



New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union

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Contact: Lyn Fraser or Ben Kruse

19 February 2009

The Secretary
Standing Committee on Employment and Workplace Relations
House of Representatives
PO BOX 6021
Parliament House
Canberra ACT 2600

Dear Madam/Sir,

**Re: Inquiry into pay equity and associated issues related to
increasing female participation in the workforce.**

The USU appreciates the opportunity to participate in the inquiry into Pay Equity. The following points are a summary of our submission:

- The award restructuring process undertaken in the early 1990s introduced a skills based classification system which helped to address many, though not all pay equity concerns.
- So far, the USU has found that the Industrial Relations Act 1996 (NSW) has enabled the NSW Industrial Relations Commission to deal with a full range of industrial issues and provide adequate powers to resolve issues for the industry parties.
- The NSW IRC's principle of fairness has been important to the process of making and varying awards and improving pay equity outcomes.
- Whilst the Union has actively initiated campaigns and legal cases which have successfully improved pay outcomes for women, vigilance is needed to ensure ongoing improvement.
- The Union also notes that whilst some advances have been made, occupational gender segmentation remains very high in local government.

Please don't hesitate to contact us should you require further information.

Yours faithfully,

Ben Kruse
GENERAL SECRETARY

Registered Office: Level 7, 321 Pitt St Sydney 2000 • Phone: (02) 9265 8211

Facsimile: (02) 9261 2265 • Email: united@usu.org.au • Website: www.usu.org.au • ABN: 95 571 805 442

Regional Offices Newcastle, Wollongong. Satellite Offices Armidale, Bathurst, Canberra, Dubbo, Grafton, Hay, Port Macquarie, Wagga Wagga



Submission from

*New South Wales Local Government, Clerical, Administrative,
Energy, Airlines & Utilities Union*

To

*House Standing Committee on Employment and Workplace
Relations*

Inquiry into:

*pay equity and associated issues related to increasing female
participation in the workforce.*

New South Wales Local Government, Clerical, Administrative,
Energy, Airlines & Utilities Union
(United Services Union)
Level 7, 321 Pitt St. Sydney NSW 2000
Ph: 02 9265 8211
Fax: 02 9261 2265

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Compiled by Lyn Fraser – USU Research Officer
Authorised by Ben Kruse, General Secretary

Introduction

The USU

The New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (the United Services Union) is the principal union in New South Wales local government and in the clerical and administrative industry and in the Energy and Utilities sector. The Union is a registered organisation of employees under the NSW Industrial Relations Act. The largest proportion of our members are employed in the local government industry.

The Submission

This submission to the inquiry into 'pay equity and associated issues related to increasing female participation in the workforce' will focus on developments in NSW local government. It will broadly touch on three issues in the Terms of Reference:

- Current structural arrangements in the negotiation of wages; and
- The adequacy of recent and current equal remuneration provisions in state legislation.

Experience of the Industrial Relations System

With regard to equity issues, it is noted that the institutions established by law to set standards and regulate employment are critical in determining pay equity.¹

Local government in New South Wales is covered by the NSW industrial relations system which has assisted in achieving fairer outcomes for workers. However, during the period of the Howard federal government's regressive Workchoices regime, federal legislation threatened to rip apart hard won gains made by the labor movement – including gains made in pay equity. During this time the USU firmly put forward the view that councils were not constitutional corporations and therefore not captured by the federal industrial relations legislation. Nevertheless the federal legislation created considerable complexities and confusion in the industry, prompting the Union to launch a campaign encouraging councils to sign referral agreements to the NSW Industrial Relations Commission.

On 13 November 2008 the NSW Government passed the Local Government Amendment (Legal Status) Bill decorporatising NSW councils. This legislation means that no council can say that they are a constitutional corporation. This also clarifies the point that Councils in NSW continue to be covered by the Industrial Relations Act 1996 (NSW) and council employees' terms and conditions of employment continue to be covered by the Local

¹ This is a point which has been argued by M.Baird, R.Cooper and D. Oliver of the University of Sydney in their report "*Down and Out with Work Choices: The Impact of Work Choices on the Work and Lives of Women in Low Paid Employment*" commissioned by the NSW Office of Industrial Relations and undertaken by the Women and Work Research Group, <<http://wwrg.econ.usyd.edu.au>> (viewed 11 Oct 2007).

Government (State) Award or relevant state enterprise award or agreement.² With or without the Legal Status legislation, the Union argues that councils are not constitutional corporations and therefore the Award has remained an instrument of the State and should not have been considered as a 'Notional Agreement Preserving a State Award' (NAPSA) – terminology only relevant in the Federal jurisdiction. Having made this latter point, the remainder of the submission will focus on the Union's experience in the NSW jurisdiction.

The first point to make is that the USU has found that the Industrial Relations Act 1996 (NSW) has enabled the Industrial Relations Commission to deal with a full range of industrial issues and provide adequate powers to resolve issues for the industry parties. Second, the IRC's principle of fairness has been important to the process of making and varying awards as well as improving equity outcomes.

In this context, it has been the experience of the USU that since the consolidation of our local government awards in the early 1990s the Local Government (State) Award has secured decent wages and conditions for the vast majority of NSW council workers.

This Award (hereto referred to as the 'State Award') has also seen the gradual evolution of improved salary systems through initiatives such as the introduction of skill-based pay and improvements resulting from an industry salary system dispute. From the Union's point of view, this system has had the capacity to provide fair outcomes and protections for sections of the workforce that have little bargaining power.

It should also be noted, that there are a few places such as Sydney, Newcastle and Wollongong where sheer size and density demand enterprise specific arrangements. There has also continued to be a need for local variations to the state award through site agreements such as council agreements. However it is the common rule application of the State Award that has delivered consistent employment and living standards for local government workers from Balmain to Bourke and Bega to Brewarrina.

The state award has facilitated significant improvements in pay equity, long service leave, redundancy, paid maternity leave, penalty rates and other important areas. These issues will be discussed in more detail later in this submission.

Nevertheless, the Union is aware of the need to remain vigilant with respect to how the intent of the award is applied at the local level. The pay rates provided in the State Award are entry level rates and each council should have a salary system that complements the entry level rates of pay and skill descriptors in the award by identifying grades. Each grade contains a number of salary points/steps for progression that are over and above the entry level rates of pay. Where the award skill descriptors are applied equitably, local government workers in areas such as libraries and child care should be treated as equals in comparison with employees in equivalent male dominated occupations in local government. However, from time to time the Union has had to mount a campaign and take court action where it is evident that the principles of fairness and equity have not been applied in a specific local salary system.³

² USU "NSW Council Workers Protected", *United News*, the official journal of the NSW Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union, Summer 2008/09, page 4.

³ *Federated Municipal and Shire council Employees' Union of Australia NSW Division and Blacktown City Council re Child Care Assistant's Rates of pay*, Matter No. IRC 2830 of 1995, Unreported Judgement of Kelly CC dated 4/8/98.

The Equal Remuneration Principle

The Equal Remuneration Principle handed down by the NSW Industrial Relations Commission in 2000 has significant implications for job evaluation under NSW State Awards.⁴ The Principle is based on the fundamental proposition that equal remuneration and other conditions of work should be made available for men and women doing work of equal value.⁵ The Principle allows claims to be made for the alteration of wage rates or other conditions of employment “on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis”.⁶ Claims are made by reference to comparator awards or classifications, involving the comparative analysis of the work skill and responsibilities of the positions concerned. Notably the Commission will not take account of external factors such as market attraction or retention rates or productivity factors.⁷ The Commission is also concerned to ensure that the “work, skill and responsibility which have been taken into account in any previous work value adjustments or structural efficiency exercises are not again considered under (the) principle, except to the extent of any undervaluation is established.”⁸ An example of the application of the Equal Remuneration Principle to local government relates to the reduction in hours for professional/specialist community services workers – this case will be discussed in the following section.

USU Initiatives in Local government

State Award negotiations have contributed to increased gender equity in NSW local government. Indeed Census data from 1986 and 2001 suggests that the gap between male and female full-time earnings was reduced in NSW local government - from approximately 18.4% to 4.4%.

The certainty created as a result of the common rule industrial regulation not only resulted in equity improvements and protection for more vulnerable workers, but also allowed for workers to enjoy the portability of entitlements (such as long service leave and sick leave entitlements) when moving to new workplaces within the local government industry. Below are examples of initiatives by the Union to improve equity outcomes for women in local government.

Child Care Workers

From time to time analysis of salary systems and remuneration practices at particular councils have required closer examination and action taken to address inequitable policies and practices. In this regard, the Union (at that time known as the Municipal Employees Union) had some success in improving child care rates under the *Local Government (State) Award*. The 1998 decision of Commissioner Kelly in *The Blacktown Council Child Care Assistants*

⁴ *Re Equal Remuneration Principle* (2000) NSWIRComm 113 (30 June 2000), 97 IR 177. The Principle followed an Inquiry by the Commission see FMSCEU, “NSW Pay Equity Inquiry”, *The Counsellor*, Autumn 1998, p.5; FMSCEU, “Pay Equity Decision Will Deliver Wage Justice”, *The Counsellor*, Spring 2000. p.4.

⁵ *Ibid* at p.192

⁶ The Equal Remuneration Principle varied the State Wage Fixing Principles, see Principle 15(a) in 97 IR at 216.

⁷ Principle 14(c), *State Wage Case (2001)*, 104 IR 438 at p.484

⁸ *Ibid* at p.484, Principle 14(h).

Case involved the application of the award skill descriptors to set the rate for child care assistants at Band 1 Level 3.⁹ This successful claim by the Union resulted in pay increases for 67 Child Care Assistants at Blacktown.

Significant problems still exist with the application of the award skill descriptors. Job evaluation remains problematic together with the development and implementation of council salary systems. During the Wyatt review numerous complaints were received by the Union about the undervaluation of community services positions. The Union suspects that in some areas job evaluation weightings in the Wyatt software were calibrated so as to replicate pre 1988 gender based local government hierarchies. Further problems arise in the implementation of job evaluation at the local level. In some cases the answers to job evaluation questionnaires are tweaked until positions are evaluated at a level considered appropriate by management. This process (described as “validation”) can have the effect of neutralising the reforms associated with the skills based award.

The *Blacktown Council Child Care Assistants Case* shows how the skills based award can be used to overcome some of these problems. The Equal Remuneration Principle is a further mechanism for the improvement of pay equity.

Paid Maternity Leave

The introduction of paid maternity leave into the 2001 Local Government (State) Award represented a significant step in addressing employment equity issues in local government. Breaks taken from the labour force to have children are important contributors to earnings inequality for women in the workforce.¹⁰

Maternity leave was a burning issue at the 1999 Women’s Conference, leading to an extensive campaign and legal case. Whilst a small number of councils provided paid maternity leave by way of policies, the USU state-wide campaign and legal case resulted in the inclusion of 9 weeks paid maternity leave (or 18 weeks at half pay) into the State Award. The leave provision provides some recognition of the realities of the modern workforce and the need for more flexible work arrangements.

The United Services Union currently envisages undertaking future negotiations with employers to extend existing employer provided provisions of paid maternity/parental leave provisions (possibly to 14 weeks at full pay) where such arrangements do not already exist.

Community Services – hours reduction

A significant pay equity win was gained in local government in 2004 following a lengthy campaign and court case run by the Union. In this instance the Union was successful in gaining a reduction of working hours for community services professionals. The disparity in working hours in this female dominated area was such that these workers were employed on a 38 hour week basis while male dominated professionals such as engineers, health and building surveyors and town planners had enjoyed a 35 hour week for many years. The longer hours worked by community services workers reduced their hourly rate of pay (this was significant for a considerable proportion of part-time workers in community services.)

⁹ *In the matter of a reference pursuant to s188(1) of a question, dispute or difficulty between the FMSCEU and Blacktown City Council re Child Care Assistant’s Rates of pay*, Unreported judgement of Kelly CC dated 4/8/98 in IRC 2830.

¹⁰ Human Rights and Equal Opportunity Commission, *Pregnant and Productive: It’s a right not a privilege to work while pregnant*, Report of the National Pregnancy and Work Inquiry, HREOC, Sydney, 1999, p15f.

Prior to the Union filing of the case in the Commission, some Union members had already taken action to bring about change and achieved agreement with the employer to reduce hours for community services workers at their council. However a co-ordinated campaign was needed to help improve pay equity outcomes across the state.

This campaign worked hand-in-hand with USU efforts to pursue the matter in the Commission under s21, s10 and 169 of the Industrial Relations Act and Wage Fixing Principle 6 – Work Value; 14 - Equal Remuneration and Other Conditions and; 10 Special Case. Principle 14 enabled the claim to be made to alter wage rates or other conditions “on the basis that the work, skill and responsibility required or the conditions under which the work is performed have been undervalued on a gender basis.”¹¹

The lack of parity in working hours for senior community services workers in comparison with their male counterparts has been apparent since the consolidation of the various local government awards in 1992. The introduction of common set of skill descriptors and the removal of occupational classifications highlighted the fact that they were required to work longer hours than their male counterparts.

On the 16 February 2004 the Full Bench approved a reduction of hours from 38 to 35 hours per week for professional and specialist workers in community services in NSW local government. The win marked a turning point by giving community services professionals the same level and status as professionals in male dominated areas of local government.

Women Workers in NSW Local Government

In 1985, the Department of Local Government reported that women comprised only 26%¹² of the local government workforce. By 2001, ABS Census indicated that this had increased to 35% and by the 2006 Census women comprised 38.6% of the local government workforce.¹³ However, analysis of Census data suggests that the increased proportion of female workers compared to overall workers in local government is partly the result of declining employment in some male dominated areas.¹⁴

¹¹ *Re Equal Remuneration Principle 97 IR 216*, 15 Equal Remuneration and Other Conditions (a).

¹² Department of Local Government NSW, *The Largest Minority: Employing Women in Councils*, 1989: p3.

¹³ Based on Australian Bureau of Statistics from 2001 and 2006 Census Population and Housing, customised data, “*Employed Persons in the NSW Local Government Sector by Occupation (ASCO 2nd edition): 2 digit and by Sex, New South Wales, Based on Usual Residence.*”

¹⁴ See L. Fraser, USU, *Employment Info Series, Info Sheet 1.3 NSW Local Government Employment*, July 2006, containing analysis of Australian Bureau of Statistics Census data in relation to pay equity issues.

Gender Segmentation

In 1980, Australia was reported to have the highest gender occupational segmentation of 12 OECD countries¹⁵. But, despite inroads women have made into some 'traditional male' occupations, local government continues to have a very high degree of gender segmentation¹⁶. This fact is demonstrated in the table below which shows local government employment figures, based on ABS 2006 Census data.

Table showing selection of employed persons in NSW Local Government Sector by occupation where either gender has over 90% dominance.

	Total Number	% Female	% Male
Very High Female Dominated Areas			
Health Professionals	101	92.1	7.9
Food Tradespersons	78	96.2	3.8
Secretaries and Personal Assistants	893	98.4	1.6
Very High Male Dominated Areas			
Tradespersons and Related Workers, nfd	100	5.0	95.0
Mechanical and Fabrication Engineering Tradespersons	523	0.6	99.4
Automotive Tradespersons	407	0.0	100.0
Electrical and Electronics Tradespersons	194	4.6	95.4
Construction Tradespersons	765	2.1	97.9
Skilled Agricultural and Horticultural Workers	1284	9.0	91.0
Intermediate Production and Transport Workers, nfd	46	0.0	100.0
Intermediate Plant Operators	2684	0.8	99.2
Intermediate Machine Operators	176	5.1	94.9
Road and Rail Transport Drivers	1853	1.5	98.5
Other Intermediate Production and Transport Workers	276	8.0	92.0
Labourers and Related Workers, nfd	917	3.2	96.8
Other Labourers and Related Workers	3227	5.1	94.9

Source: Based on Australian Bureau of Statistics, customised table, 2006 Census of Population and Housing, Customised data, Table 2, Employed Persons in the Local Government Sector by Occupation (ASCO 2nd edition): 2 digit and by Sex, New South Wales, based on Usual Residence.

While the table above groups individuals into broad occupational categories, a further disaggregation of the groups would more starkly defined gender dominance in many occupations in local government. Four notable occupational areas which are highly dominated by women include – a) secretarial/ personal assistants; b) receptionists and general clerical; c) childcare; d) libraries.

¹⁵ ABS & Office of Status of Women, *Australian Women's Yearbook 1997*, ABS Canberra, 1997, Cat. No. 4124.0 p 6.

¹⁶ See L. Fraser, USU, *Employment Info Series, Info Sheet 1.2 NSW Local Government Employment*, July 2003, containing analysis of Australian Bureau of Statistics Census data in relation to occupational gender segmentation issues.

Conclusion

The USU is committed to addressing pay equity issues in local government. The award restructuring process undertaken in the early 1990s introduced a skills based classification system which helped to address many, though not all pay equity concerns.

So far, the USU has found that the Industrial Relations Act 1996 (NSW) has enabled the Industrial Relations Commission to deal with a full range of industrial issues and provide adequate powers to resolve issues for the industry parties. The IRC's principle of fairness has been important to the process of making and varying awards and improving pay equity outcomes.

Whilst the Union has actively initiated campaigns and legal cases which have successfully improved pay outcomes for women, vigilance is needed to ensure ongoing improvement.

The Union also notes that whilst some advances have been made, occupational gender segmentation remains very high in local government.