

industry in which professional standards are increasingly demanded from its employees.

I will consider the history of the award covering child care workers in a later section. However, it is clear from this analysis that the 1988 award which provided a single classification for workers holding qualifications of Child Care Certificate or Associate Diploma did not properly assess, either the difference in the qualifications between child care worker and Associate Diploma, and/or recognise the true level of the qualifications of child care workers at that time, being more closely aligned to Associate Diploma. By the time of the 1990 Minimum Rates Adjustment process these differences at least have been recognised at the Federal level in the Minimum Rates Adjustment process undertaken in that jurisdiction (which as I will later note, considered New South Wales qualifications and training for child care workers). However, even by the time of the Minimum Rate Adjustment process in New South Wales in 1990 there was still no recognition of the distinction between Associate Diploma qualifications and Child Care Certificate qualifications. There is no proper alignment to the Federal award in the New South Wales Minimum Rates Adjustment decision and the alignment which was undertaken was between the child care worker and the base trade qualification, which was a certificate level qualification and training, does not seem to be appropriate.

## COMPETENCY STANDARDS AND QUALIFICATIONS

The National Child Care Competency Standards were developed by Community Services and Health Training Australia which was funded by the Australian National Training Authority (ANTA). The standards were developed by both private and public employers and unions. The standards cover workers in centre based early childhood centres such as long day care, occasional care and preschools as well as family day care and out of school hours services. They include workers from entry level up to non-degree qualified leadership positions (Ex 115).

The standards were completed in 1996 and endorsed by both the Board of Community Services and Health Training Australia and ANTA in 1997. The competency standards were developed to facilitate industry relevant training and assessment and provided the foundation for the National Child Care Core Curriculum mentioned above. Community Services and Health Training Australia has been at pains to point out that the competency standards are restricted entirely to training and development of staff and are not intended for industrial classification use (Ex 115).

The competency standards are linked to the Australian Standards Framework and as at the time of hearing were being integrated in to the Australian Qualifications Framework. The standards identify which competencies are required to satisfy a particular ASF/AQF level and accordingly

what qualifications are needed (Ex 115).

A number of criticisms have been made in relation to competency standards. I will not turn to these assessments. However, it should be noted that I consider Ms Godhard's assertion to be fair. She identified that there are a number of deficiencies in the standards as developed but that they represent the best description of the work of child care workers at the present time.

I agree with the submissions of the Employers' Federation/Chamber that the use of competency standards in evaluation processes needs to be treated with great care. The alignment of competency standards to the ASF or AQF are not scientific and are not necessarily related to educational outcomes (Ex 446 p 83). As described in the evidence of Mr Wright, there does seem to be an input from industrial parties in the alignment process and to that extent the process is somewhat subjective.

I also agree with the conclusions reached by Commissioner *Simmonds* in the *HPM Case* (Print P9210; 4/3/98) where he considered that competency standards do not provide a means of assessing attributes other than relative competencies such as skills and knowledge. There are other attributes to be taken into account such as responsibility, the nature of the work and conditions under which work is performed. I further agree with the distinction raised by Commissioner *Simmonds* between the competency based description of a classification and qualifications as a basis for classification (Ex 404 p 36), and also broadly agree with his conclusions that the appropriate

method of evaluating "equal value" is to apply the criteria of work value (see also at p 36). However, as I will later discuss, I do not agree that the means of obtaining a gender neutral outcome, and one which properly and fully values the work of persons engaged in female dominated industries, is to apply the current wage fixing principles in relation to work value. Furthermore, I do not consider that the appropriate test (again for reasons I will later give) is to consider discrimination per se in attempting to evaluate whether there is undervaluation of work.

As to the qualifications, I refer to the submissions by the Crown parties (Ex 459 paras 277-282) where they submit that the Australian Qualifications Framework was implemented nationally in January 1995 to provide a comprehensive, nationally consistent framework for all qualifications in post compulsory education and training. This was done by the setting of benchmarks, descriptors and structure for qualification levels. Whilst the alignment of qualifications might need to be treated with caution, nevertheless, qualifications and training remain an important and objective means by which to assess the skills and knowledge of persons holding the qualification and having undertaken the relevant level of training. This was recognised by Ms Godhard in her evidence concerning the child care services. In essence it is recognised by the whole national Australian qualifications framework. Many witnesses spoke of the significance of recognising training and qualifications as a measure of skill and knowledge.

In my view, the shortcomings of competency standards and their

use in comparing work across industries should not be confused with the significance of qualifications and training as a guide to the assessment of the value of work. However, as will be later discussed, care needs to be taken that the credentialling process which gives rise to qualifications does not itself contain a bias.

## TURNOVER

Of particular note in the development in the child care industry has been the high turn-over rate of staff working in child care centres. In the survey carried out by Ms Kelly 40% of her respondents considered turnover to be high. In responses provided by employers on the reasons behind the turn-over the four most common answers were high stress, lack of job status, low pay and lack of a career path (Ex 57 at 29-30). One employer stated his opinion that turn-over was noticeably higher than in other industries (Ex 48).

## AWARDS

The current award structure of the Miscellaneous Workers: Kindergarten and Child Care Centres (State) Award is new and replaces a system of grading Child Care Workers from 4 (lowest) to 1 (highest). The new classification structure emanates from a decision of *Redman C* of 8 July 1997. Set out below are the current award classifications matched with the classifications immediately preceding the 1997 variation and the rates of pay:

<b>1997 Classification</b>	<b>Rate of Pay</b>		<b>Previous Classification</b>
Child Care Support Worker	\$404.40		Cleaner Other Cooks Housekeeper
Child Care Support Worker (Qualified Cook)	418.00		1st Cook or Cook Working Alone
Child Care Worker	Step 1	399.80	Child Care Worker Grade 4
	Step 2	404.40	
	Step 3	408.80	
	Step 4	413.40	
Advanced Child Care Worker	Step 1	424.30	Child Care Worker Grade 2[-3]
	Step 2	436.30	
	Step 3	447.20	
Advanced Child Care Worker: Qualified	Step 1	486.50	Child Care Worker Grade 1
	Step 2	495.60	
	Step 3	504.80	
Co-ordinator - Unqualified Small	Step 1	443.50	New classification
	Step 2	455.50	
	Step 3	466.40	
Co-ordinator - Unqualified Large	Step 1	453.10	New classification
	Step 2	465.00	
	Step 3	476.00	
Co-ordinator - Qualified Small	Step 1	515.30	New classification
	Step 2	524.40	
	Step 3	533.60	
Co-ordinator - Qualified Large	Step 1	534.40	New classification
	Step 2	543.50	
	Step 3	552.70	

(Ex 34 Tab 58)

The abovementioned steps are calculated as follows:

Step 1      on engagement with early childhood or child care service

Step 2      after 1 year's employment in this classification

Step 3 after 2 years' employment in this classification

[Step 4 after 3 years' employment in this classification]

(Ex 34 Tab 58)

The term "qualified" refers to those persons who hold the Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications which are recognised under the *Children (Care and Protection) Act 1987*. The award has yet to be amended to incorporate future graduates of a Diploma in Children's Services.

#### HISTORY OF THE AWARD: 1969 - 1988

The history of awards applying in the child care industry in New South Wales gives an important insight into some historical deficiencies in wage fixing systems. Broadly speaking these deficiencies are threefold. Firstly, the rates appear to have been affected by the female character of the industry. Secondly, the Minimum Rates Adjustment principle has not resulted, at least in operation, in a proper valuation of the work performed by the predominantly female workforce in the child care industry. Thirdly, the relevant award exhibits a number of deficiencies in terms of the valuation of the work of child care workers, the remuneration paid to them and career opportunities. I make this assessment by reference to awards providing rates of pay and conditions for the male dominated metal industry.

The first award in the child care industry has been identified as the

Miscellaneous Workers' - Kindergartens &c (State) Award of 14 March 1969 (173 IG 66), that award being the outcome of *Manuel CC's* decision of the same date (Ex 206). The 1969 Award applies to four general classifications of employee: cooks, cooks elsewhere, domestic and general staff, and outdoor and other staff (Ex 34 Tab 1). Employees who would now be considered as child care workers fell within the domestic and general staff classification and were called teacher's aides or assistants (\$8.00 margin per week) or teacher's helper and general helper (\$5.00 margin per week). It is important to note that those teacher's helpers and general helpers working for the Kindergarten Union of NSW (Inc.) and for Sydney Day Nursery and Nursery Schools' Association (Inc.) were awarded a reduced margin (\$4.00) in recognition of the charitable nature of the work of those organisations (Ex 206).

The reasons given by *Manuel CC* in setting the rates of pay for child care workers in this first award, and his decision to distinguish the rates for the Kindergarten Union of New South Wales and the Sydney Day Nursery from other employers in the industry, give important insights into the female characterisation of the industry and the effect of that characterisation upon valuation. I refer to some significant aspects of the decision below:

- (1) The union claimed that a comparison should be made with independent schools in setting the rates for child care workers. This was said to be the only available comparison. It does not seem to have been considered in the setting of the rates (p 4).



- (2) Reference was made to the application of first award principles which required attention being fixed upon existing rates and conditions within the industry (p 8). However, the state of industrial regulation of the industry was described in vivid terms by the Commissioner at page 11 of his decision as follows:

The union's reference to the employees getting a just and reasonable return for their labours is irrefutable. However, if one looks at the rates currently being paid, they are, without fear of contradiction, extremely low by modern standards and should not be countenanced. They are not sufficient to maintain any worker at a decent or reasonably [sic] standard of living, indeed to allow such rates to continue or be encouraged in any industry is in complete disagreement with what Mr Justice Higgins said in 1909, 3 CAR page 1 at 32:-

Unless great multitudes of people are to be irretrievably injured in themselves and in their families, unless society is to be perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct, beyond the reach of bargaining.

- (3) The Commissioner then notes that the rates set in the industry are as a result of the employees' lack of bargaining power (p 12). He notes that the rates appear to have emanated from what was "a complete charitable system", the amounts paid over the years having been, "as was put in this matter at the 'whim of the Committee' and no doubt at as economical [sic] as possible, having regard to the fact the workers in the institutions were not dependent on it for their livelihood" (p 12). The Commissioner sets the rates of pay in the industry having regard to work value and

public interest considerations.

- (4) The Commissioner then proceeds upon the basis that a conservative approach should be taken to the rates of pay so as to do justice to the persons using the industry and to the fact that workers in the industry might receive payments from other sources. For example he refers to one employee who received a deserted wife's pension (p 12). The Commissioner also refers to the clients of the Sydney Day Nurseries as being unmarried mothers, widows and others in needy circumstances (p 12).
- (5) The Commissioner's reasoning is most revealing as to his approach to the female composition of the industry:

I am not satisfied, from the evidence adduce [sic] or from the submissions made, that the employees in this industry are completely dependent upon the industry. Many, I feel, were originally motivated by a desire to make some contribution to community service and indeed, there are many who are remaining in such a category of being voluntary workers in this, completely free of receiving any payment, the Union has not raised any objection to this. They have condoned it, although they have no desire that it should extend. However, there are many who are employed on a part time basis ... whereas the teachers' helpers who are more in the category of child minding, work 28  $\frac{3}{4}$  hours and 37  $\frac{1}{2}$  hours ... (p 14-15).

It is clear from *Manuel CC's* decision that he saw child care workers as employed in an area more akin to female identified work such as child-minding and domestic service. His conception of "community service"

appears based on assumptions that the labour provided by the volunteers was of a kind which ought to have been provided by the community and that such labour would be undertaken by females, because women were then, and still are, predominantly the providers of child-minding services. In addition, the presumption that the workers and volunteers "were not dependent on it for their livelihood" is a clear example of commonly understood presumptions about men as bread-winners and women who work as the providers of only supplemental income. The presumption dates back to *Ex parte H.V. McKay* (the *Harvester Case*) and the *Fruitpickers Case* ((1907) 2 CAR 1 and (1912) 6 CAR 61 respectively). Such presumptions conspired to minimise the recognition by *Manuel CC* of appropriate rates of pay for child care workers.

(As a matter of interest the decision of *Manuel CC* predated the first of the *Federal Equal Pay Cases* ( (1969) 127 CAR 1142) by a few months. In any event, the Federal decision would have been academic as it provided in principle 9 that the equal pay principles would not apply "where the work in question is essentially or usually performed by females" (at 1158-1159).)

*Manuel CC's* perception of the place of child care workers and their importance to both the workforce and the persons supported by the wages of the child care worker is reminiscent of the way in which infant and primary school teachers were perceived at the time. Raymond Cavenagh, a former Deputy President of the NSW Teachers' Federation, recounted in a statement to the Inquiry that the skills needed for such work were commonly discounted including by the Prime Minister of the day, John Gorton. The Prime Minister said at the

1970 World Conference of Organisations of the Teaching Profession all that such teachers needed was a “warm feeling of adventure and achievement” and he challenged the need for a degree and additional years of teacher training. By then the first teachers' strike of 1968 had already laid the ground work for increasing the length and qualifications for primary and infant training in recognition of the skills needed to properly perform those positions (Ex 432).

The number of unpaid workers has significantly declined as a percentage of the total child care workforce since *Manuel* CC brought down his decision but they still form an important component of the workforce. Ms Kelly quotes statistics that 9% of all child care workers were unpaid Australia-wide in 1996 with the figure reaching 25% in the occasional care area. Figures available for NSW indicate that 8% of workers in community-based centres and 12% in private centres were unpaid in 1993 (Ex 57 at 23). As I have noted in this section there is also a substantial amount of unpaid work performed by child care workers. It is not difficult to conclude that the perception of child care as charitable work, as work with few skills and as women's work has helped in depressing the current wages paid to child care workers.

The classifications of teaching aide or assistant and teacher's helper or general helper were defined in the 18 November 1969 (176 IG 39) amendment of the Award:

“(v) Teaching Aide or Assistant means an employee who performs general kindergarten duties in any establishment where no qualified teacher is employed as such.

(vi) Teacher's Helper or General Helper means an employee who performs general kindergarten duties in any establishment where one or more qualified teachers are employed as such."

(Ex 34 Tab 2)

These classifications confirmed the 'domestic' and child minding perception of the work.

On 2 June 1970 (178 IG 992) the distinction between employees in private kindergartens ("kindergarten" was the generic then used which included what is now referred to as "long day care") and those working for the Kindergarten Union of NSW and for Sydney Day Nursery was removed. The award also defined teaching aide as, inter alia, being an unqualified person carrying out a teaching programme or an employee in charge of a group of children. (Ex 34 Tab 4)

On 21 November 1973 (193 IG 1897) the Award was further amended to introduce a new classification called Child Care Aide and was given its current name of the Miscellaneous Workers' - Kindergarten and Child Care Centres &c (State) Award. The definition of the new classification specified that those falling within its parameters must have completed the Child Care Certificate Course at Sydney Technical College or an equivalent course or be sufficiently qualified or experienced to be so classified. The new classification was to be paid at a margin of \$49.90 per week which was in excess even of the housekeeper classification. It was substantially greater than the margins paid to Assistants (\$31.90) and Helpers (\$27.80) (Ex 34 Tab 8). The award introduced

the equal pay loadings to the basic wage. There has been no subsequent application of the equal pay principles in the award.

Between 1973 and 1981 the Award remained unamended, save for the adjustment of rates of pay and leading hand and qualifications allowances in line with the relevant State Wage Cases (Fx 34 Tabs 9 to 26). On 29 July 1981 (227 IG 1455) the Award was slightly amended to update the classifications in light of the CCC:

“(vi) Assistant means an unqualified employee responsible for teaching and child care duties or supervisory duties in connection with a group of children in any establishment where no qualified person is employed. Where a qualified person is employed, an assistant shall mean an unqualified employee carrying out a teaching program or in charge of a group of children.

(vii) Helper means an unqualified employee assisting with child care duties in connection with a group of children under the direction of a qualified person or an assistant who is in charge of such a group of children, or assisting with general kindergarten duties including domestic duties in an establishment under the control of a qualified person.”

(Ex 34 Tab 27)

In 1988 a completely new award classification system was introduced pursuant to the award restructuring principles (transcript of proceedings Ex 206). The new system recognised the new Certificate of Child Care Studies and the then forthcoming Associate Diploma in Social Science (Child Studies). The new classifications were all called Child Care Workers and they were graded from 4 to 1 (lowest to highest). The definitions of the four grades can be summarised as follows:

#### Child Care Worker Grade 4

Child Care Worker Grade 4 is an unqualified employee who assists in general child care duties under the direction and supervision of a qualified teacher or CCW Grade 1 or 2. A CCW Grade 4 who completes the CCCS or Associate Diploma or equivalent course or is otherwise sufficiently qualified or experienced shall be classified as a CCW Grade 3 or, where appropriate, Grade 1.

#### Child Care Worker Grade 3

A CCW Grade 3 employee is a qualified employee (that is, a holder of the abovementioned qualifications) who performs the same duties as a CCW Grade 4.

#### Child Care Worker Grade 2

A CCW Grade 3 employee is an unqualified employee who is required to develop and/or maintain a developmentally or educationally based curriculum programme and who may be in charge and/or responsible for the supervision of a group of children. A CCW Grade 2 employee who gains the abovementioned qualifications shall be classified as a CCW Grade 1 employee.

#### Child Care Worker Grade 1

A CCW Grade 1 employee is a qualified employee (that is, a holder of the abovementioned qualifications) who performs the same duties as a CCW Grade 2.

In addition, Child Care Workers Grades 1, 2 and 4 were all stepped: Grades 1 and 2 had three steps and Grade 4 had four steps. (Ex 34, Tab 44). Most child care workers fell into the categories of CCW Grade 4 or Grade 1 which were replaced in 1997 with Child Care Worker and Advanced Child Care Worker: Qualified (Ex 34 Tab 58).

The award made in 1988 was a consent award. There is no discussion in the proceedings as to why the parties settled upon the classification structure incorporated within that consent award. In particular, the

transcript of the proceedings (Ex 206) does not reveal why the same classification, namely child care worker grade 4 referred to the different qualifications CCCS and Associate Diploma. Exhibit C in the proceedings (Ex 206) shows no separate recognition in the award restructuring process relating to the Associate Diploma course. There was not any separate or additional recognition given to changes in training bought about by the Associate Diploma or changes in the industry to that time. (Ex 206)

### THE FEDERAL AWARDS

During the period 1988 to 1990 a test case was launched in the Australian Industrial Relations Commission to examine the wage rates of child care workers in the ACT and the Northern Territory but it was one which would be fundamental to the child care industry in Australia. The two awards were examined in *Re Child Care Industry (Australian Capital Territory) Award 1985 and the Child Care Industry (Northern Territory) Award 1986* ([1990] 39 IR 194).

There are a number of aspects of the full bench's decision in this matter which are significant to the examination of this selected industry and occupation and also to the functioning of wage fixing mechanisms.

My observations are as follows:

- (1) By reference to my later discussion about the failure of the application of the Minimum Rates Adjustment principle in New



South Wales, it needs to be noted that the Full Bench decision in this matter proceeded upon the basis of an inquiry, which had been conducted by Commissioner *Lang*, in which he considered issues which were described by the unions involved as "fundamental to the child care industry in Australia generally" and not just to the two awards in question ( [1990] 39 IR 194);

- (2) The Commission heard the matter as an Anomalies Conference. It came to the view that the existing award rates had not been adequately established in the past. In particular it concluded that "members of this industry's workforce, from whom the community expects so much, have been disadvantaged" (p 195). It should be recalled that this inquiry, and the later New South Wales inquiry, was in 1990, so that this observation really manifests, what is otherwise clear from the decision of Commissioner *Manuel* earlier referred to. That is that there was a clear undervaluation of this group of workers over a long period of time. It is difficult to avoid the conclusion that in this female dominated industry, at least in New South Wales, this depression in rates derived from the female characterisation of the industry, there being a connection between the rates of pay and that characterisation. This is significant because the rectification process that was then undertaken by the Full Bench in this decision does not direct itself specifically to this possible cause of disadvantage in the conclusion reached.

- (3) The Commission considered that there existed an inequity as a result of child care workers doing similar work but being paid different rates (p 195). It is not entirely clear from the decision what in fact was the point of comparison being undertaken by the Commission in this statement.
- (4) The Commission concluded that there were significant changes in the child care industry, including the training of child care workers with commensurate enhancement of their skills and the level of responsibility expected of them (p 195). This was no doubt a reference to the change in licensing requirements and changes in training patterns commensurate with that licensing.
- (5) The Commission essentially adjusted the rate for child care workers having regard to the Minimum Rates Adjustment principle. The essential ingredient of that principle referred to by the Commission was that the Commission will only approve relativities in a particular award "when satisfied that they are consistent with the rates and relativities fixed for comparable classifications in other awards" (p 197).
- (6) The alignment of the child care worker level 3 after one year's service with the engineering tradesperson level 1 in the Metal Industry Award, as adopted by the Commission, was derived from a consent arrangement reached between the parties to the industry

(p 197). What is important in the Commission's adoption of this comparison, is that it did so, notwithstanding that the subject classifications could not be compared in the conventional sense, but were capable of being compared by reference to training requirements for each classification. This was said to produce a guide as to the level of competence which had been obtained (p 197). Thus in order to make its assessment the Commission had regard to the development of training requirements and, in particular, considered the development of a national core curriculum and its application in various States and Territories. In New South Wales the Commission compared a course in child care which requires attendance for two years for full time study or four years for part time study with the trade courses offering apprenticeships (p 198).

- (7) The Commission made clear that the National Wage Case decision of August 1989 did not require direct comparisons of skill, responsibility and work conditions before relativities could be approved (p 199). Rather the common elements of the training comparisons undertaken were:

Both classes of worker must have work experience to complement their academic studies; and

Both are taught a range of skills which must be applied in

circumstances calling for the exercise of responsibility.

It had also been shown that in terms of the number of hours of study the child care workers had approximately twice the number of hours of academic training as had trades certificate persons (p 199).

In setting the relativities the child care worker classifications extended to level 5 which was 117 per cent. The metal trades classification extended to a much higher relativity level. It should be noted that the directors' classifications extended to the 165 per cent level.

The Federal Awards also incorporate a different classification structure which builds on the NSW Award of 1988. That is, there are 5 levels of Child Care Worker. A Child Care Worker Level 1 is a base grade Child Care Worker with similar duties to that of a Child Care Worker Grade 4 under the 1988 NSW Award. Child Care Workers Level 2 and 3 have more responsibility than a Grade 1 and have either completed an introductory course in child care (Level 2) or are holders of a child care certificate or equivalent (Level 3). A Child Care Worker Level 4 is generally equivalent to a Child Care Worker Grade 1 under the 1988 Award (or an Advanced Child Care Worker: Qualified under the 1997 NSW Award) in that the award definition requires that such a person have a TAFE advanced certificate or an Associate Diploma in child care or equivalent. A Level 5 Child Care Worker must have both a minimum of a TAFE two year full-time advanced certificate, an Associate Diploma in child care and, in addition, 200 hours or more of in-service training. A Level 5 Child Care Worker may also

take on duties as an Assistant Director, such as the supervision of both unqualified and qualified staff.

Two important features distinguish the Federal Awards from the NSW Awards up to that point. Firstly, holders of qualifications which fall short of the Associate Diploma are specifically recognised in the Federal Awards as Child Care Workers Grades 2 and 3. Persons who have completed, for example, an introductory course or exited early from an Associate Diploma course in NSW are covered in the classification Child Care Worker Grade 2. Those workers who became qualified under the old system by receiving the CCC but who have not updated their qualifications are specifically catered for with the Child Care Worker Grade 3. Secondly, workers with Associate Diploma or equivalent qualifications who have completed substantial in-house training are also recognised with the Child Care Worker Grade 5 classification. The Federal Awards accordingly provide a more defined and graded career path for all child care workers, qualified and unqualified, new and old. They also provide clear incentives for the acquisition and upgrading of qualifications.

In addition, there are three grades of Director depending on the size of the centre. The duties of a Director of whatever grade are identical and they include: recruiting staff, keeping accounts, ensuring adherence to regulations, formulating annual budgets, implementing educational and developmental programs and so forth. Finally, there are the two lowest classifications: Child Care Support Workers Grades 1 and Grade 2. A Grade 1 Child Care Support Worker is an untrained worker employed to perform duties

including cleaning, kitchenwork, handywork and gardening. A Grade 2 worker would perform the same duties but would have basic qualifications in, for example, cooking or gardening.

The AIRC decided, after the parties had consented to the approach, to align child care workers with employees under the Metal Industry Award. Specifically, the rate of pay for a Child Care Worker Grade 3 after one year was aligned with 100% of the rate of pay of an Engineering Tradesperson Level 1 (a C10). No explanation was given by the AIRC as to how it arrived at the figure of 100%, except that it was applying the National Wage Case guidelines and it was aligned in accordance with comparisons put forward by the ACTU and FMWU (Ex 35, Tab 9 at 199, Ex 57 at 45). Consideration needs to be given as to whether such a relativity is justified and whether, on a proper comparison of the two awards, a new relativity should be established. Ms Kelly has drawn attention to the fact that whereas the Metal & Engineering Industry NSW (State) Award rewards holders of an Associate Diploma (a C3) at 145% of the Engineering Tradesperson's rate of pay the Federal Child Care awards do so at only 110% (Ex 57 at 45).

Importantly, the AIRC noted that there were significant differences between the trade certificate course for the metal and engineering industry and the study needed for an Associate Diploma in child care. The AIRC noted that while both had practical work experience as part of their courses, those studying child care were required to undertake approximately twice the number of hours of academic training than their counterparts in metals and engineering. In addition, the Associate Diploma in child care was rated higher in the Register of

Australian Tertiary Education than trade qualifications. This appears to have been discounted in setting the relativities between child care and the metals industries (Ex 35, Tab 9 at 199).

The AIRC also flagged the possibility of further refinements of the award based on differences in training which were likely to come about through negotiation or, failing that, arbitration. It identified junior rates and traineeships for attention as well as three and four year trained rates, in-service training and definition of those working as field officers or co-ordinators in family care ([1990] 39 IR 194 at 201).

The wage rates for the two awards as at 25 June 1997 (ACT) and 18 August 1997 (NT) were as follows:

<b>Classification</b>	<b>Step and Wage Rate</b>	<b>Relativity</b>
Child Care Support Worker Grade 1	Step 1     \$366.60 Step 2     376.90 Step 3     387.10	
Child Care Support Worker Grade 2	Step 1     388.70 Step 2     398.90 Step 3     409.20	
Child Care Worker Level 1	Step 1     366.60 Step 2     376.90 Step 3     387.10	80%
Child Care Worker Level 2	Step 1     388.70 Step 2     398.90 Step 3     409.20	85%
Child Care Worker Level 3	Step 1     444.00 Step 2     451.20 Step 3     461.40	98% 100%
Child Care Worker Level 4	Step 1     492.90 Step 2     502.40 Step 3     512.70	110%

Child Care Worker Level 5	Step 1 (NT) 519.40 Step 1 (ACT) 522.90 Step 2 (both) 533.10 Step 3 (ACT) 543.40	117%
Director Level 1	Step 1 638.80 Step 2 649.00 Step 3 659.30	145%
Director Level 2	Step 1 690.00 Step 2 700.30 Step 3 710.50	157%
Director Level 3	Step 1 720.80 Step 2 731.00 Step 3 741.30	165%

### THE IMPORTANCE OF THE 1990 NSW AWARD

The 1990 NSW Award had two major failings. Firstly, it failed to recognise the different grades of qualifications held by child care workers in the industry, whether formal or in-house, and it placed the metals award at a different relativity level than did the Federal Awards of that year, at least for the Associate Diploma qualified person. In purportedly applying the National Wage Case guidelines, the setting of the relativity resulted in an award rate which was significantly lower than its Federal counterpart.

The 1990 NSW Award did not attempt to restructure the NSW award along the lines of, nor did it include the distinctions, in the Federal Awards. There was no recognition that the industry included child care workers with a variety of qualifications from the older CCC and CCCS through to the new graduates with the Associate Diploma. There was no level 5 created recognising specifically the Associate Diploma qualification. In addition, a large number of child care workers with older qualifications had taken steps to update



their qualifications as the new courses came on stream. The 1990 NSW Award included those holders of a CCC or CCCS together with holders of the Associate Diploma. There was no equivalent of a Federal Child Care Worker Grade 3 to take account of this important difference in qualifications. In addition, those who were still studying, those who had taken an early exit from a course or those who had completed an introductory course in child care remained “unqualified” for the purposes of the award (see Ex 57 at 47). There appears to be no recognition of in-house training or of increased responsibility as was given with the Child Care Worker Grade 5 in the Federal Award. There was simply an absence of the concerns remarked upon by the AIRC about training, enhanced skills, higher responsibilities and the provisions of career paths.

The Minimum Rates Adjustment (MRA) process was included in the amendment to the NSW Award of 15 August 1990. The amendment introduced relativities with 100% being set for Child Care Worker Grade 1 (Step 1). The exact relativities are as follows:

<b>Classification</b>	<b>Step and Relativity</b>	
Child Care Worker Grade 4	Step 1	82.0%
	Step 2	83.0
	Step 3	84.0
	Step 4	85.0
Child Care Worker Grade 3		90.0%
Child Care Worker Grade 2	Step 1	87.4%
	Step 2	90.0
	Step 3	92.4
Child Care Worker Grade 1	Step 1	100.0%
	Step 2	102.0
	Step 3	104.0

(Ex 34, History, p 7)

Clearly, the 1990 NSW Award placed NSW child care workers at a lower level of relativity than that granted to their Federal fellow workers. The mark of equivalency was set at a Child Care Worker Grade 1 which, in effect, brought it equivalence with an Engineering Tradesperson Level 1 (or a C10 under the State Metals Award) for a child care worker who had completed an Associate Diploma and had to assume the degree of responsibilities of that position. In other words, the highest child care worker, holding an Associate Diploma qualification, was aligned at the 100% level rather than 117%. Without considering the problems in the relativities set in the Federal Awards in 1990, it is clear that if the relativity used in the Federal Award was to be used, then a Child Care Worker Grade 1 should have obtained an equivalency of between 110%, as it approximates a Child Care Worker Grade 4 under the Federal 1990 Award, and 117% which was the relativity paid to a Child Care Worker Grade 5. Alternatively, the additional qualification of Grade 5 should have been created. No consideration was then available in the Award for recognition of advanced responsibilities as a Co-ordinator or a Director of a child care centre.

Ms Kelly has noted two key points in the assessment of the NSW Awards in 1990 and in 1997. Firstly, unlike the Federal Awards, there is no mention in either NSW Award of lesser qualifications than the Associate Diploma. While the Federal Awards have Child Care Workers Levels 2 and 3 to cater for holders of the CCC or the CCCS, and equivalents, there is no such recognition in either the 1990 or the 1997 NSW Award. Secondly, the Federal Awards, despite recognising the existence of qualifications below the Associate

Diploma, did not provide parity with the wage rate for the Associate Diploma in the Metal & Engineering Industry NSW (State) Award.

No further major amendments were made to the Award until the 1997 amendments. Those amendments bring the Award up to date. The 1997 amendments (Ex 34 Tab 58) introduced a number of new classifications including an Advanced Child Care Worker and a Co-ordinator. However, the 1997 Award repeats the classifications and relativities embedded in to the 1990 NSW Award and does not, except perhaps for the new Co-ordinator classifications, provide the degree of sophisticated qualification grading available in the Federal Awards from 1990. The question of the appropriate recognition for Associate Diploma qualified workers has not been addressed, with the alignment remaining between a Child Care Worker Grade 1 and the Advanced Child Care Worker Qualified. It does not appear that in this consent award that any full assessment and evaluation has been made of a qualified child care worker's duties.

A comparison between the wage rates set for the 1997 NSW Award and those for the Federal Awards at comparable times reveal that an Advanced Child Care Worker Qualified (Step 1) is paid \$6.40 less than a Child Care Worker Level 4 (Step 1) and \$32.90 less than a Child Care Worker Level 5 (Step 1)(NT). At the top end of the Co-ordinator range the differences are even starker: for example, a Co-ordinator - Qualified Large (Step 1) (as at 8 October 1997) is paid \$186.40 less than a Director Level 3 (Step 1).

The relativities, although not directly comparable because of their different base rates, vary significantly. A Co-ordinator - Qualified Small (Step 1) is paid at 106% of an Advanced Child Care Worker - Qualified (Step 1) whereas a Director Level 1 (Step 1) is paid at 145% of a Child Care Worker Grade 3. A Co-ordinator - Qualified Large (Step 1) is paid at 110% of an Advanced Child Care Worker (Step 1) whereas a Director Level 3 (Step 1) is paid at 165% of a Child Care Worker Grade 3. Even taking into account that the relativities for the Federal Award would be less, if the base rate was a Child Care Worker Grade 4, and not a Grade 3, the disparities between the State and Federal Awards are clear.

A direct comparison of wage rates between the 1997 Child Care Award and the current Metal Industry Award reveals some interesting figures. A Child Care Worker receiving wages at the award rate is paid at approximately the same rate as a C12 (and less than a C11 even on Step 4). An Advanced Child Care Worker Qualified is paid at a rate similar to a C8, or more accurately between a C9 and a C8 at Step 1 and, at Step 3, at a rate between a C8 and a C7. A Co-ordinator - Qualified Large is paid at a rate less than, but closest to, a C6.

#### A COMPARATOR: THE METAL INDUSTRY

The comparator proposed for the Child Care industry is the Metal & Engineering Industry (NSW) Award 1984 (the Metal Industry Award). No attempt is made here to set out or discuss the Metal Industry Award in the same detail as

occurred with the Miscellaneous Workers: Kindergarten and Child Care Centres (State) Award above. However, what is set out below includes the structure of the award, wage rates, allowances and consideration of the recognition of qualifications. Following discussion of the Metal Industry Award some regard will be had to particular workplaces in the Metal Industry that were examined by the Pay Equity Inquiry and at which evidence was taken.

Effectively the award is divided into 14 wage categories: C14 (lowest) to C1 (highest).

<b>Wage Group</b>	<b>Classification Title</b>	<b>Minimum Training Requirement</b>
C14	Engineering/Production Employee - Level I	38 hours induction training
C13	Engineering/Production Employee - Level II	In-house training
C12	Engineering/Production Employee - Level III	Engineering/Production Certificate I
C11	Engineering/Production Employee - Level IV	Engineering/Production Certificate II
C10	Engineering Tradesperson - Level I or Production System Employee	Trade Certificate or Engineering/Production Certificate III
C9	Engineering Technician - Level I or Engineering Tradesperson - Level II	Completion of 33% of qualification for C7
C8	Engineering Technician - Level II or Engineering Tradesperson - Special Class - Level I	Completion of 66% of qualification for C7
C7	Engineering Technician - Level III or Engineering Tradesperson - Special Class - Level II	Post Trade Certificate or Formal Equivalent

C6	Engineering Technician - Level IV or Advanced Engineering Tradesperson - Level I	1st Year of Advanced Certificate
C5	Engineering Technician - Level V or Advanced Engineering Tradesperson - Level II or Graduate Engineer	Advanced Certificate or formal equivalent
C4	Engineering Associate - Level I	3rd Year of Associate Diploma
C3	Engineering Associate - Level II	Associate Diploma or formal equivalent
C2(a)	Leading Technical Officer, Principal Engineering Supervisor/Trainer/Co-ordinator	5th Year of Diploma or formal equivalent
C2(b)	Principal Technical Officer or Experienced Engineer/Scientist Level II	Diploma
C1(a)	Professional Scientist Professional Engineer - Level III	Degree
C1(b)	Professional Scientist Professional Engineer - Level IV	Degree

(Ex 74: Metal and Engineering Industry (New South Wales) Interim Award, 15 September 1991: 273 IG 848)

What is obvious from the Metal Industry Award is that there is a clearly established gradation of classifications from a basic unskilled and unqualified worker to an experienced holder of a degree in engineering. Further, the gradations are incremental and reflect the different qualifications and the completion of those qualifications. The Award recognises, in hierarchical order, in-house training, Engineering/Production Certificate (or the basic trade

in-house training, Engineering/Production Certificate (or the basic trade certificate), Post Trade Certificate, Advanced Certificate, Associate Diploma, Diploma and Degree qualifications. Within those qualifications, the Award recognises incremental completion of the basic trade certificate (C12 and C11), the Post Trade Certificate (C9 and C8), the Advanced Certificate (C6), Associate Diploma (C4) and Diploma (C2(a)).

Experience in the workplace is also integrated into the Metal Industry Award. Graduate Engineers, for example, can expect to begin as a C5 and, depending on their level of experience and aptitude, progress through the ranks to become ultimately a C1(b). The Metals Industry Award provides a clear career path for those employed under it and also obvious incentives for those persons to undertake further work-related study. The career path also neatly links trade related qualifications with higher tertiary qualifications such as a bachelor of engineering or science. Indeed, as can be seen with the C5 classification, there are classifications within the award, where employees holding different qualifications overlap but where the more advanced qualification allows for greater progression through the award structure.

Set out below are the wage rates (as from 15 August 1997) and relativities for each level. (The qualifications needed for each level are set out in the previous table):

	<b>Wage Rate</b>	<b>Relativity</b>
C14	\$359.40	78%
C13	376.10	82
C 12	398.60	87.4
C11	419.50	92.4
C10	451.20	100
C9	472.10	105
C 8	492.90	110
C7	513.80	115
C6	555.50	125
C5	576.40	130
C4	597.20	135
C3	638.90	145

<b>Wage Group</b>	<b>Wage Rate</b>	<b>Relativity</b>
C2(a)	659.80	150
C2(b)	701.50	160
C1(a)	785.00	(174)*
C1(b)	910.10	(201.7)*

\* The Award does not provide percentage relativities for the C1(a) and C1(b) classifications, but based on the current Award wage rates the above percentages can be extrapolated.

(Ex 74: Metal and Engineering Industry (New South Wales) Interim Award, 5 March 1993 and Metal and Engineering Industry (State Wage Case 1996)(Wages) Award, 15 August 1997.)

A further important element of the Metal Industry Award is the large number and diversity of the allowances available to employees. In addition to the



usual allowances for leading hands, tools, meals and travelling expenses there are allowances for such things as boiling down work, cold places, confined places, dirty work, lead works, working in submarines, sanitary works, wet places and so forth. In all there are 65 different allowances many of them adjusted depending on the classification of the employee (Ex 74, Metal and Engineering Industry (State Wage Case 1996) (Wages) Award, 295 IG 605 at 626 ff).

### METAL INDUSTRY WORKPLACES EXAMINED BY THE INQUIRY

#### Maintrain

The Inquiry conducted inspections and took evidence from management and employees at Maintrain located at Auburn.

Maintrain is a heavy duty maintenance facility for the NSW passenger and freight rail fleets of the State Rail Authority. Maintrain is one of a facilities in the A. Goninan Service Division. It employs approximately 234 people and is predominantly metal trades with an emphasis on fabrication, fitting and machining. Maintrain is a relatively new operation having been established following the privatisation and out-sourcing of the SRA's maintenance program (Ex 194). Employees are represented by the AMWU which has assumed coverage for the entire workplace including clerks and storepersons (although those persons may be members of other unions). Approximately 80% of employees are members of the AMWU.

The overwhelming majority of employees at Maintrain are men: 217 of the 234 employees are male and 17 female. In addition, 233 of the 234 employees are employed on a full-time basis with only one employed on a casual basis. There is a reasonable spread of employees over each of the classifications. Workers in the C10 classification form 16.2% of all employees with a total of 33% in the C12 to C10 classifications. Approximately 43% of employees are in the C8 to C5 category with only 3 people in the C3 classification or 1.3% of the total Maintrain workforce (Ex 195). Employee turn over is low although it had been high when the business started up and was still affected by the early 1990s recession.

The AMWU has negotiated an Enterprise Bargaining Agreement with Maintrain which covers all employees. That Agreement is the A Goninan & Co Ltd - Maintrain (Enterprise Bargaining) Certified Agreement 1996-1998 (Ex 194). Maintrain classifications follow closely on those in the Metals Industry Award and this includes the differentials between classifications (approximately 5%). The strength of the AMWU and the industry is clearly reflected in the over-award payments paid at Maintrain. Comparing the Enterprise Bargaining Agreement with the Metal Industry Award as at the beginning of 1998, it is apparent that a C10 at Maintrain is paid \$149.90 over the award as per the Enterprise Bargaining Agreement, a C8 is paid \$168.30 more, a C5 \$205.00 more and a C3 \$232.70 more than the award. Testimony revealed that no one has ever been paid the award rate at Maintrain or at similar metal shops in the industry. This clearly reflects the fact that the Metal Industry Award is a true minimum rates award.

Maintrain workers giving evidence before the Inquiry testified that they and many of their co-workers worked over-time on a regular basis, at least 8 hours per week on one worker's estimate (Exs 196, 197). Michael Brady, a C5 at Maintrain, indicated that in the week preceding his statement to the Inquiry he earned \$1036 gross. His pay packet could be divided as being \$781.40 under the Enterprise Bargaining Agreement together with an additional \$254.60 made up from over-time and allowances (Ex 196). Mr Brady estimated that he would work 8-16 hours overtime in a given week with current demands necessitating 16 hours in overtime at the time of taking evidence.

Mr Brady indicated that he obtained a trades certificate prior to commencing at Maintrain. For his current position of C5 he was required to have completed both the trades certificate "sheet metal worker" and the advanced trades certificate "post metal trade worker". He has also completed an advanced certificate in manufacturing technology and holds various other certificates (Ex 196 para 7).

Mr Brady's duties as a C5 worker are mainly concerned with the setting up and co-ordination of a satellite store for the Bogie shop in order to ensure that the company has the right storage racks, setting up a data base of inventories, designing processes and associated flow charts, developing handling procedures, training team based co-ordinators, co-ordinating meetings, managing the ordering process and invoicing and measuring the performance of projects (Ex 196 para 8).

A number of additional over-award payments are worthy of note. Maintrain operates a non-contributory superannuation scheme for its employees. The fund returns a payment which is 10% of an employee's years of membership multiplied by the average of his or her three highest salaries in the 10 years prior to leaving Maintrain. There are also special allowances for painting, welding and the use of hazardous chemicals (Ex 194).

Career paths and multiskilling development appear to be important parts of the Enterprise Bargaining Agreement at Maintrain. The productivity of Maintrain is directly linked to increasing the skills and advancing the careers of the employees:

The aim of the [Enterprise Bargaining Agreement's] structure is to facilitate a highly flexible and efficient operating system based on a multiskilled workforce which is achieving its full potential through continuous skills acquisition and career development. (Ex 194)

Maintrain provides many of its staff with either in-house training or, alternatively, promotes the taking of relevant courses run by third parties. This is in addition to TAFE based courses which provide the minimum requirements for entry to a new classification as in the principal Metal Industry Award (Ex 196). Examples of extra-TAFE courses include the SRA Shunters Certificate, Medix First Aid Course, C4 Mobile Crane to 80t and the C12 (OH Travel Gantry Cabin) which were all courses taken by Maintrain employee, Lawrence Pech (Ex 198). Michael Brady, a C5 at Maintrain, gave evidence of his progression from entry into the Maintrain workforce in 1993 as a C10 to his current classification as a

C5. This was achieved through a combination of studying for, and completing, an Advanced certificate in manufacturing Technology from TAFE and through the completion of Maintrain certificate courses such as a fork lift operating certificate and overhead crane operating certificate (Ex 196).

Soon after entering employment with Maintrain, employees are subjected to an assessment of "prior learning" which establishes what qualifications will be recognised by Maintrain, although this is effectively done by and in accordance with TAFE qualification principles. The aim is to have the new employee inserted into the Maintrain training and qualification structure but also to provide those new employees with nationally recognised qualifications. Employees are then enabled and encouraged to gain additional skills, whether in-house or externally. This has allowed Maintrain to foster multi-skilling and reduce both middle management and overheads.

#### AWA Plessey

AWA Plessey is a 100% owned subsidiary of Plessey Asia Pacific (Pty) Ltd which is, in turn, a subsidiary of Plessey Corporation Ltd. Plessey Corporation is a holding company for a group of businesses which manufacture and market telecommunications and professional electronics internationally. AWA Plessey is divided into four business units: communications, traffic, aerospace and project services. The communications unit, for example, supplies voice and data products and systems solutions to operators of public and private telecommunications networks whereas the traffic unit designs,

supplies, installs and maintains road traffic control systems. AWA Plessey is particularly strong in exports especially in the Asia-Pacific region (Ex 79). The Inquiry took evidence from employer and employee representatives at AWA Plessey on the occasion of site inspections at the company's premises at North Ryde.

AWA has approximately 180 employees of which 70% are men and 30% are women (Ex 76). In statistics supplied to the Inquiry with regard to 60 AWA Plessey employees women were concentrated in the lower classifications and in casual positions (C11 and C12 ). There were no women employed at above the C9 classification. Compared to Maintrain there was a greater concentration of employees at the bottom of the classification structure with 62.3% of workers in the C12 to C10 range and 23% in the C9 to C5 range. There was only one C3 working at AWA Plessey and one each at the C2(a) and C2(b) levels (Ex 80).

The major unions covering AWA Plessey are the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, the Australian Workers' Union and the National Union of Workers. The principal Enterprise Bargaining Agreement at AWA Plessey is the Plessey Asia Pacific Pty Ltd (AWA Plessey) Certified Agreement 1997. The Certified Agreement is based on the Metal Industry Award. Clause 8 of that agreement provides for two wage increase in April and December 1998 of 3.5% and 4.5% respectively. There appear to be no other

over-award payments or allowances in addition to those in the parent award save for some site specific agreements not tendered to the Inquiry (Ex 82).

Over-award payments are paid to all employees as per the Certified Agreement but they are not as large as those paid at Maintrain as a percentage of the award wage rate. A C10 is paid \$57.30 over the award rate per week, a C5 \$84.69 above the award and the C3 \$98.38 above the award. However, some employees receive overaward payments far in excess of even the Certified Agreement rate: one C7 received an extra \$126.74 above the Certified Agreement rate. Employees also have the opportunity to earn overtime payments. A leading hand allowance of \$19.30 is also paid to those qualifying for it (Ex 80). Overtime varies with production requirements but when, for example, a particular antenna was being built 31.95% of total wages was expended in overtime payments (Ex 220). The employer appeared prepared to take family obligations into account in approving particular hours for overtime.

The employer representative at AWA Plessey, Mr Bruce Dinnell, indicated that national competencies were used to establish particular competencies of jobs within AWA Plessey. Specifically, AWA Plessey relied on the National Metal and Engineering Training Course Competency Standards. Mr Arnold, a Production Test Team Leader, spoke about assessing competencies at AWA Plessey. He indicated that the assessment of competencies was not rigid and that a person could achieve employment in a job ascribed a particular classification in a number of different ways. Formal qualifications were often combined with experience for a particular job in assessing whether an individual

could perform that job. Accordingly, a particular classification could include persons with different skills and specialisations.

Mr Dinnell also flagged the emerging importance of multiskilling for the company as a way to shift workers between sections, rather than being forced to make workers redundant as a result of production requirements. Multiskilling was also a way in which workers could move up classifications, particularly from C12 to C11, and potentially even to C10, even if an employee did not have the requisite formal qualifications.

The Inquiry looked particularly at the position of a C3 classified employee at AWA Plessey, Mr Long Li. The minimum training requirement for a C3 employee under the Metal Industry Award is an Associate Diploma. Mr Li possessed both a Bachelor's Degree in Engineering from Zhejiang University in China (which is a four year course) and also held an Associate Diploma in Electrical Engineering from an Australian institution (Exs 87, 94).

Mr Li was formerly engaged with Interscan, prior to it being taken over by AWA Plessey. He was formerly engaged in working on radar systems and the building of antenna. He was employed at this time at the rate of, and carrying out the functions of, a C3 level employee under the Metal Industry Award.

At AWA Plessey, Mr Li is engaged in duties at a C5 or C6 level but retains the C3 base rate of pay (and additional over award payments) (Ex 80).



The C3 level skills and responsibilities performed by Mr Li were considerably greater than the duties he currently performs at AWA Plessey. Mr Li, in conjunction with Mr Jason Arnold (Production Test Team Leader at AWA Plessey and a person who completed relevant training in relation to assessing competency standards), prepared a table setting out the competency standards for Mr Li's former position (Ex 83). This former C3 position involved making and installing antenna worth well over \$1,000,000. Mr Li's functions involved acting as a leading hand in supervising production staff; conducting the work of a team and carrying out technical functions which, most significantly, involved the diagnosing and repair of electronic systems and digital systems and equipment. Mr Li did not have responsibility for designing and planning in relation to the radar systems and antenna.

In his current function at a C5 or C6 level Mr Li does not use his full qualifications in his work. He works in the production test area which consists essentially of technicians who are engaged in testing and setting equipment to specific customer specifications. The Commission conducted an inspection of Mr Li's work area and took evidence from him at that area (together with Mr Arnold) and observed the various testing functions he performed. In the examination of his work it was revealed that he carried out the following functions at the C5 or the C6 level:

1. He carried out functions situated at a bench in the factory;
2. He carried out testing and fault finding of electronic equipment

using various measuring and testing equipment such as multimeters and oscilloscopes.

Even though Mr Li is highly qualified he does not have the skills as yet to test every product in his present area of work. In fact those qualifications are supplemented by inhouse training by AWA Plessey in order to achieve product knowledge and competency.

#### COMPARING METAL INDUSTRY CLASSIFICATIONS WITH CHILD CARE WORKERS

It is interesting that in the final analysis no parties submitted that a comparison could not be drawn between the classifications within the Metal Industry Award and child care workers, notwithstanding the dissimilarity of those classifications. Rather there was a disagreement as to what was the appropriate level of comparison and whether competency levels could be used to align the respective positions. Specifically, the Employers' Federation/Chamber and the ACM considered that it is inappropriate to align, for remuneration purposes, the classification Advanced Child Care Worker: Qualified in the Miscellaneous Workers Kindergarten and Child Care Centres (State) Award (Ex 34 Tab 58) and the Engineering Associate - Level 2 classification (Level C3) within the Metal and Engineering Industry (New South Wales) Interim Award. This is so, notwithstanding that the Advanced Child Care Worker: Qualified is defined as a qualified carer who holds the Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications, and the C3 level in the Metal Industry Award is also required to hold an Associate Diploma. This contention is

maintained even though the classifications have relevantly similar AQF levels.

I have earlier concluded in relation to this matter as follows:

1. There are limitations in the use of competency standards in fixing remuneration and qualifications are an important guide but not a determinative factor.
2. There has been an undervaluation over time (including in the current award) of a qualified child care worker.

I agree with the submission by the Employers' Federation/Chamber that Ms Kelly was wrong in contending that the same rate of pay should be made to the qualified child care worker and the C3 level of employee because they hold the same level of competencies and same qualification level. Ms Kelly did not have recourse to a comparison between the competencies specifically ascribed to the respective levels (particularly on the Metal Industry side) or to the actual work performed. In any work value assessment these considerations are important.

I also consider that, in agreement with the Employers' Federation/Chamber it is noteworthy there are no competency standards developed beyond C5 in the Metal Industry Award and that it is possible that the C3 classification might be further realigned to an ASF level 6 (Ex 446 p 53 relying on the evidence of Mr Wright).

In short, I consider that notwithstanding the proximity of the qualifications of persons acting as qualified child care workers and C3 under the Metal Industry Award, upon the evidence as to the work performed by a C3 level employee it is not appropriate to align that classification with the qualified child care worker. Even with the elevation of the qualification of the child care worker to a diploma level, I consider that there is some insufficiency of comparison between the two classifications.

However, as I have earlier noted in my view, the child care worker has been undervalued because of the gender basis for the assessment of the original classification, the failure to clearly and succinctly remove this element of assessment from the classification structure, the failure to properly value the qualifications of the child care worker, the inadequacy of the Minimum Rates Adjustment process and subsequent consent award adjustments re-evaluating the classification.

The use of a comparator may assist in understanding the extent of or nature of undervaluation. It is appropriate to have regard to the Metal Industry Award in making such a comparison. This is so at least because this exact same comparison was undertaken in 1990 by the Australian Industrial Relations Commission and subsequently as a result of the operation of the Minimum Rates Adjustment principle.

In my view, the qualified child care worker should not have been aligned at the C10 level in the Metal Industry Award. The appropriate level may

be determined, partly by a comparison with the classification structure and rates of pay within the Federal award, and perhaps, more significantly, with the appropriate classification level and rate assessment within the Metal Industry Award. In this regard I agree with the alternative submission put by the ACM (Ex 441 para 61) wherein it is put that the more appropriate comparison may have been with the C5 classification in the Metal and Engineering Award. This submission is based upon the qualifications of the workers alone. There is a substantial basis in merit for a comparison at least at this level, having regard to the work performed by the respective classifications of worker, and fully taking into account, not only the qualifications of the child care worker, but the full range of functions performed by them, extending from caring and nurturing functions through to professional or para-professional functions associated with the development and teaching of children.

In my view, the duties and functions of child care workers are evolving in a similar historical fashion to teachers where they are moving into a professional or quasi-professional status and these factors should be taken into account in assessing their work. What is significant for the purposes of this Inquiry is, put simply, the work has been undervalued both simpliciter (that is, in terms of a failure to evaluate the true worth of the work itself) and by reference to relevant comparators.

However, the comparison does end at this point; there is a further important consideration. It will be evident from the descriptions of the child care industry and metal industry that I have given in this report that there are stark contrasts between the female dominated industry and the male dominated

industry at a more general level. These comparisons relate the level of unionisation, bargaining power, the structure and function of the relevant award, access to career paths, access to overtime and payment for overtime, access to overawards and enterprise bargaining, the size of the workplace, the service as opposed to the product related activities of the corporations and the "visibility" of the workers. There is also a stark comparison between the training offered or afforded the workers and the recognition of that training by way of compensation and career paths in the respective workplaces.

In my view, these distinctions are important. It is not merely appropriate to redress undervaluation in female dominated industries by a simple one for one comparison between classifications. True it is in the analysis conducted in this case, that it has been possible to demonstrate the source of undervaluation, both simpliciter and by reference to a comparator. However, as I will discuss later in the section titled "The Wider Dimensions of Undervaluation", the Commission must also be mindful of the combination of adverse factors which apply in female dominated industries which will almost inevitably have an impact upon whether or not there is a proper valuation of the work in that industry.

The combination of broad factors that I have identified did, on the balance of probability, have an impact upon whether or not child care workers would be properly evaluated. I might add in this regard that the process of making consent awards needs to be carefully scrutinised so as to avoid the undervaluation of female dominated work in this process. This caution is more than warranted upon the basis of this selected occupation. Having in mind these

considerations, I will now turn to consider comparisons between the Metal Industry Award and the Child Care Award, which exhibit some of the distinctly different trends between the female and male dominated industries to which I have so far referred.

### COMPARING THE TWO INDUSTRIES

A direct comparison between the Metal Industry Award and the Child Care Industry Award, and the way in which each has been implemented reveals some stark differences. In relation to those parts of the Metal Industry Award and vis-a-vis the Child Care Award these can be easily summarised as follows:

<b>Metal Industry Award</b>	<b>Child Care Industry Award</b>
specific recognition of different qualifications	poor recognition of different qualifications (e.g. no differentiation between CCC, CCCS and Associate Diploma holders)
recognition of partial qualifications (e.g. completion of first year of Advanced Certificate)	no recognition of qualifications less than an Associate Diploma or partial completion of qualifications or interstate qualifications short of CCC/CCCS/Associate Diploma level
high differentiation between classifications e.g. 11 classifications between an unskilled C14 and an Associate Diploma holding C3	collapsed structure - child care workers are essentially limited to two classifications the CCW and ACCW classifications with minor changes in remuneration if qualified
express recognition of experience	experience recognised only if relevant to achieving a position as an ACCW - Qualified
express recognition of in-house training	in-house training is not recognised at all in the award (despite having been specifically included for a Child Care Worker Grade 5 in the Federal Award)

clear career path - an unskilled metal worker may advance to a C10 with a trade certificate and from there to a C7 with a Post-Trade Certificate, to a C5 with an Advanced Certificate and to a C3 with an Associate Diploma	very limited career path - an unskilled child care worker may be classified as a CCW, on the gaining of an Associate Diploma she can only advance to an ACCW - Qualified
incentives for the gaining of further qualifications at various levels	only one incentive for gaining the Associate Diploma
wide range of relativities (78% for a C14 to 201.7% for a C1(b))	small range of relativities (82% for a CCW to 110% for a Co-ordinator - Qualified Large)
relativity of 100% set at trade level (C10)	relativity set above trade level at Associate Diploma level (Advanced Child Care Worker - Qualified)
precisely formulated allowances in a large number of circumstances	very limited allowances
true minimum rates award	unrecognised paid rates award

As for the differences in application of the award and significant workplace differences these can be summarised as follows:

<b>Metal Industry</b>	<b>Child Care Industry</b>
substantial over-award payments (up to 30% above the award in the case of Maintrain)	few or no over-award payments
regular availability of overtime work	no available paid overtime
high union membership	low union membership
strong union and high effectiveness in bargaining	low union membership equates to low bargaining power and very small number of enterprise bargains - all awards in child care have been by consent
high proportion of full-time employment in the industry	large number of casual and part-time employees
in-house training recognised for the purposes of classification and promotion	in-house training unrecognised
low to medium turn-over	high turn-over
low to medium labour costs	high labour costs (as proportion of total costs)



## CONCLUSIONS AND FINDINGS

The child care industry is, in a recognised sense, a relatively new industry. It grew out of the provision of pre-schools and kindergartens for children under school-age and emerged as an industry probably in the late 1960s. Regulation began with an award in 1969 for non-teaching staff employed in children's services known as the Miscellaneous Workers - Kindergartens &c (State) Award. That award is the precursor to the current and principal award in the industry the Miscellaneous Workers - Kindergartens and Child Care Centres &c (State) Award.

Women are the predominant employees in the child care industry. Estimates of female employment rates range from 90 to 95 % of all child care employees (Ex 57 at 7; Labor Council Submissions at 8), a statistic which manifested itself in replies to inquiries from counsel assisting the Inquiry (Ex 29). According to some of the witnesses before the Inquiry the number of men participating in the industry is increasing, but at a very gradual rate, and men are moving away from the direct contact roles in favour of management.

The child care industry is one of the female dominated industries that typifies the poorly paid nature of work which is performed predominantly by women. The EPAC Child Care Task Force found in 1996 that pay rates for child care workers were below those for unskilled occupations, such as shop assistants or car park attendants. The Task Force said that the child care

industry was out of step with the pay rates paid for workers with similar levels of education and training (Ex 57 at 6).

The child care industry is regulated by the *Child (Care and Protection) Act 1987* ("the Act") and, more specifically, the *Centre Based and Mobile Child Care Services Regulation (No 2) 1996* (most recently amended in May 1997 - "the Regulations") (Ex 35). The legislation provides a licensing scheme which applies to all centre-based care including long-day care centres, preschools, multipurpose centres, occasional child care services and mobile services. It does not apply to child-minding, babysitting or playgroups organised informally by parents (Regulatory Impact Statement at 97 and s4 of the Act). Licence conditions include compliance with a "Code of Conduct" and certain standards including child number and staffing ratios.

The child care industry is split into a number of sectors: long day care, pre-school, kindergarten, occasional care, vacation care, family day care, home based care and mobile services. Long day care was examined by this Inquiry. It is one of the larger sectors in terms of employees within the child care industry. It accounts for approximately 50% of all child care employees, not including preschools and kindergartens (Ex 57 at 7).

Not for profit child care facilities play a major role in the child care industry. Two organisations stand out particularly: KU Children's Services (the successor to the Kindergarten Union of NSW) and Sydney Day Nursery and Nursery Schools Association. Evidence was taken during the Pay Equity Inquiry

from both employer and employee representatives from KU Children's Services, Sydney Day Nursery, Lady Gowrie Child Care Centre, Redfern Day Nursery, Randwick Open Care for Kids (ROCK), Jelli Beanz Kindergarten, Blacktown Kindergarten Association and others. KU Children's Services and Blacktown Kindergarten Association are registered charities whereas the Jelli Beanz Kindergarten is a private child care organisation. Lady Gowrie Child Centre is an incorporated body under the *Corporations Law* but is also a non-profit "community based" organisation.

KU Children's Service operates over 130 facilities including 92 pre-schools and 38 long day care centres (in 1996) as well as other facilities such as before and after school care, occasional and mobile care, work based care and Adult Migrant Education Program child care for those attending English classes. KU Children's Services employs over 1920 people (Ex 36 and Ex 57 at 15) and is the largest private child care organisation in NSW. Sydney Day Nursery operates 21 long day centres, mainly in Sydney but also in the ACT and rural NSW. Kelly estimates the two organisations ran 56 or 14% of the 394 community based long day care facilities in NSW in 1996 (Ex 57 at 15).

By far the largest number of employees in child care centres fall into the two classifications known as Advanced Child Care Worker (Qualified) and Child Care Worker. The term "qualified" refers to qualifications received through the TAFE system which have been, in chronological order, the Child Care Certificate ("CCC"), the Certificate of Child Care Studies ("CCCS") and the Associate Diploma in Social Science (Child Studies). Qualifications will be

considered at length in a later section. There are a small number of Advanced Child Care Workers who are not qualified but they tend to be employees who have been working in child care for a large number of years. Child Care Workers can be both qualified or unqualified and the term denotes both lack of experience compared to and/or a lower level of responsibility than an Advanced Child Care Worker.

The distribution of employees in each classification varies from centre to centre. Minimum ratios of children to staff are set by the Regulations (see under Regulatory Framework). Most importantly each centre must have a certain number of primary contact staff and teaching staff in proportion to the number of children at the centre. If there are any children at the centre under 2 years old there must be a qualified member of staff present and this employee is typically a holder of the Associate Diploma (reg 35 of the Regulations).

The child care industry has a low rate of union membership. Evidence received during the course of the Inquiry indicated that for the Sydney Metropolitan area there was only a maximum of 500 members in the ALHMWU from the child care industry.

Child Care workers have not utilised industrial action in order to achieve wage increases. The ALHMWU indicated to the Inquiry that this was likely to be caused by isolation of child care workers, especially in small community based child care centres and also by the close relationship established between the workers and parents. Isolation is exacerbated by the

lack of nearby centres with access to fellow child care workers and the workers' close proximity with employers in many centres. The close relationship between workers and parents should not be underestimated. Unlike many service industries child care employees have daily contact with not only the children but, more importantly, the parents of those children. Industrial action is likely to have an immediate and personal effect on a child care worker. This is exacerbated because of the importance of the worker-parent relationship to the child care employees' performance of their jobs. The close working relationship between child care workers and parents has meant that workers have been conscious of the possibility of fee rises following any increase in wages or improvements in conditions and the consequences that could flow therefrom (Ex 36).

Although the Miscellaneous Workers - Kindergartens and Child Care Centres &c (State) Award is classified as a minimum rates award this, effectively, is a misnomer. There are very few over-award payments in the industry and those that do exist tend to go either to senior members of child care providers such as directors of child care centres, or to employees in larger organisations who have been able to successfully negotiate such overaward payments (Ex 57 at 37). Ms Kelly estimated from her own survey that only 18.5% of child care centres paid over-award payments to child care workers. The statistic rose to 24% if directors were included (Ex 57 at 35-36). Accordingly she concluded that more than 80% of child care centres paid the award rate to employees (Ex 57 at 36). The award is, for child care workers, therefore, closer to a paid rates award than a minimum rates award (Ex 57 at 37).

Information provided to the Inquiry as a result of requests from Counsel Assisting (Ex 29) support the conclusions that in the vast majority of cases employers pay at the award rate or marginally above (Lady Gowrie Child Centre Ex 41, ROCK Ex 45, Blacktown Kindergarten Association Ex 48, Jelli Beanz Kindergartens Ex 42). Over-award payments are not paid at Sydney Day Nursery except for a 4% extra amount in superannuation (Ex 68). At the Uniting Church Engadine Long Day Care Centre the Director, but no-one else, is paid an over-award rate (Ex 43). KU Children's Service pays an award rate of pay based on its own award: KU Children's Services (Other Than Teachers) (State) Award (Ex 38). This is a higher rate than the Miscellaneous Workers - Kindergartens and Child Care Centres &c (State) Award. Kanga's House pays an extra \$10.00, \$20.00 or \$30.00 a week in recognition for 4, 5 or 6 years plus service respectively and has a number of other over award conditions such as study leave, extra sick days and clothing allowance (Ex 52).

It was also evident to the Inquiry that there was very little paid over-time available for workers in the industry. Work outside of hours was demanded by employers but was repaid, if at all, only through time-in-lieu (Ex 46, 51) or by rostered days off (Ex 40). However, this was clearly out-of-hours work for which no compensation was provided by the employer. Work out of hours consisted of mainly preparation time for developmental activities and staff meetings. Evidence taken from employees at, for example, KU Children's Service, Sydney Day Nursery and Lady Gowrie indicated that overtime was rare and at many centres non-existent (Exs 40, 46, 51 and 53 ). This accords with Ms Kelly's findings (Ex 57 at 30).

Although there has been some enterprise bargaining activity in child care since its inception in NSW in 1991, enterprise bargaining activity has generally been low. Only 15 agreements were negotiated between 1991 and 1996 according to the Department of Industrial Relations (Ex 388), and only one of those, according to Ms Kelly, dealt comprehensively with wages and conditions (Ex 57 at 33). All of those agreements were non-union and they reflect a policy of the ALHMWU to pursue award-based increases and the development of a new classification system (Ex 57 at 33). Ms Kelly points out that this is in contrast to the IEU which has entered into "pattern bargaining" negotiations with employers. Teachers were able to negotiate an over-award payment of 5% from a limited number of child care centre employers but this was later absorbed into variations to the Teachers (Early Childhood Services Centres Other Than Pre-Schools) (State) Award (Ex 57 at 34).

Child care courses offered at TAFE have changed markedly since their initial accreditation in 1977. The major shift in courses offered which is particularly relevant to the Pay Equity Inquiry was in 1990 when the principal course offered through TAFE was changed from a certificate course to an associate diploma course.

The first child care TAFE course was the Child Care Certificate (CCC) accredited in 1977, although it was first offered at North Sydney TAFE in 1975. The course involved a total of 1872 hours over two years with 432 hours of practical work. It was aimed at those wishing to be child care centre workers

with responsibility for children aged 0-8 years old. It was anticipated that the graduates would work with teachers in pre-schools and trained staff in kindergartens, full day and occasional care centres and residential centres (Ex 55).

In 1985 the CCC was replaced by the Certificate in Child Care Studies (CCCS). The CCCS was referred to as "para-professional". The CCCS expanded the coverage of the course to include children 0-12 years old and services such as family day care, refuges, cot rooms/infants/toddlers, hospital, crisis/emergency care and early intervention. The component of practical work was increased substantially to 120 days. The CCCS marked the change from child care workers working as assistants to other more comprehensively trained staff (such as teachers), and child care workers working independently (Ex 69). In addition, the Department of Community Services also granted graduates equivalency, for employment purposes, of a Mothercraft Nurse in recognition of the mothercraft module introduced after the discontinuation of the CCC (Ex 55).

The Associate Diploma of Social Science (Child Studies) was accredited in 1989 and offered as a course for the first time in 1990. The course was aimed at training its students to work independently and in teams with children aged 0-12 years in a variety of children's services. Compared to the CCCS the Associate Diploma increased both autonomy and responsibility for qualified child care workers (Ex 69). The course was taught through both practical and theoretical components over a total of 1584 hours over two years. The practical component comprised over 372 hours. Some of the major



changes included with the Associate Diploma were that the entry level was upgraded from Year 10 to Year 12 high school education. Also for the first time the Associate Diploma was given advanced standing in university courses in early childhood education. Those holding the CCCS were able to upgrade to the Associate Diploma by completing the last stage of the Associate Diploma course on integrated programming (Ex 55).

The Diploma course commencing in 1998 represents a further progression from the Associate Diploma. It includes as a matter of course the higher standards needed for entry to the Associate Diploma and also offers the advanced standing at NSW universities in early childhood studies. In addition to improvements such as the integration of standards found in the National Child Care Core Curriculum, National Competencies and ASF/AQF levels, the Diploma provides students with an opportunity to specialise. Apart from the core compulsory units students may specialise in centre based care, family day care, indirect and direct care and out of school hours care.

Witnesses appearing before the Pay Equity Inquiry remarked that the changes in TAFE courses offered were due to major changes over the period in the child care industry. Ms Killiby, the Program Manager, Child Studies, Community Services, Health, Tourism and Hospitality Educational Services Division, Department of Education and Training (formerly NSW TAFE Commission) stated that “[t]he industry became more diverse, more complex, and more professional” (Ex 69).

The Associate Diploma course, for example, had been amended to incorporate the increased number of children under 3, the growth in long day care, resulting from an increased number of women in the workforce, the emphasis on “quality” care and its link to trained staff (Ex 55). The Quality Improvement and Accreditation System mentioned above reflected the emphasis at a national level of increasing quality child care and standardising it nationally (Ex 69). Ms Killiby points out that courses changed to keep pace with industry changes.

Ms Kynaston, Executive Director of the County Children's Services Association stated “[training] is extremely important. I think it is a critical factor in the delivery of quality service.” She remarked on the increasing complexity in early childhood research and the community's expectation of child care workers. She said that the increasing complexity had been factored in to the Diploma and had been a feature of the development of TAFE courses for a period. There had been a progression in terms of the courses better reflecting the service provided. The courses met the needs of industry particularly in relation to child development and meeting community based needs.

A further important defining moment in the progressive improvement in child care qualification and its differentiation from early childhood studies came with the Associate Diploma. The curriculum for the Associate Diploma was no longer solely based on child development and care in the early childhood field, but also on workplace competencies and skill progression within the Australian Standards Framework. Influence on course content moved away

from mainly educationally based experts to those with industrial experience (see particularly Ex 69).

Ms Godhard is the Executive Officer of the Sydney Day Nursery and Nursery Schools Association. She had formerly been a Manager, Education and Care of KU Children's Services.

Ms Godhard considered that the expectations placed upon child care workers had changed over time. There was a development of a body of knowledge beyond mere child learning and child playing activities. There has been an increased emphasis upon nutrition and health safety. There is a changed emphasis on cultural diversity and working with disabilities. There has been a greater emphasis on the development of programmes for intellectual and social development and these are reflected in accreditation in the industry. Significantly, Ms Godhard considered that the development of qualified staff increased the quality of care in child care services.

There was some debate before the Inquiry as to whether the level of qualification offered by the Associate Diploma course had accordingly been raised to ASF/AQF level 5 from ASF/AQF level 3. Wendy Lindgren, for example, was of the opinion that,

... when you looked at the old Child Care Certificate and you looked at the next Certificate in Child Care Studies and you looked at the Associate Diploma, they were very similar. In fact the first one should have been named an Associate Diploma rather than a certificate. We have always felt that the title 'certificate' did not indicate the true level of the course.

The Employers' Federation/Chamber submitted that the Associate Diploma and the diploma course for Child Care Studies was at approximately the same level and provided the same level of information, knowledge and skills as the former Child Care Certificate and Certificate in Child Care Studies. They relied upon the evidence of Ms Lindgren at various points in order to support this proposition. They also relied upon the evidence of Ms Godhard.

As I have earlier noted the evidence of Ms Godhard does not support this contention. However, I consider that, properly understood, neither does the evidence of Ms Lindgren. The extract that I have set out earlier does not indicate a view that Ms Lindgren considers the Associate Diploma course to be essentially at the level of the Child Care Certificate but rather the opposite, namely, that proper evaluation and assessment of the course at its introduction would have placed Child Care Studies at an Associate Diploma level even at that earlier time. In essence, the reason for the lower classification at the earlier time was because there was a considerable degree of difficulty in establishing a child care course and the pragmatic response was to fix a course at the certificate level.

I also consider that Ms Lindgren did recognise changes had occurred since the introduction of the certificate course. For example, she recognised that the courses had been redesigned, particularly in relation to the diploma course, which was now based on the National Child Care Competencies. The diploma course was now recognised as a course providing

advanced standing at least one year at Universities. Furthermore, the entry requirements for child care studies changed so that the entry level went from Year 10 to Year 12 (Higher School Certificate). One of the most significant changes recognised by Ms Lindgren was the requirement for more recent research to be recognised in the course and the need to adjust the training from pedagogy to competency based training. Furthermore, there were changes in health requirements and child abuse requirements.

I consider that the foregoing evidence demonstrates two fundamental aspects about qualifications and training in the child care industry:

1. There have been significant changes in the industry which have been recognised in the changes made to child care courses and qualifications; and
2. the industry has now developed to a point where the diploma course is recognised as giving advanced standing for university.

Whilst the Associate Diploma of Social Science Child Studies course was accredited in 1989, it is likely that the true qualifications for child care workers have reached that level or that stage at an earlier date than that. The Child Care Certificate course was accredited in 1977 and it is likely that, whilst the Certificate in Child Studies course was accredited in 1985, the child care workers had reached an Associate Diploma level of training by that time or shortly thereafter.

In short, the child care industry has seen major changes over the last 30 years in the type of work conducted, in the demand for its services and in the training and professionalism of its employees. The child care workers described by *Manuel* CC in 1969 (Ex 206) worked with little or no training and in what was an industry dominated by charities and characterised as mainly charitable.

The training of child care workers has grown remarkably since 1975 so that now child care workers can be seen as at least para-professionals if not professionals. Increased regulation in the area has cemented the role of properly trained child care workers in the industry. The National Child Care Curriculum and the National Competencies linked in with the AQF have helped standardise the qualifications nationally and have assisted in integrating child care courses with further tertiary study. Consistently rising demand and increased State and Federal funding, at least to date, has assisted in changing the focus of the industry, from mainly charitable, to a fully-fledged service industry in which professional standards are increasingly demanded from its employees.

It is without doubt that the current child care industry had its origins in charitable organisations. The two largest child care providers in NSW, the Sydney Day Nursery and KU Children's Services were both established with charitable purposes in mind. The former has been involved in child care for the last 90 years and the latter was established in 1895. The organisations were established to assist those who would now be regarded as women in low income

groups for social aims which have changed dramatically in the last thirty years. The flavour of the purposes for which the organisations operated can be found in the decision of *Manuel* CC when he considered the first award in the area - the Miscellaneous Workers - Kindergartens &c (State) Award 1969:

Mr Coleman, on behalf of the Sydney Day Nursery and the Nursery Schools' Association stated that this Association was providing a service in nurseries and nursery centres for the proper care and education of babies and children of needy people ... [T]he Association provides this service to many in these categories such as widows, deserted wives, divorced persons, invalid mothers with children whose home environment is unhealthy, children of migrants so that the children can get proper schooling ... and they were to the foremost in suburbs which he regarded as the poorer suburbs... (Ex 206 at 5-6)

The reasons given by Commissioner *Manuel* in setting the rates of pay for child care workers in this first award, and his decision to distinguish the rates for the Kindergarten Union of New South Wales and the Sydney Day Nursery from other employers in the industry, give important insights into the female characterisation of the industry and the effect of that characterisation upon valuation. I refer to some significant aspects of the decision below:

- (1) The union claimed that a comparison should be made with independent schools in setting the rates for child care workers. This was said to be the only available comparison. It does not seem to have been considered in the setting of the rates (p 4).
- (2) Reference was made to the application of first award principles which required attention being fixed upon existing rates and

conditions within the industry (p 8). However, the state of industrial regulation of the industry was described in vivid terms by the Commissioner at page 11 of his decision as follows:

The union's reference to the employees getting a just and reasonable return for their labours is irrefutable. However, if one looks at the rates currently being paid, they are, without fear of contradiction, extremely low by modern standards and should not be countenanced. They are not sufficient to maintain any worker at a decent or reasonably [sic] standard of living, indeed to allow such rates to continue or be encouraged in any industry is in complete disagreement with what Mr Justice Higgins said in 1909, 3 CAR page 1 at 32:-

Unless great multitudes of people are to be irretrievably injured in themselves and in their families, unless society is to be perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct, beyond the reach of bargaining.

- (3) The Commissioner then notes that the rates set in the industry are as a result of the employees' lack of bargaining power (p 12). He notes that the rates appear to have emanated from what was "a complete charitable system", the amounts paid over the years having been, "as was put in this matter at the 'whim of the Committee' and no doubt at as economical [sic] as possible, having regard to the fact the workers in the institutions were not dependent on it for their livelihood" (p 12). The Commissioner sets the rates of pay in the industry having regard to work value and public interest considerations.



- (4) The Commissioner then proceeds upon the basis that a conservative approach should be taken to the rates of pay so as to do justice to the persons using the industry and to the fact that workers in the industry might receive payments from other sources. For example he refers to one employee who received a deserted wife's pension (p 12). The Commissioner also refers to the clients of the Sydney Day Nurseries as being unmarried mothers, widows and others in needy circumstances (p 12).
- (5) The Commissioner's reasoning is most revealing as to his approach to the female composition of the industry:

I am not satisfied, from the evidence adduce [sic], or from the submissions made, that the employees in this industry are completely dependent upon the industry. Many, I feel, were originally motivated by a desire to make some contribution to community service and indeed, there are many who are remaining in such a category of being voluntary workers in this, completely free of receiving any payment, the Union has not raised any objection to this. They have condoned it, although they have no desire that it should extend. However, there are many who are employed on a part time basis ... whereas the teachers' helpers who are more in the category of child minding, work 28  $\frac{3}{4}$  hours and 37  $\frac{1}{2}$  hours ... (p 14-15).

It is clear from *Manuel* CC's decision that he saw child care workers as employed in an area more akin to female identified work such as child-minding and domestic service. His conception of "community service" appears based on assumptions that the labour provided by the volunteers was of

a kind which ought to have been provided by the community and that such labour would be undertaken by females, because women were then, and still are, predominantly the providers of child-minding services. In addition, the presumption that the workers and volunteers “were not dependent on it for their livelihood” is a clear example of commonly understood presumptions about men as bread-winners and women who work as the providers of only supplemental income. The presumption dates back to *Ex parte H.V. McKay* (the *Harvester Case*) and the *Fruitpickers Case* ((1907) 2 CAR 1 and (1912) 6 CAR 61 respectively). Such presumptions conspired to minimise the recognition by *Manuel CC* of appropriate rates of pay for child care workers.

Apart from the work value assessments conducted by *Manuel CC* there was no work value assessment of any classification of work in the award up to and including the award restructuring processes that were undertaken in 1988.

The consent award which was made in 1988 included a new classification structure. The highest classification in that award was the Child Care Worker Grade 1. This classification undervalued the work of child care workers in three important ways:

1. The definitions of child care worker did not distinguish between qualifications held at a CCCS level or an associate diploma level which, in my view, was inappropriate given the development of the qualifications at that time. Indeed, it appears that no independent

evaluation was undertaken as to the particular requirements or standards in the associate diploma course at that time.

2. There was no assessment of the work value of child care workers in order to undertake the award restructuring. This is significant because the award had hitherto been predicated upon assumptions about the performance of the work of child care workers, based on notions of domesticity and child minding, as opposed to qualified work.
3. In 1990 the Australian Industrial Relations Commission recognised that "members of this industry's workforce, from whom the community expects so much, have been disadvantaged". It is clear that by this time there had been no effective rectification of the undervaluation of the work of child care workers. This undervaluation of work derived directly from the characterisation of the industry as a female industry, or one in which the work was associated with purported female traits such as domestic and child minding. This observation is important, not only because the industry remained in this state until at least 1990, when a review was undertaken by the Australian Industrial Relations Commission but because the Australian Industrial Relations Commission did not undertake in that review any analysis of the causes of the disadvantage suffered by the child care workers. Rather the Commission undertook an evaluation based upon changes in

training and qualifications within the industry and some comparisons drawn with engineering tradespersons pursuant to the Minimum Rates Adjustment principle. However, the Commission did recognise the undervaluation of the associate diploma qualification and created a new level, Level 5 Child Care Worker in the Federal award.

Two particular difficulties emerge from the 1990 decision of the Australian Industrial Relations Commission. These are as follows:

1. The Commission accepted the agreement of the parties in the Minimum Rates Adjustment process. This resulted in the Child Care Worker Level 3, after one year's service, being aligned with the engineering tradesperson Level 1 in the Metal Industry Award. The Commission approached this task of alignment of comparing dissimilar work by comparing the training experience of the two classifications. However, the Commission then aligned the child care worker and engineering tradesperson, notwithstanding the fact that it found superior qualifications in the child care area. The Commission recognised that both classifications of work required work experience to complement their academic studies and both were taught a range of skills which must be applied in circumstances calling for the exercise of responsibility. However, the Commission recognised that the evidence showed that the student in the child care study will have had approximately twice

the number of hours of academic training as the student in the trade certificate course in the metal and engineering industry. Additionally, the Commission noted that two year courses in child care studies are rated in the register of Australian Tertiary Education at levels higher than the levels for which certificate trade courses are accredited.

2. As was later pointed out in the study made by Ms Kelly, the Associate Diploma level in the Metal Industry Award attracts a 145% or C3 level. The equivalent 145% level in the Federal awards covering the Child Care Workers is the director level.

The application of the Minimum Rates Adjustment principle in NSW in 1990 in fact aggravated and worsened the situation in both absolute and relative terms.

The 1990 NSW Award did not attempt to restructure the NSW award along the lines of, nor did it include the distinctions in, the Federal Awards. There was no recognition that the industry included child care workers with a variety of qualifications from the older CCC and CCCS through to the new graduates with the Associate Diploma. There was no level 5 created recognising specifically the Associate Diploma qualification. In addition, a large number of child care workers with older qualifications had taken steps to update their qualifications as the new courses came on stream. The 1990 NSW Award included those holders of a CCC or CCCS together with holders of the Associate Diploma. There was no equivalent of a Federal Child Care Worker Grade 3 to

take account of this important difference in qualifications. In addition, those who were still studying, those who had taken an early exit from a course or those who had completed an introductory course in child care remained “unqualified” for the purposes of the award (see Ex 57 at 47). There appears to be no recognition of in-house training or of increased responsibility as was given with the Child Care Worker Grade 5 in the Federal Award. There was simply an absence of the concerns remarked upon by the AIRC about training, enhanced skills, higher responsibilities and the provisions of career paths.

The 1997 amendments to the New South Wales Award do improve the relativities in relation to the Federal child care worker's award and the metal industry award, but did not fully remedy the inadequacies in the classifications and relativities embedded in the 1990 award. The position of the Associate Diploma Qualified Child Care Worker has not been fully and adequately addressed in the current award, with the alignment remaining between a Child Care Worker Grade 1 and the Advanced Child Care Worker Qualified.

#### THE COMPARISONS RAISED DURING THE INQUIRY

It is interesting in the final analysis that no parties submitted that a comparison could not be drawn between the classifications within the Metal Industry Award and child care workers, notwithstanding the dissimilarity of those classifications. Rather there was a disagreement as to what was the appropriate level of comparison and whether competency levels could be used to align the respective positions. Specifically, the Employers' Federation/Chamber and the ACM considered that it is inappropriate to align, for remuneration purposes, the

classification Advanced Child Care Worker: Qualified in the Miscellaneous Workers Kindergarten and Child Care Centres (State) Award (Ex 34 Tab 58) and the Engineering Associate - Level 2 classification (Level C3) within the Metal and Engineering Industry (New South Wales) Interim Award. This is so, notwithstanding that the Advanced Child Care Worker: Qualified is defined as a qualified carer who holds the Associate Diploma in Social Science (Child Studies) from TAFE or equivalent qualifications, and the C3 level in the Metal Industry Award is also required to hold an Associate Diploma. The contention is also maintained even though the classifications have relevantly similar AQF levels.

I agree with the submissions of the Employers' Federation/Chamber that the use of competency standards in evaluation processes needs to be treated with great care. The alignment of competency standards to the ASF or AQF are not scientific and are not necessarily related to educational outcomes (Ex 446 p 83). There does seem to be an input from industrial parties in the alignment process and to that extent the process is somewhat subjective (see the evidence of Mr Wright).

I also agree with the conclusions reached by Commissioner *Simmonds* in the *HPM Case* (Print 9210; 4/3/98) where he considered that competency standards do not provide a means of assessing attributes other than relative competencies such as skills and knowledge. There are other attributes to be taken into account such as responsibility, the nature of the work and conditions under which work is performed. I also agree with the distinction

raised by Commissioner *Simmonds* between the competency based description of a classification and qualifications as a basis for classification (Ex 404 p 36). I also broadly agree with the conclusions of Commissioner *Simmonds* that the appropriate method of evaluating "equal value" is to apply the criteria of work value (see also at p 36). However, as I will later discuss, I do not agree that the means of obtaining a gender neutral outcome, and one which properly and fully values the work of persons engaged in female dominated industries, is to apply the current wage fixing principles in relation to work value. Furthermore, I do not consider that the appropriate test (again for reasons I will later give) is to consider discrimination per se in attempting to evaluate whether there is undervaluation of work.

As to the qualifications, I refer to the submissions by the Crown parties (Ex 459 paras 277-282) where they submit that the Australian Qualifications Framework was implemented nationally in January 1995 to provide a comprehensive, nationally consistent framework for all qualifications in post compulsory education and training. This was done by the setting of benchmarks, descriptors and structure for qualification levels. Whilst the alignment of qualifications might need to be treated with caution, nevertheless, qualifications and training remain an important and objective means by which to assess the skills and knowledge of persons holding the qualification and having undertaken the relevant level of training. This was recognised by Ms Godhard in her evidence concerning the child care services. In essence it is recognised by the whole national Australian qualifications framework. Many witnesses spoke of the significance of recognising training and qualifications as a measure of skill



and knowledge.

In my view, the shortcomings of competency standards and their use in comparing work across industries should not be confused with the significance of qualifications and training as a guide to the assessment of the value of work. However, as will be later discussed, care needs to be taken that the credentialling process which gives rise to qualifications does not itself contain a bias.

In any event, I agree with the submission by the Employers' Federation/Chamber that Ms Kelly was wrong in contending that the same rate of pay should be made to the qualified child care worker and the C3 level of employee because they hold the same level of competencies and same qualification level. Ms Kelly did not have recourse to a comparison between the competencies specifically ascribed to the respective levels (particularly on the Metal Industry side) or to the actual work performed. In any work value assessment these considerations are important.

I also consider that, in agreement with the Employers' Federation/Chamber, it is noteworthy there are no competency standards developed beyond C5 in the Metal Industry Award and that it is possible that the C3 classification might be further realigned to an ASF level 6 (Ex 446 p 53 relying on the evidence of Mr Wright).

In short I consider that, notwithstanding the proximity of the

qualifications of persons acting as qualified child care workers and C3 under the Metal Industry Award, upon the evidence as to the work performed by a C3 level employee it is not appropriate to align that classification with the qualified child care worker. Even with the elevation of the qualification of the child care worker to a diploma level, I consider that there is some insufficiency of comparison between the two classifications.

However, as I have earlier noted in my view, the child care worker has been undervalued because of the gender basis for the assessment of the original classification, the failure to clearly and succinctly remove this element of assessment from the classification structure, the failure to properly value the qualifications of the child care worker, the inadequacy of the Minimum Rates Adjustment process and subsequent consent award adjustments re-evaluating the classification.

The use of a comparator may assist in understanding the extent of or nature of undervaluation. It is appropriate to have regard to the Metal Industry Award in making such a comparison. This is so at least because this exact same comparison was undertaken in 1990 by the Australian Industrial Relations Commission and subsequently as a result of the operation of the Minimum Rates Adjustment principle.

In my view, the qualified child care worker should not have been aligned at the C10 level in the Metal Industry Award. The appropriate level may be determined, partly by a comparison with the classification structure and rates

of pay within the Federal award, and perhaps, more significantly, with the appropriate classification level and rate assessment within the Metal Industry Award. In this regard I agree with the alternative submission put by the ACM (Ex 441 para 61) wherein it is put that the more appropriate comparison may have been with the C5 classification in the Metal and Engineering Award. This submission is based upon the qualifications of the workers alone. There is a substantial basis in merit for a comparison at least at this level, having regard to the work performed by the respective classifications of worker, and fully taking into account, not only the qualifications of the child care worker, but the full range of functions performed by them extending from caring and nurturing functions through to professional or para-professional functions associated with the development and teaching of children.

In my view, the duties and functions of child care workers are evolving in a similar historical fashion to teachers where they are moving into a professional or quasi-professional status and these factors should be taken into account in assessing their work. What is significant for the purposes of this Inquiry is, put simply, the work has been undervalued both simpliciter (that is, in terms of a failure to evaluate the true worth of the work itself) and by reference to relevant comparators.

However, the comparison does end at this point; there is a further important consideration. It will be evident from the descriptions of the child care industry and metal industry that I have given in this report that there are stark contrasts between the female dominated industry and the male dominated

industry at a more general level. These comparisons relate the level of unionisation, bargaining power, the structure and function of the relevant award, access to career paths, access to overtime and payment for overtime, access to overawards and enterprise bargaining, the size of the workplace, the service as opposed to the product related activities of the corporations and the "visibility" of the workers. There is also a stark comparison between the training offered or afforded the workers and the recognition of that training by way of compensation and career paths in the respective workplaces.

In my view, these distinctions are important. It is not merely appropriate to redress undervaluation in female dominated industries by a simple one for one comparison between classifications. True it is in the analysis conducted in this case, it has been possible to demonstrate the source of undervaluation, both simpliciter and by reference to a comparator. However, as I will discuss later in the section titled "The Wider Dimensions of Undervaluation", the Commission must also be mindful of the combination of adverse factors which apply in female dominated industries which will almost inevitably have an impact upon whether or not there is a proper valuation of the work in that industry.

The combination of broad factors that I have identified did, on the balance of probability, have an impact upon whether or not child care workers would be properly evaluated. I might add in this regard that the process of making consent awards needs to be carefully scrutinised so as to avoid the undervaluation of female dominated work in this process. This caution is more

than warranted upon the basis of this selected occupation.

A direct comparison between the Metal Industry Award and the Child Care Industry Award, and the way in which each has been implemented reveals some stark differences. In relation to those parts of the Metal Industry Award and vis-a-vis the Child Care Award these can be easily summarised as follows:

<b>Metal Industry Award</b>	<b>Child Care Industry Award</b>
specific recognition of different qualifications	poor recognition of different qualifications (e.g. no differentiation between CCC, CCCS and Associate Diploma holders)
recognition of partial qualifications (e.g. completion of first year of Advanced Certificate)	no recognition of qualifications less than an Associate Diploma or partial completion of qualifications or interstate qualifications short of CCC/CCCS/Associate Diploma level
high differentiation between classifications e.g. 11 classifications between an unskilled C14 and an Associate Diploma holding C3	collapsed structure - child care workers are essentially limited to two classifications the CCW and ACCW classifications with minor changes in remuneration if qualified
express recognition of experience	experience recognised only if relevant to achieving a position as an ACCW - Qualified
express recognition of in-house training	in-house training is not recognised at all in the award (despite having been specifically included for a Child Care Worker Grade 5 in the Federal Award)
clear career path - an unskilled metal worker may advance to a C10 with a trade certificate and from there to a C7 with a Post-Trade Certificate, to a C5 with an Advanced Certificate and to a C3 with an Associate Diploma	very limited career path - an unskilled child care worker may be classified as a CCW, on the gaining of an Associate Diploma she can only advance to an ACCW - Qualified

incentives for the gaining of further qualifications at various levels	only one incentive for gaining the Associate Diploma
wide range of relativities (78% for a C14 to 201.7% for a C1(b))	small range of relativities (82% for a CCW to 110% for a Co-ordinator - Qualified Large)
relativity of 100% set at trade level (C10)	relativity set above trade level at Associate Diploma level (Advanced Child Care Worker - Qualified)
precisely formulated allowances in a large number of circumstances	very limited allowances
true minimum rates award	unrecognised paid rates award

As for the differences in application of the award and significant workplace differences these can be summarised as follows:

<b>Metal Industry</b>	<b>Child Care Industry</b>
substantial over-award payments (up to 30% above the award in the case of Maintrain)	few or no over-award payments
regular availability of overtime work	no available paid overtime
high union membership	low union membership
strong union and high effectiveness in bargaining	low union membership equates to low bargaining power and very small number of enterprise bargains - all awards in child care have been by consent
high proportion of full-time employment in the industry	large number of casual and part-time employees
in-house training recognised for the purposes of classification and promotion	in-house training unrecognised
low to medium turn-over	high turn-over
low to medium labour costs	high labour costs (as proportion of total costs)

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## **CLERICAL EMPLOYEES & METAL TRADESPERSONS**

### **INTRODUCTION**

The nomination of clerical employees employed pursuant to Grade 3 of the Clerical and Administrative Employees (State) Award (Ex 384), and metal tradespersons employed pursuant to the C10 classification of the Metal Industry Award (Metals Award), was made by the Federated Clerk's Union (FCU). In making this nomination, the FCU sought to focus the Inquiry's attention on whether a disparity exists between the over award earnings of clerical employees as compared to metal tradespersons, and whether it is appropriate that different over award payments apply to Grade 3 clerical employees and C10 metal tradespersons engaged in the same enterprise.

The evidence with respect to this nomination was limited and as a consequence it is difficult for the Inquiry to make specific findings with respect to the presence or absence of pay inequities between clerical employees and metal tradespersons. Notwithstanding this fact, the evidence received by the Inquiry in relation to the operations of the Maintrain workshop in Auburn, New South Wales (Maintrain) is of importance as it provides an example of how it is possible to compare employee earnings in circumstances where a work force is compartmentalised into predominantly male (metal tradespersons) and female (clerical) occupations. In addition, the Maintrain evidence provides an example of a situation where the disparities, which can arise between the overaward payments made to employees, who are otherwise aligned for the purposes of



minimum rates adjustments, have been removed. By ensuring that there is a parity between the overaward payments of metal tradespersons and clerical employees, Maintrain has successfully addressed the concern of the FCU that, in circumstances where the minimum rate of clerical employees is aligned to that of a C10 metal tradesperson, it is only fair and appropriate that the overaward payments made to clerical employees and metal tradespersons also be equal and comparable.

### Maintrain

An analysis of the operational and organisational structure of Maintrain is contained elsewhere in this Report and for present purposes the information is not repeated.

### Classification of Maintrain employees

The terms and conditions of employment at Maintrain are governed by the A Goninan & Co Limited - Maintrain (Enterprise Bargaining) Certified Agreement 1996 - 1998 (Ex 194 Annex 3) (Agreement). The Agreement applies to all Maintrain employees bound by the terms of the Metal Industry Award 1984 - Parts I, II and IV (Ex 194, Annex 3, cl 3) and is based on a skills based classification structure which is intended to facilitate the creation of a "highly flexible and efficient operating system based on a multi-skilled work force which is achieving its full potential through continuous skills acquisition and career development" (Ex 194, Annex 3, cl 8).

There are 14 classification levels in the Agreement (although Maintrain does not recognise the C13 or C14 levels). These are:

Wage Group	Classification Title	Minimum Training Requirement	Relativity to Level 10
Level 1(b)	Professional Engineer Level IV	Four Year Degree	210%
Level 1(a)	Professional Engineer Level III	Four Year Degree	170%
Level 2(b)	Experienced Engineer Level II Principal Technical Officer	Four Year Degree or Diploma or equivalent	160%
Level 2(a)	Leading Technical Officer	Associate Diploma plus additional training	150%
Level 3	Engineering Associate Level II	Associate Diploma or equivalent	145%
Level 4	Engineering Associate Level I	22 appropriate modules of an Associate Diploma	135%
Level 5	Engineering Technician Level V Advanced Engineering Tradesperson Level II Graduate Engineer Level I	Advanced Certificate Advanced Certificate Four Year Degree	130%
Level 6	Engineering Technician Level IV Advanced Engineering Tradesperson Level I	12 appropriate modules of an Advanced Certificate	125%
Level 7	Engineering Technician Level III Engineering Tradesperson Special Class Level II	9 appropriate modules of an Advanced Certificate	115%
Level 8	Engineering Technician Level II Engineering Tradesperson Special Class Level I	6 appropriate modules of an Advanced Certificate	110%
Level 9	Engineering Technician Level I Engineering Tradesperson Level II	3 appropriate modules of an Advanced Certificate	105%
Level 10	Engineering Tradesperson Level 1 Production System Employee	Trade Certificate or Engineering Production Certificate III	100%
Level 11	Engineering/Production Employee Level IV	Engineering Production Certificate II	92.4%
Level 12	Engineering/Production Employee Level III	Engineering Production Certificate I	87.4%
Level 13	Engineering/Production Employee Level II	Up to 3 months structured in-house training	82.0%
Level 14	Engineering/Production Employee Level I	Up to 38 hours induction training	78.0%

(Ex 194 Annex 3)

In addition to applying to metal tradespersons employed at Maintrain the evidence revealed that the abovementioned classification structure has, since

1994, also applied to Maintrain's clerical employees. This is notwithstanding the fact that clerical employees at Maintrain are not covered by the Metals Award or by the Agreement (Ex 194 p 2). In order for clerical employees to be included in the Agreement's classification structure, it was necessary for Maintrain to establish an appropriate reference point between the salaries paid to clerical employees and those paid to metal tradespersons. For this purpose Maintrain chose to formally align the rate paid to Grade 3 clerical employees with the rate paid to C10 metal tradespersons (Ex 194 p 2). The C10 benchmark was adopted because it most closely reflected the market rate payable to clerical employees, based on the rates charged to Maintrain by recruitment agencies, as well as on Maintrain's own experiences with direct recruitment of clerical employees. In this respect Mr Colin Edwards, the Organisational Development Manager at Maintrain, gave evidence that the rates payable to clerical employees and C10 metal tradespersons were "within a few dollars a week" and that the cost of adjusting the salaries of Maintrain's clerical employees to bring them into line with the C10 metal tradespersons was approximately \$3,000 per annum.

Following the alignment of clerical employees with C10 metal tradespersons Maintrain began a process to fine tune the classification levels of various employees. This process of fine tuning was deemed necessary because it was discovered that the tasks performed, and the level of responsibility of some of Maintrain's clerical employees, were "significantly higher" than that of other Maintrain employees. As a result of this process, the executive assistants employed by Maintrain were re-aligned with the C9 classification, in recognition of the training courses which they had undertaken.

The evidence in respect of this nomination also revealed that the process of fine tuning employee classification levels was run in conjunction with the introduction of skills standards into the Metals Award. The introduction of these skills standards has assisted Maintrain in determining the appropriate classification level for its employees, and, in particular, those employees employed in the stores area, as it introduced a range of warehousing and materials handling benchmarks which could be used to evaluate and assess job roles. In this respect, Mr Edwards gave evidence that it was likely that, when finalised, the process of applying skills standards would result in a reclassification of the (exclusively male) work force in the stores area of Maintrain who are currently aligned with the C11 level, as well as the possibility that the clerical employees in the stores area would have the opportunity to have their classification level re-assessed. In addition, the evidence revealed that the reference to appropriate skills standards has assisted in the removal of job demarcations at Maintrain, thereby aiding in the process of producing a multi-skilled work force. Mr Edwards pointed to the example of how employees engaged in the stores area of Maintrain have been designated as production engineering employees and not as storepersons *per se*, thereby providing these employees with the same opportunities to undertake further training and education as are available to all other production engineering employees at Maintrain. Furthermore, it is the intention of Maintrain to rotate these employees through Maintrain's workshop areas, in order to assist in the removal of the narrow functional job descriptions which may have existed in the past.

The increased flexibility in assessing job classifications, which was introduced with the skills standards process, has provided Maintrain with the opportunity to conduct an overall re-evaluation and comparison of the skills of the clerical employees and storepersons employed in the warehousing area of Maintrain. As such, it is now easier for Maintrain to assess the skills base of an employee, such as Miss Diane Rayner, a clerk in the stores area of Maintrain. Miss Rayner gave evidence of her responsibilities with respect to the processing of delivery dockets and invoicing and as to how her responsibilities include the operation of Maintrain's component management inventory software (ManmanX). In order to undertake these responsibilities, Ms Rayner was required to undertake a special training course which provided her with the skills to enable her to properly operate the ManmanX system.

By recognising the specific skills of clerical employees, such as Miss Rayner, and thereby comparing them to the skills base of other employees, Maintrain has been able to break down the rigid job demarcations which existed under previous job classification structures. In this respect, Mr Edwards gave evidence as to how the skills assessment process could be further developed, so that it could be used to remove differences and inequities between groups, that are female dominated, and those that are male dominated, because the skills assessment process is one which enables Maintrain:

to break down the divisions wherever they exist to create a multi-functional resource that is properly multi-skilled and differentiated only on the basis of skill. That skill is defined in terms of national standards, the metals and engineering curriculum.

Rates of Pay and Overtime

The evidence presented to the Inquiry revealed that the pay scales applicable to Maintrain employees include a significant over award element. Between the C3 and C12 levels the comparison between the rates of pay under the Metals Award and the rates of pay under the Agreement is as follows:

<b>Pay Class</b>	<b>Weekly \$ (Agreement)</b>	<b>Weekly \$ (Metals Award)</b>
C3	871.60	638.90
C4	811.50	597.20
C5	781.40	576.40
C6*	761.00	565.10
C7*	700.90	523.40
C8*	670.80	502.50
C9*	640.80	481.70
C10*	610.70	460.80
C11	555.40	419.50
C12	525.40	398.60

\* includes a \$9.60 per week tool allowance.

(Ex 195 p 2)

Although the salary rates at Maintrain are well in excess of the minimum Metals Award rate, the evidence indicated that over award payments are a regular feature of employment in the metal trades. In particular, Mr Edwards gave evidence that he was unaware of any metals workshops which paid the basic Metals Award rate. The salary rates paid to Maintrain employees are therefore considered to be "market rates" and, as a consequence, any over award element is seen as a "default" which arises by virtue of the fact that the market rates differ from those specified by the Metals Award. For present purposes, what is of most

significance is the fact that, because the salary rates of clerical employees at Maintrain are formally linked to the rates payable to C10 metal tradespersons, the over award payments described above, including all allowances provided for in the Agreement, also flow on to Maintrain's clerical employees.

### Conclusion

The Maintrain evidence is important, because it indicates that it is possible to undertake a comparative analysis of the salary rates and job classifications of male and female dominated occupations within an organisation for the purposes of addressing any pay inequities which may have arisen.

In the context of Maintrain, this comparative analysis was undertaken as a part of Maintrain's strategy to achieve a "world's best practice" operation. The success of the program instituted by Maintrain is highlighted by the fact that Maintrain has been able to put in place a system which recognises, and deals with, inequities between job descriptions whilst, at the same time, ensuring the organisation's underlying viability and profitability.

By aligning various job descriptions (which would otherwise fall outside the scope of the Agreement) with the 12 band classification structure adopted in the Agreement, and by encouraging a continuous skills reassessment process, Maintrain has developed a model which serves as a useful reference point for organisations seeking to address inequities between male and female dominated job roles within the workplace.

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## HAIRDRESSERS & BEAUTY THERAPISTS

### HAIRDRESSING

#### Size of Industry and Gender Segmentation

According to the Professional Hairdressers' Association (PHA) there are approximately 5000 hairdressing salons throughout New South Wales (Ex 186 p 13). These estimates are roughly comparable with data compiled by the Australian Bureau of Statistics (ABS) which estimated that, as at June 1995, there were approximately 4,281 hairdressing and beauty salons operating in New South Wales (Ex 186 p 12). At the entry level there are approximately 3,977 students currently engaged in hairdressing and beauty therapy TAFE courses (Ex 382 p 2). This compares with a total of 4,883 students in 1997, 5,023 students in 1996 and 4,650 students in 1995 (Ex 382 p 2). Although the figures for 1998 are somewhat lower than those of previous years this is attributed to the fact that the 1998 figures have not yet factored in the expected increases resulting from mid year enrolments (Ex 382).

For the most part the hairdressing industry can be characterised as falling within the domain of "small business" with ABS data revealing that over 80 percent of hairdressing and beauty therapy salons employ less than 5 employees:



<b>Employment Size</b>	<b>Hairdressing and Beauty Salons</b>
less than 5	3481
5 - 9 employees	729
10 - 19 employees	69
20 - 49 employees	2
50 - 99 employees	-
over 100 employees	-
<b>TOTAL</b>	<b>4281</b>

(Ex 186 p 12)

Notwithstanding the above table, the evidence taken by the Inquiry revealed at least one salon which employed in excess of 100 employees, Mr John Paradee, the Managing Director of Milman International Australia Pty Ltd (MIA), giving evidence that MIA employed 119 employees (111 females, 8 males) (Ex 173 p 1). These employees were broken down by job classifications and gender as follows:

	<b>Female</b>	<b>Male</b>	<b>Total</b>
Managers	23	3	26
Senior Hairdressers	22	3	25
Part-time senior	50	2	52
Receptionists			2
Beauticians			1
Part-time beauticians			1
1 <sup>st</sup> year apprentice Hairdresser			4
2 <sup>nd</sup> year apprentice Hairdresser			1
3 <sup>rd</sup> year apprentice Hairdresser			1
4 <sup>th</sup> year apprentice Hairdresser			3
Salon Assistant			3
<b>TOTAL</b>			<b>119</b>

MIA is one of the largest hairdressing employers in New South Wales (Ex 173 p 1). However the gender segmentation of its workforce is representative of a general trend in the industry which sees hairdressing as the

most significant employer of female tradespersons. Out of a total number of 32,550 women in the trade and related works category in New South Wales as at May 1995, female hairdressers totalled 10,769 (Ex 186 p 10). As a percentage of the total hairdressing workforce in New South Wales this equates to 75.9 percent of all hairdressers (Ex 186 p 15).

### Distinguishing Between Hairdressing Salons

It has been suggested that geography is the key determinant in the segmentation of the hairdressing industry. In this respect the Australian Workers' Union (AWU) has divided the industry into the following three sectors:

- (i) **'prestigious' salons** in the City, Newtown, Oxford Street and Double Bay such as Anthony Whittaker, Jon Adams and Synergy;
- (ii) **metropolitan salons** in 'strip' shopping centres and larger shopping complexes which on average would employ less than 10 people. The largest proportion of hairdressers are located in this group; and
- (iii) **rural salons** which on average would employ less than 10 people.

(Ex 186 p 14)

The geographical breakdown adopted by the AWU was not endorsed by witnesses before the Inquiry who suggested that whilst distinctions can be drawn between hairdressing salons, they are not geographic, but are based on matters such as client service, client comfort and promotion to the client. In this sense the distinction between hairdressing salons can be related to the high price, low price dichotomy that exists within the hairdressing industry.

### Age of Industry Participants & Staff Turnover

Hairdressing is characterised by the relative youth of the workforce in the industry and the transient nature of employment. The majority of employees in the hairdressing industry are under 30 years of age and remain with their employer for periods of between one and two years (Ex 173 p 2, Ex 178 p 1). The exception to the above are generally employees occupying managerial positions who tend to remain with the one employer for longer periods of time of between 2-3 years. (Ex 178 p 1). This is attributed to the fact that managerial employees have greater security of employment by virtue of having employment agreements which include a salary in excess of the award minimum.

Even taking into consideration managerial employees the incidence of long term, stable employment in the hairdressing industry is low. In this respect Mr Peter Cordoney, the proprietor of Liberty Hairdressers and Everblades Hairdressers, gave evidence that in the 25 years that he had been in the industry only one employee had remained employed for a sufficiently long enough period to be entitled to long service leave.

Given the high attrition rate of employed hairdressers the evidence revealed that the hairdressing industry suffers from an acute shortage of qualified hairdressers, also known as senior hairdressers (Ex 171 p 2).

### Reason for Staff Attrition Rate

A number of reasons have been offered as to why the hairdressers industry suffers from such a high attrition rate. These include:

- the offer of higher earnings at other salons;
- hairdresser's wishing to open their own salons;
- the general transient nature of the industry with hairdresser's often working from home and changing jobs or moving locations;
- a belief that hairdressing, as compared to other trades (such as hospitality), has gone out of favour over recent times and a perception that the hairdressing apprenticeship, at four years, is too long;
- the desire to start a family and the associated parental responsibilities that that entailed; and
- a general concern about the lack of a career pathway for an employed hairdresser.

These explanations are reflected in ABS data which has highlighted the following reasons as to why qualified hairdressers have left the industry:

<b>Main reason last left trade</b>	<b>Hairdressing</b>
Laid off, lack of work	*4.1
Sought better pay, lack of career prospects or promoted	*2.7
More job security or sought better physical working conditions	*0.9
Wanted a change, or dissatisfied with job	14.9
Family, personal, or ill health	28.3
Other	*5.0

\*subject to sampling variation too high for most practical uses.  
(Ex 185 p 18)

Once employee hairdressers leave the “commercial” sector of the hairdressing industry it is uncommon for them to return, the evidence suggesting that, following a period out of the hairdressing industry, due for example to parental responsibilities, hairdressers lack the confidence to re-enter the commercial sector of the industry:

Q. You give evidence that older hairdressers, those above 30, tend not to practice. Is there a particular reason for that?

A. Yes. A lot of them perhaps practice at home, backyard, and so on but, as far as practice professionally, the nature of things, predominantly a female industry, they have been known to have babies and the demands of children and so forth. Generally they are about 10 or 12 before they are off their hands sufficiently to go back into the workforce. Then fashions have changed, techniques haven't but fashions have, and they perceive that they are not up with it and, often they prefer a part time job and they get something close to home to look after the children and so forth, and they just don't go back into it.

Q. Largely the reason for not going back into the trade is lack of confidence?

A. Confidence, yes. The TAFE has a refresher course for those sort of people which, I believe, is fairly well supported, but a lot of the hairdresser skills they learned such as communication and people skills during the course of their work does open up other areas of employment as well and, again, because of the flexibility of that they may go into that area as well.

### Training & TAFE

The training to become a qualified hairdresser in New South Wales can take one of three forms as provided for in cl.6 of the *Hairdressing Regulation* 1997 (Ex 256):

- (i) a TAFE indentured apprenticeship completed in NSW over a period of, or periods totalling, at least 4 years;
- (ii) work in NSW as a hairdresser (otherwise than as an

apprentice) for a period of, or periods totalling, at least 4 years; or

- (iii) work outside New South Wales as a hairdresser for such period, and in such capacity, as is considered satisfactory by the relevant regulatory authorities.

The TAFE hairdressing apprenticeship consists of both an on-the-job and an off-the-job component. The off-the-job component consists of 576 hours training which is undertaken during the first and second years of the indentured apprenticeship. During this 2 year period an apprentice is expected to spend one day per week at TAFE (36 days per year) (Ex 186 p 20).

The subjects undertaken during the TAFE hairdressing apprenticeship are:

Subject No.	Subject Name	Hours
4968A	Dealing with Customers and/or Clients	18
2050D	Safety for Cosmetology Services	18
2051A	Hairdressing, Workplace Orientation	18
2051B	Basin Skills	18
2051C	Design Elements and Client Characteristics	11
2051D	Hair Physiology & Chemistry	24
2052A	Haircutting Fundamentals	12
2052B	Haircutting - Solid form	16
2052A	Haircutting - Graduation	16
2052D	Haircutting - Layering	28
2052E	Haircutting - Graduation	16
2052F	Haircutting - Shaving & Beard Trimming	16
2052G	Haircutting - Combining Techniques	23
2052H	Haircutting - Commercial Styles	36
2053A	Fundamental Hair Design	33
2053B	Applied Hair Design	22
2053C	Creative Hair design	24
2054A	Perm Wave Winding	20
2054B	Applied Perm Wave Procedures	36
2054C	Perm Wave Processing	27
2054D	Perm Wave Variations	36
2055A	Hair Colour Application	12
2055B	Hair Colour Theory & Selection	24
2055C	Applied Hair Colouring	36
2055D	Commercial Hair Colouring/Lightening	36

(Ex 172 p 3)

The on-the-job training component is intended to supplement the training undertaken at TAFE, with the TAFE training acting as a base upon which 3<sup>rd</sup> and 4<sup>th</sup> year off-the-job training can build upon (Ex 186 p 20).

### Customer Relation Skills

Success in the hairdressing industry is dependent not only on the technical skills of a hairdresser but also on the ability of a hairdresser to interact with clients and keep them happy. Good customer relations skills are regarded as being essential. As a consequence some employers suggested that potential employees' interpersonal skills rated above their technical skills, that, for example, of Mr Peter Cordoney saying that:

When hiring staff we look for good people and communication, [sic] skills, personality, the right attitude and commitment to work. If they have these traits, we can teach them the hairdressing skills.  
(Ex 178 p 2)

However, this evidence does not take into account the significant changes in the industry, which have required an upgrading of technical skills, particularly in post trade training, and product knowledge to meet modern demands. This is often done in post trade training.

Given the importance of these customer relations skills it is somewhat surprising to note that the TAFE training in this area is, at best, minimal with the subject "Dealing with Customers and Clients" occupying only 18 hours out of a total course syllabus of 576 hours. As a consequence of the lack

of formal TAFE formal training in this area hairdressers receive much of this training on the job.

### Employee Representation

The Australian Workers' Union (AWU) has coverage of employees performing work in the hairdressing and beauty therapy industries (Ex 177 p 1). Union membership in the hairdressing industry is low (Ex 300 p 2), a factor which has been attributed by the AWU to the large number of small workplaces and the wide areas over which they are located. Prior to an orchestrated recruitment drive, AWU coverage in the hairdressing industry in the Greater New South Wales branch was estimated to be approximately 9 - 12 AWU members, however following the recruitment drive, AWU membership increased to 120 members. It should also be noted that Ms Sarah Kaine, a union organiser for the AWU, gave evidence that there is a "much greater" penetration of union membership in the hairdressing industry in the Wollongong and Newcastle branches of the AWU.

Given the low levels of union membership the incidence of industrial activity in the hairdressing industry is low (Ex 300 p 2).

### Employer Representation

The peak employer organisation in the hairdressing industry is the PHA. Anecdotal evidence taken by the Inquiry indicated that industry



membership of the PHA is not high (Ex 186 p 47).

#### Evidence of move from employee to owner

One of reasons attributed to the high attrition rate of employee hairdressers is a recognition that hairdressers often resign to establish their own hairdressing salons (Ex 173 p 2). Although detailed evidence was not presented about the costs involved in establishing a hairdressing salon, a number of witnesses suggested that the capital costs involved are relatively low. Estimates varied depending on the type of salon being established but the costs can be as low as a few thousand dollars and as high as \$150,000. The advertised cost of an already operating suburban salon, inclusive of equipment, ranges between \$10,000 - \$30,000.

#### Mobile/Home Based Operators

Mobile or home based hairdressers are those hairdressers who work outside the structure of a "commercial" hairdressing salon and conduct their business at the homes of their clients. The evidence taken by the Inquiry pointed to the rapid growth of mobile operators and the serious difficulties that these operators have presented to the mainstream hairdressing industry.

The rapid growth in mobile and home based operators has been attributed to the repealing of the *Local Government Act 1919* (NSW) and in particular of *Ordinance 62*. This Ordinance had the effect of, inter alia, ensuring that hairdressing premises were maintained in a clean and hygienic state, by

making it illegal to perform hairdressing upon persons in premises that were not licensed for that purpose. According to correspondence received by the PHA in July 1994 from the NSW Minister for Energy, Local Government and Co-Operatives, *Ordinance 62* was repealed "in accordance with the Government's policy of reducing the regulatory burden on business by removing licences and unnecessary prescriptive standards" (Ex 379).

Given that mobile hairdressers do not have the overheads that are associated with running a commercial salon, they have been able to undercut the pricing structures put in place by salons, thereby increasing pressure on an industry. In addition, the "commercial" hairdressing industry has raised a number of concerns about the health and safety standards of mobile and home based operations, Linden Swan describing how "[t]here is no way of knowing how their tools and equipment are kept in terms of hygiene. They are just an unknown ticking time-bomb as far as we are concerned."

#### Regulation of the Industry, Including Most Recent Changes

The hairdressing industry is regulated by the provisions of the *Factories, Shops and Industries Act 1962* (NSW) (Act) (Ex 199). For the purposes of the Act, s.104 defines a "hairdresser" and "hairdressing" to mean a person engaged in:

- (a) arranging, dressing, curling, waving, cleansing, cutting, . . . trimming, shaving, singeing, bleaching, tinting, colouring or otherwise treating the hair or beard of any person, whether by hand, or by any mechanical or electrical apparatus or appliances; or

- (b) massaging, cleansing or stimulating the scalp, face or neck of any person, whether with the use of cosmetic, antiseptic or similar preparations, or of tonics, lotions, or cream or otherwise; or
- (c) carrying out any beauty treatment on the premises of a hairdresser.

Regulation of the hairdressing industry falls under the jurisdiction of a Hairdressers Council, which has, pursuant to s.106(1), wide powers to:

- (a) investigate and make recommendations to the Minister in respect of special measures necessary to improve methods of hairdressing, standards of hygiene and sanitary conditions in premises used in connection with the trade or calling of hairdressing;
- (b) recommend to the Minister standards of efficiency necessary for persons engaged in the trade or calling of hairdressing;
- (c) recommend to the Minister measures necessary to regulate and control conditions under which hairdressers may carry on their trade or calling;
- (d) consider and recommend to the Minister any amendment of existing legislation and proposals for future legislation which in its opinion are necessary and desirable in respect of any matters relating to the regulation and control of the hairdressing industry.

The licensing of hairdressers is provided for in ss.107 - 110 of the Act. In particular s.108(1) provides:

“No person shall:

- (a) for fee, gain or reward act as a hairdresser unless he or she is the holder of a hairdresser’s licence granted under this Division;
- (b) employ, instruct or allow any person not the holder of a licence to act for fee, gain or reward as a hairdresser.”

Those guilty of a breach of s.108(1) are liable to the imposition of a pecuniary penalty not exceeding 25 penalty units, or \$2,750: s.147(1)(b).

To be entitled to a licence as a hairdresser a person must complete a course of training and pass examinations. Regulation 6(1) of the *Hairdressing Regulation 1997* (NSW) (Ex 256) provides that a prescribe course of training in respect to all aspects of hairdressing can be constituted by any of the following:

- (a) an apprenticeship in hairdressing completed in New South Wales,
- (b) work in New South Wales as a hairdresser (otherwise than as an apprentice) for a period of, or periods totalling, at least 4 years,
- (c) work outside New South Wales as a hairdresser for such period, and in such capacity, as the Director-General considers satisfactory.

The evidence (Ex 300) revealed that there are four classes of hairdressing licence. These are:

- (i) NSW Hairdressing Class 1 Combined Licence;
- (ii) NSW Class 2 Hairdressing Licence (Ladies' Hairdressing);
- (iii) NSW Class 3 Hairdressing Licence (Men's Hairdressing);  
and
- (iv) NSW Class IV Hairdressing Licence.

Of particular note is the Class IV Hairdressing Licence which is only required for hairdressers or beauticians performing beauty therapy treatments within a hairdressing establishment. At present the Class IV Licence is the only

licence applicable to those persons wishing to perform beauty therapy services; however, the Class IV Licence does have a number of significant limitations, not the least of which being that it applies only in respect of defined beauty therapy services. Furthermore, a Class IV Licence is only required if the person performing beauty therapy services is working within a hairdressing establishment. As such, there are no licensing requirements for beauty therapists who operate outside the confines of hairdressing salons.

The licensing of beauty therapists is discussed in more detail at a later section of this report.

#### Changing Demand for Hair Care Services

The hairdressing and general fashion industries are intimately connected, one witness describing how “hair styles complement the clothing fashions”. Changing trends in the fashion industry have meant that hair styles are constantly evolving and as such the skills base of hairdressers regularly needs to be updated so that they can keep up with overseas trends.

Witnesses who gave evidence stressed the significance of the interrelationship between changing fashions and training, Mary Doyle stating:

Fashion changes and if a new look comes in and it require [sic] a different hair cut, it's really nerve racking for a hairdresser, if a client walks in and produces a new hairstyle from a magazine or wherever and the hairdresser has never ever seen that hair cut and doesn't know what to do.

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