1998 Report of the Pay Equity Inquiry in New South Wales.

The Industrial Relations Act Amendment Bill 2001 (Qld), introduced into the Queensland Parliament on 1 November 2001, implements many of the recommendations of the Pay Equity Inquiry Report by amending the IR Act to –

- *ensure that awards made by the QIRC contain provision for equal remuneration for men and women employees for work of equal or comparable value;*
- *require that the QIRC be satisfied that certified agreements and Queensland Workplace Agreements allow for equal remuneration for men and women employees for work of equal or comparable value before they are certified or approved, as the case may be; and*
- *require that the QIRC make a general ruling at least once every 12 months about a Queensland minimum wage for all employees.*

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1 INTRODUCTION

Women represent 44.9% of Queensland's employees, following the national trend that women make up 44.1% of all Australian employees.¹ 55.66% of Queensland's casual workforce are women. The highest proportion of female workers is in the areas of health and community services; education; and finance and insurance.

It is reported that the gender wage ratio between men and women in non-managerial employment has improved since the introduction of the *Industrial Relations Act 1999* (Qld) (the IR Act), increasing from 83.6% of average weekly ordinary-time male earnings in May 1999 to 87.1% in May 2001.²

Concerns about the continuing disparity between male and female wages in Queensland led to the Queensland Government commissioning the Queensland Industrial Relations Commission (QIRC) to undertake a *Pay Equity Inquiry*. The Inquiry, which reported in March 2001, follows, and significantly draws upon, the 1998 *Report of the Pay Equity Inquiry* in New South Wales.

The Industrial Relations Act Amendment Bill 2001 (Qld), introduced into the Queensland Parliament on 1 November 2001, implements many of the recommendations of the *Pay Equity Inquiry Report* by amending the *IR Act* to –

- ensure that awards made by the QIRC contain provision for equal remuneration for men and women employees for work of equal or comparable value;
- require that the QIRC be satisfied that certified agreements and Queensland Workplace Agreements allow for equal remuneration for men and women employees for work of equal or comparable value before they are certified or approved, as the case may be; and
- require that the QIRC make a general ruling at least once every 12 months about a Queensland minimum wage for all employees.

2 QUEENSLAND'S PAY EQUITY INQUIRY

In September 2000, the Queensland Government issued a direction, under the *Industrial Relations Act 1999* (Qld), to the Queensland Industrial Relations Commission to hold an

¹ Queensland. Queensland Department of Industrial Relations, *The Operation of the Industrial Relations Act 1999: The First Two Years*, October 2001, p 12.

² *The Operation of the Industrial Relations Act 1999: The First Two Years*, October 2001, p 12.

inquiry into pay equity in Queensland. This action followed one of the recommendations made by an independent Industrial Relations Taskforce (established to consider the Queensland industrial relations system and legislation) which reported in 1998.³ That recommendation was that the Queensland Government should review the findings and decisions in relation to pay equity in New South Wales as soon as possible to determine appropriate action to achieve pay equity in Queensland.

The *Pay Equity Inquiry* was conducted by Queensland Industrial Relations Commissioner, Glenys Fischer. The Terms of Reference were to consider and report on

- the extent of pay inequity in Queensland;
- the adequacy of current legislative arrangements for achieving pay equity; and
- to consider a draft pay equity principle (after examining the NSW *Equal Remuneration and Other Conditions Principle* and the Tasmanian *Pay Equity Principle*) which might be adopted for Queensland.

The *Valuing Worth – The Report of the Pay Equity Inquiry (Pay Equity Inquiry Report)* was received by the Queensland Government in March 2001.

The Queensland Inquiry used as a basis, work that had been done by the New South Wales Industrial Relations Commission in its 1998 *Pay Equity Inquiry Report*.⁴ It generally supported and adopted the NSW findings as relevant to the Queensland workplace situation. The Queensland Inquiry received 28 submissions which also provided the basis of the Report and recommendations.

The Queensland Inquiry also looked at case studies undertaken by the NSW Inquiry to determine their relevance, in the Queensland context, of assessing pay equity issues. Due to some limitations with the application of those case studies, the Inquiry undertook its own case study of dental assistants to identify aspects of possible undervaluation of their work, and to use the information obtained to help formulate an appropriate draft pay equity principle for Queensland.

³ Queensland. Queensland Government, *Review of Industrial Relations in Queensland: Industrial Relations Taskforce Report*, December 1998.

⁴ New South Wales. Industrial Relations Commission of New South Wales, *Report of the Pay Equity Inquiry*, Sydney, 1998.

2.1 BRIEF OVERVIEW OF NEW SOUTH WALES PAY EQUITY INQUIRY

The NSW *Report of the Pay Equity Inquiry* formed the basis upon which the Queensland Inquiry was focused, and its findings were largely supported by it. It is therefore important that a brief overview of the major findings of the NSW Inquiry is provided in this Section.

The main findings and conclusions of the NSW Inquiry included –

- that undervaluation of women’s work may arise for a number of reasons, including gender assumptions in work value assessments; occupational segregation; and other factors such as the poor bargaining position of female dominated occupations and industries (eg weaker union);
- that undervaluation on the basis of gender was evident in the occupations and industries considered in the case studies undertaken by the Inquiry (see Section 2.5 of this Brief);
- that remedies to remove undervaluation of women’s work should be established within the framework of the existing industrial relations system in NSW, including industrial relations legislation, principles developed by the NSW Industrial Relations Commission, and the development of case law relating to equal remuneration;
- that the current provisions in the *Industrial Relations Act 1996* (NSW) were able to facilitate equal remuneration but amendments (including clarifying that discrimination was different to, and should not be a precondition of, a claim for equal remuneration) were necessary;
- that relevant industrial principles developed by the Commission were capable of addressing equal remuneration issues but a new equal remuneration principle should be developed, via a State Decision, to replace existing principles which should apply to all of the Commission’s functions;
- that the linchpin to the identification, and the remedying of, undervaluation of women’s work is work value assessment rather than traditional job evaluation (a concept explored further in this Brief);
- comparisons between female and male dominated occupations or industries should not be prerequisites for equal remuneration claims.

2.2 BRIEF HISTORY OF PAY EQUITY ATTEMPTS

The Queensland *Pay Equity Inquiry Report* considered a 1917 decision which established a precedent for Queensland. That was that equal pay would apply only where the work performed by women was the same in class, quality and quantity as that of men and the work produced the same profit to the employer (ie the work had to be

‘the same’).⁵ Over subsequent years, Queensland female employees did not do well in attempting to achieve pay equity and fell behind their counterparts employed under federal awards. The principle of ‘equal pay for equal work’ adopted by the Commonwealth in 1972 was not taken up in Queensland until amendments were made to the *Industrial Arbitration Act 1916* in 1975. However, by mid 1975, Queensland followed the Commonwealth Commission’s lead and increased the female Guaranteed Minimum Wage to 100% of the male rate.

However, the problems regarding pay equity, a more complex issue than equal pay, remained.⁶ The *Pay Equity Inquiry Report*, like the NSW Inquiry, treated the concept of ‘pay equity’ as having a broader meaning than ‘equal pay’ as it allows examination of a range of forms of remuneration (not just a basic ordinary wage) and comprehends the idea of equal remuneration for men and women doing work of equal or comparable value.

The *Pay Equity Inquiry Report* noted that although legislation enabling the QIRC to make orders for equal remuneration on application has existed for some six years, the powers have been used only on two identifiable occasions. For various jurisdictional reasons, the applications failed.⁷

2.3 OBSERVATIONS AND FINDINGS CONCERNING THE PAY EQUITY GAP

The conclusions and recommendations of the *Pay Equity Inquiry Report* have formed the basis of the amendments to the *IR Act* proposed by the new Bill. The Minister for Industrial Relations, the Hon G R Nuttall MP, is reported as seeing the Report as providing a solid base on which to move ahead, although he considered that pay equity would have to be targeted in stages.⁸

The findings of the *Pay Equity Inquiry Report* include the following –

- the evidence presented to the NSW Inquiry and the statistical and other material examined indicated a gender pay gap exists in Queensland. However, its precise size is difficult to ascertain and varies according to the measurement tool used (see the next bullet point) and industries and occupations examined (eg female

⁵ *Pay Equity Inquiry Report*, p 22-23; *Industrial Arbitration Act 1916* (Qld), s 8(1).

⁶ *Pay Equity Inquiry Report*, p 26.

⁷ *Pay Equity Inquiry Report*, p 26.

⁸ Sean Parnell, ‘Unions backed in pitch for equal pay’, *Courier-Mail*, 31 March 2001, p 7.

casual educational professionals and elementary sales workers fare well but female casual health professionals do not);⁹

- the gender pay gap is 11%, if measured on hourly earnings for all employees. Both the Queensland Inquiry and NSW Inquiry considered that such measurement (ie hourly earnings for all employees) might produce a more accurate calculation of the pay gap, as it looked at overtime as well as ordinary hours, and took into account all employees not just full-time employees. The gap is around 17% if based on a calculation using full time employees and ordinary hours;
- it appears that women employees, particularly part-time and casual employees, are not doing as well as men under the enterprise bargaining system;¹⁰
- factors that appear to have an impact on the extent of the pay gender gap include the poor bargaining position of women; occupational segregation; and undervaluation of work performed by women. This was also found by the NSW inquiry on the evidence and material before it;¹¹
- although the extent of pay inequity in Queensland is similar to that in NSW, it appears that Queensland legislation better facilitates achieving pay equity. However, some reforms to provisions of the *IR Act* are needed.

It is interesting to note that, in a recent survey on wage disparity conducted by a leading recruitment firm, TMP Worldwide, around 80% of male and 40% of female respondents did not think there was any difference in wages between men and women. However, the older and more senior a woman was in the workplace and the higher her wage, the more likely she was to believe that a discrepancy exists.¹²

2.4 KEY RECOMMENDATIONS

the *Pay Equity Inquiry Report* made 20 recommendations, and the key recommendations benefiting women employees include –

- that amendments be made to the *IR Act* –

⁹ *Pay Equity Inquiry Report*, p 50.

¹⁰ *Pay Equity Inquiry Report*, p 51.

¹¹ *Pay Equity Inquiry Report*, p 51. *NSW Report of the Pay Equity Inquiry*, Vol 1.

¹² Michelle Hele, 'Women get fewer perks with wages', *Courier-Mail*, 3 October 2001, p 12.

- to enable the QIRC to refuse to certify agreements or to approve Queensland Workplace Agreements that do not contain provisions about pay equity;
- to enable the QIRC to specify a minimum wage applying to all employees, including those not covered by awards or agreements;
- to give 'remuneration' a broad meaning to reflect the ILO Convention 100, Article 1(a);
- that the QIRC adopt a draft equal remuneration principle to be used in exercising powers relating to equal remuneration;
- that the Government begin an education campaign on award requirements, industrial entitlements, and workplace health and safety issues aimed at telemarketing and call-centre employees and employers (those occupations being relatively new so that award coverage and entitlements might take some time to be understood by employees and employers);
- that the Government provide matching funding to assist unions or employer organisations in 'female' occupations or industries with low membership to conduct resource intensive pay equity cases.

In responding to the *Pay Equity Inquiry Report* recommendations, the Queensland Government made a commitment to implement all recommendations.

Australian Industry Group State Director, David Whiting has commented that the concept of pay equity was not new but that the recommendations would assist the enforcement of existing legislation. He was, however, reported as being opposed to unions being given financial assistance to conduct cases for pay equity while the Minister for Industrial Relations has expressed a belief that unions were under-resourced in that fight.¹³

2.5 RELEVANCE OF NSW CASE STUDIES TO QUEENSLAND

The first Term of Reference required the Queensland Inquiry to consider whether case studies into the undervaluation of women's work undertaken as part of the NSW Inquiry were relevant to determining the extent of pay inequity in Queensland. The Queensland Government commissioned university researchers (Griffith University) to undertake a project to consider this matter further. Section 4 of the *Pay Equity Inquiry Report* sets out the studies, the university research, and the relevant findings.

The NSW Inquiry was asked to determine whether work in female dominated occupations and industries is undervalued in terms of the remuneration paid relative to

¹³ Sean Parnell, 'Unions backed in pitch for pay equity', *Courier-Mail*, 31 March 2001, p 7.

work in comparable male occupations and industries. Seven case studies were undertaken –

- child care workers;
- clerical employees vs metal tradespersons;
- librarians vs geoscientists;
- hairdressers, beauty therapists vs motor mechanics;
- nurses vs coal miners;
- outworkers; and
- seafood processors.

The level of undervaluation based on gender was measured using indicators such as: female characterisation of work; no work value assessments having been conducted by the Industrial Relations Commission; low or weak unionisation; lack of, or inadequate recognition of, qualifications; lack of training or career path; a large casual component.

The NSW Inquiry found the work of all of the selected groups (apart from nurses and clerical workers about whom it had insufficient evidence) was undervalued.

The NSW Inquiry found that traditional work value assessments have developed from male dominated industries and occupations where many skills can be readily identified and, therefore, readily valued (eg technical skills). Skills found in female dominated industries and occupations often require a range of interpersonal and professional skills that are not easily equated with skills found in technical occupations. The Report gave the example of child care workers where it is easy to see many of the skills exercised by women as an extension of that exercised in a domestic context – ie minding children – when the job actually requires much more – ie the development of children.¹⁴

The Griffith University research examined Queensland equivalent occupations.¹⁵ It was found that most of the issues arising out of the NSW case studies also appeared in the Queensland context, including undervaluation of the work, absence of work value assessments for many years; low levels of union membership or a weak union; lack of recognition of skills or qualifications. This might, it was considered, suggest that undervaluation contributes to the gender pay gap in Queensland.

¹⁴ NSW Industrial Relations Commission, *Report of the Pay Equity Inquiry*, vol I, pp 254-255.

¹⁵ The Queensland university researchers did not look at clerical workers or nurses in detail because the NSW Inquiry found problems with the evidence upon which to draw proper conclusions.

For example, when **librarians** were considered (the NSW Inquiry focusing on librarians within the State Library of NSW, while the Griffith University research focused on libraries in the Queensland State public sector), it was found that the award pay rates for Queensland public sector librarians were less than that of similarly qualified professionals (mainly scientists). It was also observed that the lesser position of librarians was not addressed when degree qualifications became mandatory nor was it addressed by separate work value exercises or assessments. It was revealed that the apparent opening up of career structures in the new award system in the 1990s has still left librarians concentrated at lower levels. There was also a problem of inadequate career paths. Any work value increases that have been granted to the public service in general were carried through to librarians without separate examination of their work.¹⁶

It has been noted that when the library field was a male-dominated one, it was well paid but as women infiltrated it, real pay rates declined. As at June 2000, 83% of the profession in Queensland were women. The result is made more regrettable, according to Commissioner Glynn who headed the NSW Inquiry, by the fact that the need for librarians to embrace new technologies and keep up with information advances has actually increased work value.¹⁷

The *Pay Equity Inquiry Report* concluded, however, that while the Griffith University research findings had much to commend them and the submissions to the Inquiry raised issues that were worthy of further investigation, there was not enough scrutiny and analysis to enable endorsement by the Inquiry. However, despite the limitations, the Inquiry was able to find that undervaluation of work seems also present in Queensland and to be a factor in pay inequity.¹⁸

The findings of both inquiries appear to support a view espoused by author, Clare Burton, that discrimination against women in the workplace can be traced to the point at which women and men are given different tasks which results in 'custodial' socialisation' for women while men have more challenging work. The result is that the value attached to women's work is lower than that for men.¹⁹

¹⁶ *Pay Equity Inquiry Report*, pp 85-86.

¹⁷ Phil Teece, 'All eyes on library workers as test case looms', *Incite: News Magazine of the Australian Library and Information Association*, November 2001, p 40.

¹⁸ *Pay Equity Inquiry Report*, p 101.

¹⁹ C Burton, *Women's Accommodative Strategies in the Labour Market*, 1996 cited by Jocelyn Scutt, 'Restore the worth to women's work', *Australian*, 21 September 2000, p 35 (edited version of the Clare Burton lecture on 19 September 2000).

2.6 QUEENSLAND PAY EQUITY INQUIRY CASE STUDY – DENTAL ASSISTANTS

The Queensland Inquiry decided to do its own case study of dental assistants – a predominantly female occupation. This was examined in Section 5 of the *Pay Equity Inquiry Report*. The case study involved a hearing in which documents were examined and witnesses heard as well as the convening of an informal conference. The results were not intended to be comprehensive as only a representative sample of employees and employers was considered.

One of the aims of the study was to analyse, assess and value the work in a gender neutral way by ‘unpacking’ the work, skills, and responsibilities. The study carefully examined: the nature of duties performed (with close scrutiny of those that might be seen as ‘routine’ but might actually be moderately complex); skills (with emphasis on looking at ‘soft’ skills to ensure that typical female abilities – eg interpersonal skills – were not downplayed); knowledge and training; responsibilities that might be unacknowledged; working conditions (eg exposure to dangerous instruments or hazardous waste).

The study highlighted a number of skills and responsibilities that may not be objectively seen as part of the value of the dental assistants’ work. For example, most assistants have delegated responsibility for quite important matters, particularly for infection control and prevention of cross contamination which needs some understanding of anatomy, pathology etc., and of disease transmission and effects. They need considerable knowledge about materials and equipment used and why they had to be used in a certain way. The reality appears more rigorous than the award position description which says that dental assistants must maintain ‘cleanliness, care and sterilisation of surgery equipment’. The success of a procedure also owes much to the assistant’s anticipatory skills to assist the dentist during the relevant procedure as well as dexterity in coordinating instrument exchange etc.

The use of ‘soft’ skills are particularly important, especially interpersonal skills to deal with, and provide information to, patients from diverse backgrounds who might be nervous, aggressive, or require special treatment. In addition, the value of domestic skills in keeping the reception area clean and tidy have been undervalued as ‘basic’ yet such are important to the patient’s perceptions of the cleanliness of the environment in which they are to be treated. Such ‘softer’ skills have traditionally been seen more as attributes of women than as skills and have failed to be recognised properly in job evaluations and classification systems as a component of work value.²⁰

²⁰ *Pay Equity Inquiry Report*, pp 133-134.

While the study did not seek to establish the existence or extent of undervaluation of dental assistants' work, it was found to have demonstrated the need in pay equity cases to carefully consider the nature of the work, skills and responsibilities in a gender neutral way.

Similarly to the conclusions drawn in NSW Inquiry, the Queensland *Pay Equity Inquiry* found that fundamental to identifying and remedying undervaluation is work value assessment rather than job evaluation.

A work value assessment allows for the taking account of a variety of skills, responsibilities and conditions of work that may not have been previously considered eg 'softer' skills, delegated responsibilities, interpersonal skills, organisational skills that may have traditionally been regarded as attributes rather than skills or have not been recognised at all under traditional job evaluation systems. In the NSW Inquiry, the view was expressed that the methodologies used in job evaluation (eg the Job Evaluation Management System (JEMS) process used in the public sector to classify positions) may be inadequate in assessing work value because certain skills and responsibilities are weighted more heavily than typically female skills and responsibilities.²¹

The Inquiry also considered the study as showing that contextual matters such as the composition of the workforce, the extent of unionisation and agreements and the level of casualisation were also factors to be considered. Award histories might also be important in showing the female characterisation of an occupation or the absence or infrequency of job evaluations.

2.7 DRAFT EQUAL REMUNERATION PRINCIPLE

The Terms of Reference required the *Pay Equity Inquiry* to consider the pay equity principles developed by the NSW and Tasmanian Industrial Relations Commission to ascertain their relevance for a pay equity principle for Queensland. It was also asked to prepare a draft principle which would need to be adopted by the Full Bench of the QIRC before it can be implemented (see s 288 of the *IR Act*). Such a Principle would provide guidance to the QIRC and the parties concerning how pay equity is to be achieved.

The **New South Wales** Industrial Relations Commission developed the *Equal Remuneration and Other Conditions Principle* on 30 June 2000 as part of the Wage Fixing Principles. It applies only to awards.²² There is no power provided for the

²¹ NSW, *Report of the Pay Equity Inquiry* Vol II, p 246.

²² Although, since the Principle was developed, the Commission has amended the principles for approving enterprise agreements to require that it take into account whether the agreement

Commission to make equal remuneration orders, as exists in the Queensland *IR Act*; and the Commission decided that ‘remuneration’ in the NSW *IR Act* should be given a narrower meaning than has been recommended by the *Pay Equity Inquiry Report* for Queensland. Those limitations led the Queensland Inquiry to consider that the NSW Principle had limited relevance to Queensland.²³

The **Tasmanian** Industrial Relations Commission adopted the *Pay Equity Principle* on 6 July 2000 as part of its Wage Fixing Principles. Although the Tasmanian *Industrial Relations Act 1984* has no powers concerning pay equity or equal remuneration for men and women employees for work of equal or comparable value, the Commission relied upon its general powers of equity, good conscience and the merits of the case, and the public interest as the basis for founding the Principle.²⁴ It too, is limited to awards but is broader than the NSW Principle.

The *Pay Equity Inquiry* considered that despite legislative differences between the Queensland *IR Act* and industrial relations legislation in NSW and Tasmania, the Principles developed in those states do provide guidance in developing a draft principle in Queensland. However, the outcomes of the dental assistants’ case study were regarded as of most assistance in formulating a practical and workable pay equity principle. That case study showed that a pay equity principle needed to be based on elements of work value and other factors such as award histories; union membership; casualisation rates; existence of agreements; and composition of the workforce.

Accordingly, the *Pay Equity Inquiry Report* recommended that a draft Equal Remuneration Principle be adopted by the QIRC.²⁵ It is intended to apply in the context of the Commission’s powers over awards, equal remuneration orders; arbitrations of disputes over equal remunerations; or valuations or assessments of work in ‘female’ occupations. If satisfied that an inequity exists, the QIRC can provide remedies such as reclassification of work or wage increases. Claims brought under the Principle will be considered on a case-by-case basis. Certified agreements and QWAs have not been included in its context because the legislative reforms to the *IR Act* will implement mechanisms for ensuring equal remuneration in those agreements is provided for.²⁶

provides for equal remuneration for men and women employees for work of equal or comparable value.

²³ *Pay Equity Inquiry Report*, p 135 and Appendix 10.

²⁴ *Pay Equity Inquiry Report*, p 135 and Appendix 10.

²⁵ *Pay Equity Inquiry Report*, Recommendation 17; pp 141-142.

²⁶ *Pay Equity Inquiry Report*, p 145.

The Principle will require the QIRC to consider –

- the value of the work – nature of the work, skills and responsibilities; conditions of the work;
- other relevant features – eg unpaid overtime; self-funded training.

The Commission can also consider whether, in the history of the award, the level of pay has been affected by the gender of the workers.

2.7.1 Application of the NSW *Equal Remuneration Principle* – Library Workers

The first pay equity test case under the NSW *Equal Remuneration Principle* is currently being brought in the NSW Industrial Relations Commission by the Professional Officers Association (PSA). The test case was given impetus from the NSW *Pay Equity Inquiry* which found that public sector librarians were disadvantaged in the pay stakes and their work undervalued (see Section 2.5). It has been identified as suitable for a test case by the NSW Government which may well assist in a favourable outcome being secured.

The proposed Library and Archives Award will cover library workers across a wide range of public sector agencies. The PSA is claiming an average wage increase of around 13% with increases at some classification levels at around 17%. The employer has offered around 9%.²⁷ Proceedings are considerably advanced and a result is expected by the end of the year.

3 LEGISLATIVE IMPLEMENTATION OF RECOMMENDATIONS

The *Industrial Relations Act 1999* (Qld) will be amended to apply the legislative reform recommendations of the *Pay Equity Inquiry*. It is understood that there has been extensive consultation in relation to implementing those recommendations and all of the organisations and persons who made submissions to the Inquiry were invited to provide further comment. Those comments were considered in developing the Industrial Relations Act Amendment Bill 2001 (Qld) to implement the necessary changes.²⁸ The amendments introduced by the Bill assist in promoting pay equity in a number of ways explained below. They will commence on 1 May 2001 to allow time for adjustment.

²⁷ ‘Library workers in NSW equal pay test case’, Australian Library and Information Association, 12 November 2001, downloaded from the ALIA website at <http://www.alia.org.au/employment>.

²⁸ Industrial Relations Act Amendment Bill 2001 (Qld), *Explanatory Notes*, p 4.

3.1 OBJECTS

The objects of the *IR Act* are amended by **cl 4** to separate s 3(c) into two separate subsections. The wording is altered so that the objects will now include preventing and eliminating discrimination in employment (**new s 3(c)**); and ensuring equal remuneration for men and women employees for work of equal or comparable value (**new s 3(d)**). Section 273(2) of the *IR Act* requires the QIRC to perform its functions in a way that furthers the objects of the Act (ie to further, inter alia, the object of ensuring equal remuneration).

3.2 ‘REMUNERATION’

The term ‘remuneration’ is not defined in the *IR Act* (or in the NSW *IR Act*). The previous *Workplace Relations Act 1997* (Qld) did, however, provide that the provisions for equal remuneration orders in the Act were to give effect to conventions including the ILO Convention 100 (the Equal Remuneration Convention of 1951). Article 1(a) of that Convention defines ‘remuneration’ broadly –

Article 1

- a) *the term ‘remuneration’ includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.*

Article 1(b) then provides that –

- (b) the term ‘equal remuneration for men and women workers for work of equal value’ refers to rates of remuneration established without discrimination based on sex.

The *Pay Equity Inquiry Report* found that legislative reform was needed in the interests of certainty as it was unclear whether the *IR Act* still incorporated the ILO Convention meaning of ‘remuneration’ or whether it is intended to have a narrower meaning. Accordingly, it was recommended that the *IR Act* be amended to provide that, for the purposes of equal remuneration orders and for any other matter involving pay equity or equal remuneration, ‘remuneration’ bears the meaning of ILO Convention 100, Article 1(a). The NSW position is to prefer the narrower interpretation, based on the provisions of the *Industrial Relations Act 1996*.

Clause 36 of the Bill amends **Schedule 5** (the Dictionary) to provide that **remuneration**, for a provision relating to work or equal or comparable value, includes –

- (a) the wage or salary payable to an employee; and
- (b) amounts payable or other benefits made available to an employee under a contract of service.

3.3 ‘EQUAL OR COMPARABLE VALUE’

The requirement throughout the new provisions is to ensure equal remuneration for men and women employees for ‘work of equal or comparable value’. The inclusion of the term ‘comparable’ suggests that the work need not be the ‘same’ and would seem to enable consideration of ‘work value’ (a concept explored throughout this Brief) across different awards or different callings, not just of similar work.²⁹

3.4 CONTENT OF AWARDS

Part 2 of Chapter 5 of the *IR Act* deals with the QIRC’s powers regarding awards made by the Commission in relation to employers and employees in Queensland.

At present, **s 126** states that the QIRC must ensure that an award, among other matters, does not contain discriminatory provisions, and provides for secure, relevant and consistent wages and conditions.

²⁹ NSW *Report of the Pay Equity Inquiry*.

The *Pay Equity Inquiry Report* considered that other provisions regarding awards (eg s 128(1)) suggest that award rates have to be fixed on the basis of equal remuneration for men and women employees for work of equal or comparable value. In addition, it seemed that the objects of the *IR Act* in s 3 combined with ss 125 and 126 required the QIRC to ensure that awards did contain provisions for pay equity. However, the Report concluded that it would be preferable if specific reference to the issue was made expressly in s 126. Consequently, the Inquiry recommended that s 126 of the *IR Act* be amended.³⁰

Clause 10 of the Bill will insert into s 126 of the *IR Act* a new requirement that the QIRC must ensure that an award provides for equal remuneration for men and women employees for work of equal and comparable value. The Minister for Industrial Relations explained that new awards will be necessary to comply with this principle and existing awards will have to be reviewed through the legislative award review process.³¹

Section 19(3) of the NSW *Industrial Relations Act 1996* requires the NSW Industrial Relations Commission, in its three yearly review of awards, to take account of any issue of discrimination under the awards, including pay equity. That provision seems broader than the current s 126 of the Queensland *IR Act*.³² However, in 2000, a Full Bench of the NSW Industrial Relations Commission found that in reviewing an award, the Commission was not to embark on a wide investigation into the operation of a particular award or industry and was limited to pay equity within the particular award in question. It was not to consider the way in which other persons to whom the award does not apply are remunerated.³³

3.5 CERTIFIED AGREEMENTS

A certified agreement is an agreement about the relationship between an employer and a group of employees (eg State public servants; employees of a single or multi-employer) and may be made between an employer, on the one hand, and one or more employee organisations or the relevant current employees on the other. The QIRC has power to

³⁰ *Pay Equity Inquiry Report*, Recommendation 3, p 60.

³¹ Hon G R Nuttall MP, Minister for Industrial Relations, Industrial Relations Act Amendment Bill 2001 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 1 November 2001, pp 3340-3344, p 3340.

³² Queensland. Queensland Industrial Relations Commission, *Pay Equity Inquiry Discussion Paper*, October 2000.

³³ *Re Equal Remuneration Principle* [2000] NSWIRComm 113, paras 108-109, 110.

assist the negotiation process and may step in to conciliate and, if necessary, arbitrate on various issues if the process falters, and may make a determination.

Where an agreement is reached, an application must be made to the QIRC to certify the agreement within 21 days of it being signed by the parties. A hearing, at which all relevant employee organisations are entitled to be heard, must take place before the Commission can certify the agreement.

Section 156 of the *IR Act* sets out the matters about which the QIRC must be satisfied that the agreement provides for before it can certify it. Those include compliance with procedural requirements; approval by a majority of relevant employees; provisions for dispute resolution procedures; that it does not disadvantage employees by resulting in a reduction in the employees' entitlements or protections under an award, agreement or legislation etc.

The *Pay Equity Inquiry Report* noted that it is not always the case that an agreement will contain provisions for equal remuneration for men and women employees for work of equal or comparable value because many are built on parent awards that might themselves express gender based undervaluation. In addition, the process of negotiation usually entails the employees and unions seeking increased wages while the employers are pushing for increased efficiency and productivity. In that context, classification and wage rate structure does not usually enter into the equation. The Inquiry found that neither the NSW nor the Queensland *IR Act* provisions made adequate provision for ensuring equal remuneration in such agreements.

In March 2000, a Full Bench of the NSW Industrial Relations Commission issued a set of principles about approving enterprise agreements which included a requirement that the Commission take into account whether the agreement provides for equal remuneration. Note, however, that the requirement is only that the matter be 'taken into account' not that the Commission must refuse approval if the agreement does not do so.³⁴

Consequently, the Inquiry recommended that s 156 of the Queensland *IR Act* be amended to make explicit provision for agreements, other than multi-employer agreements, to contain pay equity provisions for all men and women employees of the employer. Such amendment to require equal remuneration for all employees of the employer, not just those under the agreement, would ensure that the requirements are not got around by employers making a number of agreements where one agreement might be made with male employees and another with female employees.³⁵

³⁴ *Pay Equity Inquiry Report*, p 62.

³⁵ *Pay Equity Inquiry Report*, pp 61-63, Recommendation 6.

A **proposed new s 156(1)(l)** will be inserted by **cl 18(1)** to apply to agreements other than a multi-employer agreement or project agreement. The QIRC must be satisfied about additional matters before certifying an agreement. Those matters are –

- the employer remunerates, or will, because of the agreement if it is certified, remunerate all men and women employees equally for work of equal or comparable value; or
- the employer is implementing equal remuneration for work of equal or comparable value for all men and women employees.

A **proposed new s 156(1)(m)** will provide that for a multi-employer agreement (ie two or more associated employers) or a project agreement (ie an agreement for a project eg a major construction), the QIRC must be satisfied, before certification, that the agreement provides for equal remuneration for all men and women employees covered by the agreement for work of equal or comparable value.

Thus, for multi-employer and project agreements, it is necessary only that the agreement ensure equal remuneration for those employees covered by the agreement rather than for all employees of the relevant employer, as with normal agreements. That is to overcome the complex practical difficulties of determining whether an agreement provides for equal remuneration for all employees of all the multi-employers in a joint venture or common enterprise as they may well have a broad range of business activities.³⁶

Note also that s 9 of the **Industrial Relations Regulation 2000** will be amended to state that the affidavit accompanying the agreement which is sought to be certified, setting out relevant information about the agreement, must also establish what steps are being taken to ensure equal remuneration has occurred or will occur.³⁷

In addition, the QIRC must, in deciding whether or not to certify the agreement, consider any relevant industrial instrument (eg an award) to decide whether the instrument provides for equal remuneration for men and women employees covered by the instrument for work of equal or comparable value: **proposed new s 156(3)**. However, the QIRC cannot review the relevant instrument, because its role at this juncture is to consider the agreement rather than delay matters by reviewing the instrument. Such a consideration of

³⁶ *Pay Equity Inquiry Report*, p 64, Recommendation 7.

³⁷ See *Pay Equity Inquiry Report*, p 64, Recommendation 8.

awards etc should occur in other types of proceedings (eg reviewing of awards by the Commission).³⁸

Section 157 sets out the circumstances in which the QIRC must refuse to certify an agreement. A **proposed new s 157(5)** will ensure that the Commission will so refuse where a provision of the agreement seeks to prohibit or restrict an application being made for an equal remuneration order in Chapter 2, Part 5 (see Section 3.8).³⁹ This amendment is based on a recommendation of the *Pay Equity Inquiry Report* which sought to overcome the uncertainty about the reading of s 157(1)(a) of the *IR Act*. It provides that the QIRC must refuse to certify an agreement where a provision is inconsistent with Chapter 2 Part 5. The doubt involved whether or not the current provision actually enabled the Commission to refuse to certify an agreement if it sought to preclude an application for an equal remuneration order.⁴⁰ Note that an agreement cannot be certified if it is inconsistent with a prior Chapter 2, Part 5 Order.

3.6 QUEENSLAND WORKPLACE AGREEMENTS

A Queensland Workplace Agreement (QWA) is an agreement made between a single employer and a single employee. However, there are a number of workplaces in which they are not permitted to operate – eg government departments, public service offices, the parliamentary service: s 192(3).

Under the *IR Act*, the Government imposed restrictions on the approval and use of QWAs in order to give greater protection for individual employees, particularly those who are young or low paid, whose bargaining position may not be as strong as that of a collective group of employees.⁴¹ QWAs have recently declined in popularity with Queensland workplaces tending to opt for collective bargaining procedures. A report commissioned by the Queensland Department of Employment, Training and Industrial

³⁸ Industrial Relations Act Amendment Bill 2001 (Qld), *Explanatory Notes*, p 10; Hon GR Nuttall MP, Industrial Relations Act Amendment Bill 2001 (Qld), Second Reading Speech, pp 3340-3341.

³⁹ Industrial Relations Act Amendment Bill 2001 (Qld), **cl 19**.

⁴⁰ *Pay Equity Inquiry Report*, p 62-63, Recommendation 5.

⁴¹ *The Operation of the Industrial Relations Act 1999: The First Two Years*, October 2001, p 8.

Relations identified that around half of QWAs were in female dominated industries, particularly child care and real estate sales.⁴²

The amendments to the QWA approval process implement recommendations of the *Pay Equity Inquiry Report* that explicit provision needed to be made for QWAs to contain pay equity requirements before they can be approved by the Commission.⁴³

A QWA must contain provisions covering a number of matters before it is approved by the QIRC: s 193. As well as provisions about discrimination, a QWA will have to make provision for the remuneration of the employee covered by the agreement on the basis of equal remuneration for the employee for equal remuneration for work of equal and comparable value performed by other men and women employees of the employer: **proposed new s 193(1)(b)**. Again, the affidavit accompanying the QWA in the application seeking approval from the Commission has to contain information about the steps the employer has taken, or will take, to comply with that new requirement.⁴⁴

Under the approval provisions in s 203 of the IR Act, a **proposed new s 203(7)** will enable the QIRC to consider, but not review, any relevant industrial instrument to decide whether the QWA complies with the equal remuneration requirement.⁴⁵

3.7 MINIMUM WAGE GENERAL RULINGS

Under s 287 of the IR Act, the QIRC may make general rulings about a Queensland minimum wage, whether or not it is the subject of an industrial award, agreement etc.. In doing so, it conducts a hearing at which all interested persons must be given a chance to be heard. The general ruling made as a result of this process is published in the industrial gazette.

A **proposed new s 287(2)** will be inserted (by **cl 25**) to ensure that the Full Bench of the QIRC makes a general ruling about a Queensland minimum wage for all employees at least once each calendar year. Note that it does not matter that the employees are not covered by any award or agreement. There are a number of female dominated sectors to

⁴² Australian Centre for Industrial Relations Research and Training, *Trends in Queensland Workplace Agreements: Developments since the amendments to the Workplace Relations Act 1997 and the introduction of the Industrial Relations Act 1999*, Department of Employment, Training and Industrial Relations, March 2000.

⁴³ *Pay Equity Inquiry Report*, pp 66-67, Recommendations 10-11.

⁴⁴ Industrial Relations Regulation 2000, s 13 will be amended to include that.

⁴⁵ Industrial Relations Act Amendment Bill 2001 (Qld), **cl 21**.

which awards or agreements do not apply (eg home-based industries such as domestic cleaning).

The minimum wage ruling can be made either on application but if there is no application, the QIRC must do so on its own initiative.⁴⁶

Thus, under the new changes, the Commission must make such a general ruling rather than being given a discretion to do so. In introducing the Bill, the Minister for Industrial Relations stated that the new mandate will enable greater protection for the low paid and most disadvantaged workers. He noted that the power to make a general ruling about a minimum wage has not been utilised since it was introduced in 1999 and the minimum wage set each year through the 'state wage case' by way of a statement of policy applies only to employees covered by awards and only when application is made to incorporate the statement of policy into the award.⁴⁷ Thus, as the *Pay Equity Inquiry Report* found, the effect of the Queensland legislation is that employees not covered by an award are not guaranteed a minimum wage, a position which the Inquiry considered to be unacceptable and possibly in contravention of international obligations.⁴⁸ Accordingly, it was recommended that s 287 of the IR Act be amended to actually require the QIRC to make a general ruling about a Queensland minimum wage at least once each calendar year to cover *all* employees.⁴⁹

The Inquiry considered but did not adopt the model existing in Western Australia where the *Minimum Conditions of Employment Act 1999* provides for a minimum rate of pay for employees for a 40 hour week. The Commission must review that rate annually and make a recommendation to the Minister who then determines the relevant rate. The conditions are implied into every award, agreement or contract of employment. The Inquiry considered that while this WA model had its attractions, the power to fix a minimum wage should be retained by the QIRC which has wage fixing as one of its main functions.⁵⁰

⁴⁶ Industrial Relations Act Amendment Bill 2001 (Qld), *Explanatory Notes*, p 11.

⁴⁷ Hon G R Nuttall, Industrial Relations Act Amendment Bill 2001 (Qld), Second Reading Speech, p 3341.

⁴⁸ *Pay Equity Inquiry Report*, p 77.

⁴⁹ *Pay Equity Inquiry Report*, p 79, Recommendation 14.

⁵⁰ *Pay Equity Inquiry Report*, p 79.

3.8 EQUAL REMUNERATION ORDERS

Note that **Chapter 2, Part 5** allows the QIRC to make any order it considers appropriate to ensure men and women employees covered by the order receive equal remuneration for work of equal or comparable value. Such order is made only after application by: an employee to be covered by the order; industrial organisation; State peak council; the Minister; or the anti-discrimination commissioner. The order would appear to prevail over other industrial instruments eg awards and agreements.

The *Pay Equity Inquiry Report* noted that no equivalent exists in the NSW *Industrial Relations Act 1996*, where the Commission's power in relation to pay equity is only in the context of making, varying and reviewing awards and it is not permitted to consider the remuneration of employees not covered by the relevant award under review. The NSW *Report of the Pay Equity Inquiry* did not make any recommendations about its adoption in that State. The Queensland provision is not limited to the existence of an award or to persons covered by it.

The Inquiry found that equal remuneration orders have great potential for ensuring pay equity and could, for example, be used to order a party to an award to re-classify a 'female' position to correct gender based undervaluation in that position.⁵¹

The Queensland *Pay Equity Inquiry Report* noted also that no applications had been made under the Queensland provisions as at the time of reporting.

4 CONCLUSION

In his speech introducing the Bill, the Hon G R Nuttall MP said that the Bill built on the fair and balanced platform established by the *IR Act* which had, as its centrepiece, reforms aimed at ensuring greater pay equity for Queensland women workers and an extended work and family package to give greater surety and security for casual employees with family responsibilities.⁵²

⁵¹ *Pay Equity Inquiry Report*, p 56.

⁵² Hon G R Nuttall MP, Industrial Relations Act Amendment Bill 2001 (Qld), Second Reading Speech, p 3344.

APPENDIX A – MINISTERIAL MEDIA STATEMENT

The Hon. Gordon Nuttall MP

Industrial Relations

30 March 2001

QUEENSLAND WOMEN STILL FIGHTING 32 YEARS ON

A report commissioned by the Beattie Government has found that 32 years after a decision to grant equal pay to all Australians, women are still paid only 83% for the same work as men.

Industrial Relations Minister Gordon Nuttall was handed the Pay Equity Inquiry report today by author, Industrial Commissioner Glenys Fisher.

"Thirty-two years on, women in the workforce in Queensland are still earning 11 to 17 per cent less than men doing the same work.

"While there have been some advancements, there is clearly scope to improve wages for many Queensland women workers who are a growing proportion of the workforce," he said.

"Enterprise bargaining isn't reaching the large numbers of women employed in industries like hospitality and retail, or casual employees.

"What's worse for women in Queensland is that we have the highest rate of casual employment in the country - 30% of our workforce are casual workers, and almost 40% of those casual workers are women."

Mr Nuttall said the report recommends the Queensland Industrial Relations Commission be given new powers to investigate pay equity in agreements struck between employers, unions and employees.

"It also recommends the QIRC use its powers to set a minimum wage standard for the 17% of workers currently not covered by a minimum wage, like nannies and domestic cleaners, and that the Commission be required to review this annually.

Mr Nuttall said the report especially highlighted pay inequity for women in new growth industries, such as telemarketing and call centres.

"While this Government has already agreed in principle to support the ACTU Code for call centres, we will now be taking a much closer look at enforcing entitlements in all these new growth industries."

He said the report also found that so-called 'softer skills' like communication, and organisational skills were not being considered in evaluating wages for women.

"The report recommends establishing a pay equity wage principle to set strict criteria and ensure that work undertaken by women is valued in the same way as the work in male dominated occupations."

"The Inquiry found that while Queensland has the most advanced pay equity legislation in the country, it's not being used to its full potential," Mr Nuttall said.

The Pay Equity Inquiry was commissioned in October last year, to investigate the extent of pay inequity in Queensland, the adequacy of the current legislation, and make recommendations to address the problem areas.

Commissioner Fisher, the first woman appointed to the QIRC, considered submissions from key union and employer groups, the Anti-Discrimination Commission and other community organisations such as the Working Women's Service.

"This report will be an important milestone in the pursuit of equal pay for women in Queensland," Mr Nuttall said.

"The Government is committed to pay equity for women, and as such we made a clear election commitment to implement the recommendations of this Inquiry."

"I will be talking to the key stakeholders in preparing a submission to Cabinet so that we can bring in reforms by the end of the year."

Media contact: Leisa Schultz on (07) 3225 2017 or 0419 746 093.

APPENDIX B – NEWSPAPER ARTICLES

Title **Unions backed in pitch for equal pay.**
Author **Sean Parnell**
Source **Courier-Mail**
Date Issue **31/03/01**
Page **7**

Women in Queensland earn up to 17 per cent less than men doing the same job, with the state's burgeoning call centre industry among those showing the highest level of pay inequity. The pay equity inquiry, in a report released yesterday, found the enterprise bargaining system did not deliver equal pay packets for women and recommended unions be given financial incentives to step up the fight.

The State Government, which commissioned the report, will call on the Queensland Industrial Relations Commission to set minimum wage standards for workers such as nannies and domestic cleaners.

Industrial Relations Minister Gordon Nuttall said yesterday that he would give the QIRC the power to investigate pay equity in enterprise bargaining agreements in line with the report's recommendations. Mr Nuttall said pay equity would have to be targeted in stages but the report provided a "solid base on which to move ahead".

"It will be an important milestone in the pursuit of equal remuneration for women workers in this state," Mr Nuttall said.

The report found "softer skills" were often regarded more as attributes than skills and were therefore undervalued in the workplace. It recommended the full bench of the QIRC make a statement of policy to deal with pay equity matters and the Government adopt an Equal Remuneration Principle and introduce amendments to the Industrial Relations Act.

The report also recommended the Government give "matching funding" to unions which take up the equity fight for women whom they traditionally under-represented.

Australian Industry Group state director David Whiting said yesterday that he was opposed to unions being given financial incentives and believed many employers - particularly those with large numbers of women casuals - would feel an impact on their margins. Mr Whiting said the concept of pay equity was not new but the recommendations would help enforce existing legislation.

Mr Nuttall said he believed unions were under-resourced to fight for pay equity. However, Queensland was fortunate to have some employers who recognised the value of all workers. He said the recommendations would be taken to Cabinet and the report adopted "lock, stock and barrel".

The report, presented yesterday by Industrial Commissioner Glenys Fisher, found the gender pay gap was between 11 and 17 per cent.

"For many women in industrially weak workforces, a reason for low pay is that they are unable to enforce their existing entitlements," the report said.

"In particular, the inquiry considers the cases of telemarketing and call centres which are new, growth industries."

Title **Women get fewer perks with wages.**
Author **Michelle Hele**
Source **Courier-Mail**
Date Issue **03/10/01**
Page **12**

Women are partly to blame for their earning less than men, according to one of Australia's leading recruitment firms.

TMP Worldwide chief operating officer Leanne Warner believes women are "less adept" than men when it comes to negotiating salary and promotions.

"My experience is that both men and women are becoming much savvier at negotiation than they were years ago, but the men tend still to be smarter when negotiating their perks and conditions," she said.

The results of a national survey on wage disparity by TMP released yesterday found that the majority of men did not believe there was any difference in the level of pay between the genders.

But women typically earn about 85 per cent of a man's salary, according to figures from the Australian Bureau of Statistics. About 80 per cent of men and 40 per cent of women who responded to the survey did not think there was any difference in wages between the sexes.

The older and more senior a woman in the workplace, and the higher her wage, the more likely she was to feel that there was a discrepancy in pay packets.

About 80 per cent of women at CEO or board level believe that women are paid less than men, while at an administrative level the figures drops to about 50 per cent.

Queensland Council of Unions general secretary Grace Grace said that in awards and agreements pay levels were usually the same for men and women.

Ms Grace said the disparity happened when women were paid less than men with similar skill levels, but working in different industries. Over-award payments, fringe benefits and bonuses helped push men's wages higher than women's.

"When you take all of those into account, that is where women are not paid the same," Ms Grace said.

She said there were more women working in lower levels, while men outnumbered them in the senior higher-paying positions.

She agreed that when it came to negotiating personal agreements, women often were not offered some of the benefits male employees were.

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