

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s.125 - application for new award

Queensland Services, Industrial Union of Employees AND Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Others (A/2008/5)

COMMISSIONER FISHER

6 May 2009

QUEENSLAND COMMUNITY SERVICES AND CRISIS ASSISTANCE AWARD - STATE 2008

Application for new award - Two stages - First stage consent award operative 3 November 2008 - Award incorporated SACS Award and CASH Award classification structures, position descriptors and salaries - Stage two amended application - Increased rates of pay and Equal Remuneration Principle - Work Value changes - Employer counter claim - Agreed statement of facts - Attitude of Government - Inspections - Witnesses - Undervaluation of work - Origins of community services sector - Cultural devaluation of care work as women's work - Nature of care work - Qualifications - Reasons for cultural devaluation of care work - Indicators of undervaluation - Industrial issues - Award history - Barriers to bargaining - Conditions under which work is performed - Relevant work features - Funding - Factors contributing to undervaluation of work - Work value of employees increased - Knowledge and skill - Changed practice methods - Greater complexity of service users and client need - Greater adherence to legislative standards - Counter claim - Graduate entry - Increments - Comparisons with other industries - Inability of sector to enterprise bargain - Salary sacrifice not taken into account - Undervaluation established - Work value recognised - Increases awarded - Equal remuneration component granted at 1% of award rate - Phasing in arrangements - Classification structure to be reviewed as to Advanced Practitioner - Draft amendment to be prepared by parties.

DECISION

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1. **Introduction**

Two claims are before the Commission seeking to obtain wage rates that more properly reflect the value of the work performed by community services workers and to ensure that their wages do not erode over time because of their incapacity to engage in enterprise bargaining. This decision responds to both of these claims.

1.1 **QSU Claim**

On 11 April 2008 the Queensland Services, Industrial Union of Employees (QSU) applied for the making of a new award to be known as the Queensland Community Services and Crisis Assistance Award - State. The application was in two stages. The first stage sought the making of the award and imported the wage rates then provided in the federal Social and Community Services (Queensland) Award 2001 (the SACS Award) and the Crisis Assistance Supported Housing (Queensland) Award 1999 (the CASH Award). This step was considered necessary because many of the organisations within the community services sector were said to be either unsure of their constitutional status or are not trading corporations for the purposes of assessing whether they are covered by the *Workplace Relations Act 1996* (Cth). The QSU contended this had led to a great amount of confusion and disruption for both employers and employees. It was also contended that because of the change to industrial regulation many employees had been left without the protection of an award that establishes fair and just employment conditions.

The filing of the application attracted interest from a number of employers and unions including The Australian Workers' Union of Employees, Queensland (AWU), The Queensland Public Sector Union of Employees (QPSU), the Queensland Nurses' Union of Employees (QNU), the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (LHMU), and the Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch, Union of Employees (AMACS). The QSU agreed to enter into discussions with interested organisations to resolve any matters of concern.

The Queensland Council of Social Service Inc. (QCOSS) also appeared in support of the making of the Award.

The first stage of the application had its substantive hearing before the Commission as constituted on 19 September 2008. By this time the application had been amended to accommodate the concerns of other unions and employers and also in some minor ways to take account of requirements of the *Industrial Relations Act 1999* (Qld) (the Act) and other State standards. The Award, known as the *Queensland Community Services and Crisis Assistance Award - State 2008*, (the Award) was made by consent, operative from 3 November 2008. The Award incorporated both the SACS Award and CASH Award classification structures, position descriptors and salaries.

Stage two of the application, which was later set out more fully in a Further Amended Application filed on 14 November 2008, sought substantially increased rates of pay for those employees covered by the Award and a 1.25% Equal Remuneration Component (ERC). At one point the application also sought to amend the graduate entry points, however, this aspect of the claim was not ultimately pursued after a correction of error was made by the Commission to insert clauses 5.7 and 5.8 in the Award, such clauses having been omitted in error from the original application to make the Award. The clauses had been part of the federal SACS Award.

The claim for increased rates of pay is made in accordance with the Act provisions s. 125 **Making, amending and repealing awards** and s. 126(e) which provides that the Commission must ensure an award provides equal remuneration for men and women employees for work of equal or comparable value. The application also seeks to achieve pay equity by correcting historical undervaluation and acknowledging changes in work value for workers classified at Levels 4 and above of the Award. To this end reliance is placed on the Equal Remuneration Principle (ERP) of the Queensland Industrial Relations Commission (2002) 170 QGIG 15 and Work Value Changes of the Statement of Policy - State Wage Case 2008 issued by the Queensland Industrial Relations Commission (2008) 188 QGIG 16. A subsequent amendment was made to clarify that the application is also being made pursuant to Part 5 of the Act **Equal remuneration for work of equal or comparable value**.

The increases sought in stage 2 of the application are to correct historical undervaluation, to establish rates which reflect the current value of the work and an ERC to ensure that the value of the rates now set maintain currency into the future given that enterprise bargaining is not a feature of this sector. The application seeks to obtain wage increases for both the Community Services Worker and the Crisis Accommodation Worker classifications. In this decision the generic term, community services worker, has been adopted to apply to both classifications.

1.2 Employer Counter Claim

On 23 January 2009 Jobs Australia, one of the major employer respondents to the application, filed a counter claim which was supported by the other employer respondents, Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers (QCCI) and the Queensland Community Services Employers Association Incorporated (QCSEA). The counter claim formally stated that the employer parties opposed the wage rates as claimed by the QSU. However, "[T]he employer parties do not dispute that there is warrant for phased in increases but not to the extent claimed. The salary levels proposed by this counter claim are it is submitted more representative of what would be expected from a claim based on the Equal Remuneration Principle."

The counter claim seeks significant increases in wages; an ERC of 1%; changes to entry level requirements for three and four year degree holders; the reduction in the number of increments at all classification levels to two and phasing in of wage increases. The QCCI submitted that the rates sought by the QSU are significant and not affordable or sustainable for the industry whereas the rates sought by the counter claim are fair and in the public interest.

The employer respondents generally supported each other's submissions.

Although welcoming the employers' claim for increased wages the QSU opposed all aspects of the counter claim.

1.3 Agreed Statement of Facts

In an endeavour to streamline the conduct of the case and in recognition of the broad agreement between the QSU and the respondents (at this stage including the National Retailers Association Limited, Union of Employers (NRA) representing Aged Care Queensland) that pay inequity existed in this industry the parties prepared an Agreed Statement of Facts (exhibit 5). As Jobs Australia said the Agreed Statement of Facts reflects the common concerns of the parties.

In summary this Agreed Statement of Facts acknowledges that the community services sector workforce is predominantly female engaged primarily in small workplaces and addresses pay equity issues under the following headings:

- Undervaluation exists;
- Community sector work is care work;
- Government funding models contribute to undervaluation of the work;
- Industry features have influenced undervaluation;
- Changes in the value of the work have not been recognised in award rates; and
- Undervaluation raises public interest concerns.

Each of these matters was addressed in evidence and submissions and will be detailed later in this decision.

In the Report of the first Pay Equity Inquiry, *Worth Valuing*, guidance was provided to industrial parties about how to manage the resource intensive and time consuming nature of pay equity cases in an adversarial setting. In particular the Inquiry recommended that much of the preparatory work could be done collaboratively to

ensure mutual understanding of the issues and the case to be conducted as well as to minimise the number of matters in dispute (p. 158). The Agreed Statement of Facts highlights the value in the parties adopting a co-operative, collaborative approach to complex cases. It assisted the parties in marshalling their evidence, narrowed the arguments around the above topics and reduced the hearing time.

1.4 Other Appearances

As mentioned earlier several unions and employers appeared in the initial hearings leading to the making of the Award.

The Queensland Council of Unions (QCU) intervened pursuant to s. 322(2) of the Act and made submissions in support of stage two of the application. By consent, QCOSS was given leave to be heard and made submissions in support of stage two of the application.

By correspondence dated 3 February 2009 the NRA withdrew from further proceedings.

1.5 Attitude of Government

As the Queensland Government is one of the major funding bodies of the community services sector the (then) Department of Employment and Industrial Relations was served with a copy of the application and the subsequent amendments. The Department did not appear in the proceedings.

A letter from the Minister for Transport, Trade, Employment and Industrial Relations, John Mickel MP, dated 26 May 2008 was tendered to the Commission by the QSU. The letter was in response to correspondence from the QSU advising the Minister of their intention to make an application for the making of a new Award for employees in the social welfare sector. In relation to the issue of higher wages for employees, the Minister said this "would be a matter for the industrial parties to negotiate or the QIRC to determine through arbitration". No commitment for funding to meet increased salaries was given.

The QSU also tendered to the Commission a letter from the Premier of Queensland dated 3 November 2008 to the Member for Cook, Jason O'Brien MP, responding to that Member's representations on behalf of the community sector organisations concerning community services wages. The Premier said:

"This Government will fund State Funded Community Service organisations for any QRC (sic) award wage increase."

The Commission notes that despite this correspondence the respondents were unable to advise the Commission of any commitment given by the State Government to funding any wage rises that might flow from this application.

2. Inspections

25 September 2008	North Queensland Domestic Violence Service, Townsville Sharehouse Youth Accommodation Program Inc., Townsville.
26 September 2008	Atherton Neighbourhood Centre, Atherton Tablelands: <ul style="list-style-type: none"> • Tablelands Drug and Alcohol Counselling Centre • Family Support House. Shelter Housing Action, Cairns Centacare, Cairns.
1 October 2008	West End Community House, Brisbane. Micah Projects Inc., South Brisbane: <ul style="list-style-type: none"> • Saint Mary's House; • Brisbane Homelessness Service Centre; • Lotus House; • Young Mothers for Young Women.
2 October 2008	Logan Youth and Family Services: <ul style="list-style-type: none"> • Early Childhood Support Unit; • Domestic Violence Unit. Inala Community House: <ul style="list-style-type: none"> • Family Day Care Schemes;

- Community and Individual Support Unit.

3. Witnesses

QSU's Witnesses

ATHERTON NEIGHBOURHOOD CENTRE

Claudia MORRIS, Co-ordinator of Volunteers and a range of Community Support programs.

Coleen NEVILLE, Manager, ANC.

Pauline Priscilla WEBB, Intensive Family Support Worker.

CENTACARE (CAIRNS)

Helga BIRO, Executive Director.

Larisa Jayne ARLIDGE (Ex Counsellor).

GOLD COAST SEXUAL ASSAULT SERVICE

Diane Sharon MacLEOD, Co-ordinator.

HEALTH AND COMMUNITY SERVICES WORKFORCE COUNCIL INC.

Wallis WESTBROOK, Executive Director.

INALA COMMUNITY HOUSE

Michele Lea MEREDITH, Chief Executive Officer.

Helen Margaret O'REILLY, Manager/Social Worker - Community Support Program.

LOGAN YOUTH & FAMILY SERVICES

Ingrid H. ANDERSON, Domestic and Family Violence Counsellor.

Catherine Mary BARTOLO, Chief Executive Officer.

Liza Mae GILBERT, Young Parents Support Worker of Youth and Family Services.

Robert John MUNCE, Co-ordinator.

MICHA PROJECTS INC.

Karyn WALSH, Co-ordinator.

NORTH QUEENSLAND DOMESTIC VIOLENCE RESOURCE SERVICE

Kim Anne CLEVERLY, Child Adolescent Support Worker.

Pauline WOODBRIDGE, Co-ordinator.

NAMBOUR NEIGHBOURHOOD CENTRE INC.

Mark WISCHNAT, Co-ordinator.

QUEENSLAND COUNCIL OF SOCIAL SERVICE INC.

Jill LANG, Director.

QUEENSLAND SERVICES, INDUSTRIAL UNION OF EMPLOYEES

David SMITH, State Secretary.

Michelle ROBERTSON (on secondment to Queensland Council of Social Service Inc.).

SHARE HOUSE YOUTH ACCOMMODATION PROGRAM INC.

Penelope Ann JANSEN, Co-ordinator.

SHELTER HOUSING ACTION CAIRNS

Sharon Patricia LARGE, Service Manager.

WEST END COMMUNITY HOUSE

Malcolm John CAMPBELL, Community Worker.

Peter Robert MADDERN, Tenancy Advice/Advocacy Worker.

WOMEN'S HOUSE SHELTA

Barbara Gay CROSSING, Refuge Support Worker.

Academics

Karen Elizabeth HEALY, Associate Professor, School of Social Work and Human Services, The University of Queensland.

Robert Lawrence LONNE, Professor of Social Work, Queensland University of Technology.

QCSEA's Witnesses

QUEENSLAND COMMUNITY SERVICES EMPLOYERS ASSOCIATION INC.

Matthew BIENSTOCK, President.

TENANTS' UNION OF QUEENSLAND

Janice McDONALD, Secretary.

4. Undervaluation of Work

The QSU has made its application for equal remuneration pursuant to the provisions of the Act and the ERP. Equal remuneration is defined in the Act to mean equal remuneration for men and women employees for work of equal or comparable value. In determining whether equal remuneration exists in this Award the Commission is guided by the ERP which sets out the types of matters to be considered. Each claim is to be determined on a case by case basis.

As the decisions in the *Dental Assistants Case* (2005) 180 QGIG 187-213 and the *Child Care Case* (2006) 182 QGIG 318-367 show no two cases are alike and the decision responds to the arguments presented. Here, the case presented did not seek to "unpack" the first work value element mentioned in paragraph 2 of the ERP i.e. the nature of the work, skill and responsibility required in the same way that the *Child Care Case* did. While detailed evidence was presented about the duties performed it did not identify where or how those duties, skills or responsibilities had been previously undervalued or had not been considered in past wage setting. Evidence, albeit of a limited nature, and largely elicited by QCCI, identified the conditions under which work is performed and other relevant work features - the other two work value elements of the ERP. The case about undervaluation of work conducted by the QSU focussed on the questions:

- What is the nature of the work being performed? and
- Has the work been undervalued? Why has it been undervalued?

Having addressed these matters the QSU went on to consider the extent of the undervaluation and how it should be corrected.

In addressing the value of the work and undervaluation the QSU submitted that:

- The work of employees at Level 4 and above has been historically undervalued and never appropriately assessed;
- Undervaluation is directly associated to gender or gender associated factors and that this work is characterised by features that fit the undervaluation profile;
- There have been changes in the nature of the work and the environment within which it is carried out that constitute increases in the value of the work that have not been reflected in the rates in the Award for employees at Level 4 and above;
- As a result of lack of enterprise bargaining within the industry or part of the industry covered by the Award all levels have been undervalued; and
- These matters are acknowledged in the Agreed Statement of Facts and the evidence before the Commission.

Given the way the QSU presented its case this decision does not systematically address each of the requirements of the ERP. Rather the evidence is examined more holistically with reference to the particular requirements being made under the headings below. However approached, the ERP requires the Commission to make a transparent, objective and non-discriminatory assessment of the value of the work.

In this matter the evidence established that a number of factors have contributed to the undervaluation of work. The evidence has not established, for example as it did in the *Child Care Case*, that gender assumptions had influenced the setting of rates in past wage setting cases. Nor has it established that rates have been undervalued because equal pay principles could not apply because it was a predominantly female occupation. Here the evidence points to a confluence of factors, none of which of or by itself has caused undervaluation but which, when taken as a whole, have contributed to the work being undervalued. While some research has established that the mere engagement in care work attracts a wage penalty the factors which have been identified in this case have gender at their heart. When the factors are considered collectively gender is seen as the common thread and a significant underlying cause of undervaluation of work in this sector.

The factors which have contributed to gender undervaluation of work are:

- The origins of the community services sector;

- Cultural devaluation of care work as women's work;
- Industry features;
- Industrial issues; and
- Government funding of the sector.

Each of these will now be addressed in turn.

4.1 Origins of the community services sector

Evidence was given by Professor Lonne and Associate Professor Healy about the origins of the community services sector. Professor Lonne commenced his analysis by referring to the origins of social work in the late 19th century in both Europe and the United States of America ostensibly as a response by mostly middle class women to the plight of the poor, especially women and children. It initially focussed on assisting the "deserving poor", that is, those who were seen to be in need as a result of external factors or situations over which they had little control rather than those who were seen as primarily responsible for their own plight.

Associate Professor Healy said that the social and community services sector in Australia had its foundations in the large religious charities that were the major providers of charitable services to vulnerable individuals and families from Australia's early settlement to the mid-20th century. The origins of the modern non-government community sector can be traced to the 1950s and especially the late 1960s when the federal government began to fund community services in response to demands from advocacy bodies such as women's groups and consumer representative organisations.

The community services sector is defined by the Australian Council of Social Service as:

"Community services include direct service delivery, advocacy, community development and preventative activities".

Since the mid-1960s the variety of community services organisations has grown operating as public, for-profit and not-for-profit and ranging in size from single worker organisations to those employing more than 10,000 people. As at 2006 the community services sector in Queensland was a growing industry with approximately 2,000 organisations employing over 20,000 people. In 2007 QCOSS estimated that approximately 43% of the community services sector in Queensland would be covered by state industrial regulation. Although some uncertainty remains about the extent of state versus federal coverage the majority of the community services organisations falling within the Queensland jurisdiction are in the small to medium sized category. One such medium sized organisation is Youth and Family Services Incorporated (YFS) at Logan which employs 132 staff. (Approximately 115 of these staff are covered by the Award). An example of a small organisation is the Women's House SHELTA which employs six support workers. Despite the lack of precision about the extent of state industrial regulation it is clear that a significant number of employees and organisations are covered by this Award and will be affected by this decision.

The aspect of the community services sector with which this application is concerned is employees performing social and/or welfare work in the not-for-profit organisations. This includes the associated administrative work.

Fields that Professor Lonne said are primarily run by the not-for-profit organisations are family and community support agencies; domestic violence services; relationship-based services; youth work; indigenous and cross-cultural work and child care. Disability and mental health and substance abuse are fields that are conducted by both government and not-for-profit organisations.

The community services sector is, as Professor Lonne said, one that is now large and complex and increasingly difficult to define and characterise because of its rapid growth, the diversification of programs and services, the ways in which services are structured and delivered and the ways in which professional and other staff operate. Despite this application only affecting a proportion of the community services organisations that operate in Queensland the description given by Professor Lonne to the sector in general is apposite to the organisations covered by this Award.

In the late 1980s and 1990s governments began to introduce a new mechanism to provide welfare services. In essence governments moved away from being service deliverers to policy makers and introduced contracts for the non-government sector to deliver services. Professor Lonne said that a primary rationale for this devolution of programs and the rise of contractualism was the belief that not-for-profit organisations could deliver services and programs cheaper than government could. Implicit in this was a downward pressure on the rising costs of social welfare particularly wages and conditions. The evidence of both Mr Bienstock and Ms McDonald supported this view. They said that community services organisations that are funded by government act as an extension of government social policy. In effect they carry out the necessary delivery of services not

undertaken by government in a cost effective way. The effect of this is that staff are inequitably paid lower than comparable public service positions.

As the evidence from Associate Professor Healy and the witnesses engaged in community services organisations shows this contracting of services has implications for how care work is valued by government. Later evidence will establish that the apparent tolerance of funding levels and resistance to industrially challenge the resultant low rates of pay are attributable to the predominance of women in the community services organisations. This has contributed to and perpetuated undervaluation of work in this sector.

The origins of this sector clearly show it developed from the work performed by well-intentioned women in a voluntary capacity or by those with a vocation. As the evidence of Associate Professor Healy outlined later in this decision will show an understanding of these origins helps to explain some of the reasons care work is valued as it is.

4.2 Cultural devaluation of care work as women's work

4.2.1 *Nature of care work*

In considering the nature of the work performed by community services workers it is first necessary to have some understanding of what is meant by "care work". To this end the evidence of Associate Professor Healy is instructive. Whilst noting the many and varied definitions she defines care work as "work that provides a face-to-face service and develops human capabilities of recipients". The term "human capabilities" refers to the health, skills and capacities such as the increased capacity to maintain social connections or to access community resources. This work is important for enhancing the quality of life of vulnerable individuals by increasing their capacity to:

- be self-determining by improving their access to community resources such as education and social support;
- remain in the community rather than in an institutional setting;
- develop positive family and community relationships; and
- reduce vulnerability to abuse, neglect or other forms of violence.

As Associate Professor Healy noted this care work can reduce costs to government and to broader society.

The QSU submitted that the work performed by employees is complex and requires the application of high-level skills often described as emotional intelligence. Further, for all employees the level of responsibility associated with the work is high given the social, medical or legal consequences that may flow from the advice, assistance, counselling, support and advocacy they provide.

Professor Lonne referred to the three skill sets that social workers and social care professionals are required to develop and apply, *viz.*, interviewing skills, assessment skills and working with complexity. In relation to the first two Professor Lonne said these skills have to be applied both when reacting spontaneously to a situation which presents while simultaneously thinking through and analysing the issues in order to provide appropriate assistance. In relation to working with complexity both Professor Lonne and most other witnesses identified the complexity of the service users who present with multiple issues e.g. homelessness, mental health or substance abuse issues or chaotic interpersonal situations where explosive violence, depression or a range of behaviours may be present. The professional community services worker must have the skills to assist the service user understand their internal processes and to provide strategies to change behaviour. In addition, the community services worker must have the skills and knowledge to de-escalate situations where service users are violent or abusive towards staff.

The work is performed by community services workers who are not formally qualified; by those who have vocational education qualifications and those who are professionally qualified. The direct care work is supported by administrators, supervisors and managers. In considering the nature of the work performed by direct care workers the qualifications available are described to show the types of skills obtained and utilised.

4.2.2 *Qualifications*

Mr Westbrook explained that the role of the Health and Community Services Workforce Council is to provide advice and support to the health and community services industries in relation to workforce planning and management issues. It examines such matters as skill requirements and impediments to people remaining in the industry to ensure an adequate supply of appropriately skilled employees to meet current and future needs of the industries.

The evidence of Mr Westbrook addressed the qualifications available for employees in the community services sector. He referred to the development of a specific training package for the sector which contains approximately 50 qualifications from work experience and entry level to advanced practice qualifications. This package is a nationally endorsed framework that establishes national qualifications aligned with the Australian Qualifications Framework. The package contains qualifications ranging from Certificate I to Certificate IV as well as Diploma and Advanced Diploma. Each qualification has a particular set of competency standards to be achieved and includes both compulsory and elective competencies.

A new qualification which has been introduced is the Vocational Graduate Certificate which is specifically designed to provide advanced practice and skills. It is available to people who have a qualification at either advanced diploma or university degree level and provides greater practical application of theoretical knowledge. The Vocational Graduate Certificate included in the Community Services Training Package is in Community Services Practice [Statutory Child Protection].

In addition to the formal qualifications skill sets are being introduced. These do not replace formal qualifications and indeed such qualifications are necessary before a skill set can be obtained. However, skill sets allow workers to obtain additional skills or expertise which enables them to work more effectively in a particular area. They have been developed in response to the increased complexities of the work in the industry, particularly complexities associated with the client group. Examples of skill sets include: Homelessness support work skill set; Community sector team leadership skill set; Mental health skill set and Alcohol and other drug skill set.

QCOSS submitted that the development of this 2008 Community Services Training Package recognises the complexity involved in the delivery of quality services to individuals and communities.

Professor Lonne gave evidence about the training of social workers (four year degree). He said the Australian Qualifications Framework of Universities Australia sets a requirement for undergraduate degree programs. In social work the standard program for entry level is a four year undergraduate degree or its equivalent or a two year postgraduate degree following the completion of an undergraduate degree (either three or four years). Students are also required to undertake two placements totalling 980 hours of direct practice whilst supervised by an experienced social worker.

Professor Lonne also gave evidence about the growth in employment in the community services sector of graduates from three year degrees in social science/human services/welfare disciplines. Those who train in the latter two or community services courses accredited by the Australian Institute of Welfare and Community Workers undertake about 400 hours of on-the-job training. In his opinion, three year trained graduates do not have skills and knowledge equivalent to four year trained social workers.

The evidence presented by Mr Westbrook shows that employees in the community services sector are more likely to have a post-school qualification than workers across all industries and opportunities for skill acquisition are increasing in the sector. Despite the prevalence of qualifications employees in the community services sector have lower gross weekly incomes.

4.2.3 *Reasons for cultural devaluation of care work*

Associate Professor Healy gave evidence about the reasons for this. She referred to research which shows that care work has generally been culturally devalued as women's work. She gave four reasons for the lack of appropriate remuneration of direct service work commensurate with the level of skill and responsibilities assumed:

- (i) caring work is associated with the supposedly inherent caring skills of women;
- (ii) both within the sector and the broader community care work is seen as a vocation rather than an occupation;
- (iii) the evolution of the work from voluntarism and the continued widespread use of volunteers has complicated the assessment of the value of the work; and
- (iv) the nature of the client group can cause community services workers to compensate for shortfalls in funding by providing unpaid or underpaid work.

In relation to point (i) Associate Professor Healy referred to a study done by economists England, Budig and Folbre, "Wages of Virtue: the Relative Pay of Case Work", 49 *Social Problems* 455 which considered the wage penalty associated with paid care work. In that article the authors say that "paid care work consists of those functions of care for dependents historically done by women in the family". Although much of that work is now taken over by community services organisations notions of the work still stem from ideas of gender and motherhood that come from the culture.

This may mean that modest relative pay is seen as appropriate for this work and as the work is predominantly performed by women then given the cultural devaluation of women the work is likely to be also devalued.

In addition as care is associated with women and mothering the skills are more likely to be seen as "natural" and thus either go unnoticed or are not seen as deserving of remuneration.

This point leads on the second reason that care work is devalued, that is, that care work is seen as a vocation and as such not deserving of decent wages. As England *et al* say:

"While mothers are revered, there is a sense that they *should* provide care out of love, not for money. That is part of why they are revered! This notion may be extended to paid care work so that care workers are implicitly expected to prove their proper motivation by accepting a wage penalty" at p 457.

The authors highlight the paradox of this cultural construction. While care work is respected it denies decent wages to those who provide the care.

Further, Associate Professor Healy commented that the view that community services work is a vocation is also attributable to the origins of the sector in religious institutions and its development through social movement organisations in the 1960s-1980s. Professor Lonne referred to empirical research which reveals that many, if not most, social workers and human service professionals view their career choice as a vocation. This view is held by the existing workforce and those selecting tertiary studies in social or welfare work.

In relation to the issue of volunteers it is clear that they have an important and critical role to play in community services organisations. However, the use of volunteers can prove to be a double edged sword. On the one hand it is clear that volunteers are essential - to participate on committees of management and perform a range of administrative tasks that paid staff do not have the time or expertise to perform. Volunteers also have roles in service delivery. For example, the Atherton Neighbourhood Centre has 36 volunteers who perform a variety of tasks ranging from reception to bus driving. On occasion volunteers are used in community services organisations when paid staff cannot be recruited, otherwise they are used to complement the work of paid staff.

The flip side to the use of volunteers is that it may cause paid work in the community services sector to be undervalued. This has occurred because the sector grew from the work initially performed by volunteers, predominantly women. There remains a view that much of the work now performed can still be performed by volunteers and as such it is not and need not be remunerated as highly as similar work performed in other sectors or industries. However, as Ms Jansen remarked in her evidence, well meaning intentions with the focus on helping people do not have the ability to address the real issues people are dealing with and can do more damage. A more professional approach is required.

The fourth point above alludes to the "other relevant work features" aspect of the ERP as it highlights that the work can be devalued by the performance of unpaid or underpaid work. Associate Professor Healy said the client group with whom community services workers often work are generally profoundly disadvantaged and distressed people who have little or no ability to pay for their care. This can lead the workers to underrate their own workplace disadvantages and to internalise community, employer and service user expectations such that they will compensate for shortfalls in funding by performing unpaid or underpaid work. This factor also relates back to the cultural association of women with the quality (rather than a skill) of empathy and the notion of care work as a vocation.

The evidence of Ms Large confirmed many of the reasons identified by Associate Professor Healy for the low pay found in community services work. She referred to "the common notion in the wider community that workers who are employed by community-based organisations should perform their duties based on the premise they are working for the betterment of society, performing an act of kindness and therefore are not entitled to fair pay and conditions. There is little recognition of the complexities that workers are required to respond to on a daily basis in their willingness to support community members who are some of the most disadvantaged and vulnerable in our society."

All four factors identified by Associate Professor Healy are related to gender. The last three reasons for the undervaluation of care work outlined by Associate Professor Healy differentiate community services work from other industries and are factors which are not present in predominantly male occupations or industries.

4.3 Industry features

The QSU relied on the second Pay Equity Inquiry report, *Pay Equity: Time to Act*, produced by the Commission as constituted, where it was stated that the community services sector displays many of the characteristics of the undervaluation profile. Reference was also made to the evidence produced in these proceedings which, it was submitted, support those conclusions.

Under this heading consideration is given to the indicators of undervaluation that were developed by the NSW Pay Equity Inquiry headed by Glynn J (*Report of the Pay Equity Inquiry*, vol 1, pp 46-7) and which were adopted in the first Pay Equity Inquiry conducted by the Commission as constituted. The "profile of undervaluation of work" contains a number of indicators that might suggest the possibility of undervaluation of work based on gender. The NSW Inquiry noted that not all indicators would necessarily be present in each case, but it is likely that most cases would contain some of them. In my view, because of the absence of any long established award history which may point to undervaluation of work through the industrial process, consideration of relevant indicators of the undervaluation profile may provide more comprehensive information about the factors which may have influenced the rates found in the Award.

4.3.1 Indicators of undervaluation

- *female dominated*

The evidence shows that the community services sector is predominantly comprised of female employees. The report, *Who Cares? Volume 1: A Profile of Care Workers in Australia's Community Services Industries*, written by Gabrielle Meagher and Karen Healy for the Australian Council of Social Service, June 2005, draws primarily on ABS data and shows that in 2001, 88.4% of care workers in community services were female. Although this information was not broken down by State and includes some government community services this figure is consistent with other evidence included as part of Mr Westbrook's affidavit which shows that the community services workforce is predominantly female standing at 87%. This compares with the all industries average of 45%.

Further support for the view that the community services sector is female dominated is drawn from the evidence of Professor Lonne who said that the gendered nature of the workforce is increasing particularly with respect to the profession of social work which is now more than 85% female. The evidence from Mr Westbrook is that at May 2007 the community services workforce is growing at 8.2% per annum with the biggest growth according to Professor Lonne occurring in the human services/social welfare and social science qualified staff. The evidence of Mr Westbrook was that predominantly women hold these qualifications in the sector as it provides a legitimate career pathway for them.

In addition the evidence from the QSU's witnesses as to the gender composition of their organisations showed they were predominantly female. In some organisations no men are employed, e.g. Shelter Housing Action Cairns where no male has been employed since the organisation was incorporated in 1989. This is not due to discrimination but a paucity of men applying for positions. The evidence also showed that men who were employed in the sector usually had a partner who worked in another industry and was more highly remunerated.

- *female characterisation of the work*

The evidence of Associate Professor Healy, described above, referred to research which shows that care work is associated with women's work. This evidence is supported both by Professor Lonne and Mr Westbrook. In describing the origins of care work Professor Lonne noted that in western societies care work is seen as women's work as it is a derivative of maternal instincts. Reference is also made to his evidence, noted earlier, about the vocational aspect of professional care work. Mr Westbrook referred to research about community perceptions of care work which showed that community services work was seen as being done by "good people", generally women,

- *often no work value exercise conducted by the commission*

The review of the history of the Award shows that the rates have not been reviewed, except for an adjustment to the four year graduate entry rate, since it was made in 1996.

- *few union members*

The evidence of the QSU Secretary, David Smith, is that the rate of unionisation is low - estimated at 10%.

- *consent awards or consent amendments to awards*

The review of the Award history shows that the rates and level descriptors were made by consent.

- *large component of casual workers*

In this sector the evidence shows that part-time employment is more widespread than casual work. Data drawn from ABS Social Trends 2005, included in an attachment to Ms Lang's affidavit and also Mr Westbrook's affidavit, show that workers in the community services sector are more likely to be employed on a part-time (56%) or casual basis (20%). This was confirmed by the evidence of the QSU's witnesses. For example, the North Queensland Domestic Violence Resource Centre employs 19 staff, almost half of whom are part-time. Other examples are the Atherton Neighbourhood Centre which employs 28 staff, of whom only two are full-time, the remainder being part-time or casual and Inala Community House which employs 31 full-time staff, 13 part-time and 5 casual staff.

The prevalence of part-time work is not due to employee preference but because funding does not allow the employment of full-time staff. This point is encapsulated in the evidence of Mr Wischnat who said:

"... the actual amount of government funding is fairly thin which results in program delivery having resource constraints which are expressed most acutely by staff on casual or part-time hours. For example, of the 8 paid staff who work at Nambour Community Centre, only 1 is able to be employed on a full time basis. Most of the remaining 7 staff have expressed a desire to work on a full-time basis but funding levels will not permit this".

The evidence of Ms O'Reilly is that funding does not sustain her position as full-time or allow for any resource for project/program delivery. Similar evidence was given by Ms Crossing who said the six positions at Women's House SHELTA were only funded for between 30 and 33 hours per week.

The methods of funding also seem to contribute to there being more part-time than casual positions. Vacancies in part-time positions can lead to casual staff being employed as an interim measure: see for example, Youth Worker positions at Sharehouse, Townsville.

Although the level of casualisation is less than that found in the two predominantly female occupations the subject of earlier pay equity reviews, the prevalence of part-time work in this sector and the disproportionate representation of women in such work are relevant factors when considering undervaluation of work. It can point to work being under paid - a matter that will be explored further when examining government funding models.

- *deprivation of access to training and career paths*

The evidence from witnesses on this factor was mixed. A number of witnesses gave evidence that their organisations paid for or assisted in paying for staff development. However, other witnesses indicated that the limited funds available to their organisation means that only minimal training can be provided. In small organisations the ability to fund training and development was especially limited.

On the issue of career paths the evidence was overwhelming that the Award does not provide career path opportunities particularly for those wishing to remain in the sector in service delivery roles. This matter is discussed further under the heading of "Advanced Practitioner". The effect of the evidence is that the absence of career paths means that employees are not being remunerated commensurate with their duties, skills and knowledge and further, it is difficult to retain experienced staff.

- *small workplaces*

The QCOSS Industrial Relations Project Survey, referred to in an attachment to Ms Lang's affidavit, shows that more than 90% of respondent organisations employ fewer than 100 employees. In fact, approximately 50% employ fewer than 15 employees.

- *new industry*

The overview given above, drawing on the evidence of Professor Lonne and Associate Professor Healy, shows that community services began developing as an industry in the 1960s.

- *service industry*

That the sector is in the service industry is evident by its name: the community services sector.

Based on the above it is clear that the community services sector has many of the indicators of undervaluation of work. In its submissions the QCCI supported this conclusion and is a view expressed in the Agreed Statement of Facts.

4.4 Industrial issues

Relevant matters for consideration falling under this heading include those which are addressed in the ERP. They include the Award history; the conditions under which work is performed and other relevant work features. This section also addressed the degree of Award reliance.

4.4.1 Award history

Paragraph 6 of the ERP requires the Commission when assessing the value of the work to have regard to the history of the Award including whether there have been any assessments of the work in the past and whether remuneration has been affected by the gender of the workers. This paragraph then goes on to list matters relevant to the consideration of the Award history and includes matters drawn from the undervaluation profile. Such matters are however, to be considered in the context of the Award history, the purpose of which is to establish whether work covered by the Award has been undervalued.

In 2008 a state Award was made for social and community services workers who were award-free. The Award will also cover employees and organisations which transition back to state regulation in the future. The Award was made firstly to reflect the SACS and CASH Awards (subject to some modification necessary to meet state standards) and secondly, in the knowledge that the federal Award would be used as the basis for a pay equity review. The Award history which is being examined under this paragraph of the ERP is the federal SACS Award. Because of the relative recency of this Award some of the matters listed as relevant to consider are not apparent. Relevant matters that arise in this review of the Award history are the incidence of consent awards as well as the struggle for and belated success in achieving award coverage.

Evidence about the industrial coverage of employees in this sector was given by Associate Professor Healy who also referred to a journal article of which she was a joint author entitled, "Becoming an Industry: the Struggle of Social and Community Workers for Award Coverage, 1976-2001" 49(4) *Journal of Industrial Relations* 497. Associate Professor Healy said that the Australian Social Welfare Union (ASWU) was established in 1976 to represent the interests of social welfare workers and the service users with whom they worked. This dual focus caused tension in the ASWU as some members were concerned about the diversion away from service users that improved industrial conditions may imply.

Associate Professor Healy also referred to the many challenges faced by the ASWU in achieving industrial recognition of social welfare work. After deciding in 1977 to pursue a federal award the ASWU first had to face industrial challenges as to whether professional social work was an industry under the *Conciliation and Arbitration Act 1904* (Cth). The ASWU had decided to serve a log of claims to cover project officers employed by committees funded federally to deliver the Community Youth Support Schemes (CYSS). Although a dispute finding was made by the Conciliation and Arbitration Commission at first instance this was subsequently challenged and the matter found its way to the High Court. The grounds argued by the ASWU were firstly that the constitutional concept of "industrial dispute" was sufficiently wide to embrace any dispute between employer and employees as to the terms and conditions of employment; and, alternatively, that the activities of the Committees were incidental to industry. The High Court held that the dispute between the ASWU and the CYSS Committees was an industrial dispute to which the *Conciliation and Arbitration Act 1904* applied: *R v Coldham; ex parte Australian Social Welfare Union* (1983) 153 CLR 297. For the first time social welfare work was recognised as an industry and hence an award could be made. However, it was many years before award regulation was achieved in Queensland.

Associate Professor Healy said the journal article argued that the history of exclusion from industrial coverage is a vital contributor to the poor working conditions experienced by workers in the sector

today. She said that in essence, the sector has poor conditions because it achieved industrial coverage so recently and, moreover, then as now community services workers must contend with a variety of challenges to the recognition of their work as work. This commentary links back to Associate Professor Healy's evidence recounted earlier about the reasons care work is culturally devalued.

Ms Robertson gave unchallenged evidence about the history of award regulation in the sector in Queensland. Ms Robertson was involved in the making of the first award in this sector in Queensland and has extensive knowledge and experience of this sector.

Ms Robertson said that prior to award regulation in this sector employees were primarily engaged on contracts developed by management committees of community services organisations. Despite the initial plan to have a single award by the time of the decision of the High Court case the ASWU in New South Wales had already decided to pursue separate award negotiations with employers in that State. This prompted the ASWU in other states to also commence discussions with some employers about the making of an award. However, as opposition still existed progress was slow. In 1991 a conditions only award was made for employees working in the Supported Assistance Accommodation Program. This was the first iteration of an award which later became known as CASH Award. The 1999 CASH Award was a full Award. It was only in 1996 that the SACS Award was made.

Ms Robertson explained the legal, political and industrial opposition to the making of the SACS Award. In early 1996 the new Queensland government withdrew the previous opposition to the making of the Award which allowed for discussions to commence in earnest with employers about an award to apply in Queensland. Those discussions commenced in April 1996 and concluded in June 1996.

However, proposed changes at the federal level placed pressure on having an award in place by the end of June 1996. A federal election was looming and the Federal Government's scheme for providing supplementary funding for non-award community sector organisations to move to award conditions (the Movement to Award Wages scheme) was about to expire. Negotiations with employers were described as intensive and all parties acknowledged the common interest of an expeditious settlement. Ms Robertson said the union's objective was to achieve award regulation for those workers who were award-free and while the focus was on the best possible outcome it was recognised that time for protracted arbitration did not exist. The time pressure, together with the expectations of employees and the level of resources already expended, resulted in compromise in the wage rates in order to achieve consent.

Ms Robertson also explained how the various rates were set in the Award. At Level 3 and below the metal trades standard provided the framework. The parties did not give the rates below the graduate entry rate detailed consideration as fewer people were employed at these levels. The QSU said an error forced by compromise was made in relation to the graduate entry point at Level 3. A three year graduate was incorrectly aligned at 115% and 120% for a four year graduate. This error was rectified in 2002 by Senior Deputy President Cartwright when he found the key classification in the Award was the entry level classification for a graduate with a four year degree and that the appropriate relativity of that classification with the metal industry fitter was 130% [PR 911777 and PR 914950].

For the levels above the graduate entry rates Ms Robertson said that further compromises were made between the parties. She said there was no scientific formula as to how the rates were set. Effectively, the rates were struck by simply applying 5% increments throughout the structure, bearing in mind the rates in the (federal) *Queensland Local Government Officers' Award 1992*. The new rates, while representing a substantial improvement for all workers, were developed from a very low base, that is, a completely unregulated environment. No review of the rates has occurred since the making of the Award except for the adjustment to the four year graduate entry rate and consequential adjustment to the three year graduate entry rate made by Cartwright SDP. The change in relativity to 130% for the four year graduate entry rate did not displace the internal relativities in the Award.

Consent was also reached on the level descriptors. The descriptors were based on the *Queensland Local Government Officers' Award 1992* as it was considered to be the most relevant both in terms of being a modern Award and because it provided a community and environment stream. In this regard it was seen to have some synergy with the work performed in the community services sector.

Ms Robertson said that some difficulty has arisen in the classification of employees as the descriptors are not sector specific. Her concern is that Level 5 is now used as a generic level for most SACS workers who have a degree and who work with service users. Level 6 has thus been interpreted and applied as a management level when it was initially envisaged to encompass the concept for a skilled practitioner who does not take on management or supervisory duties. Ms Robertson also noted that at the time of negotiating the rates for Levels 6, 7 and 8 there was no sense of the complexity of the work that is now carried out at this Level.

4.4.2 *Barriers to bargaining*

The evidence showed that organisations and employees in this sector are highly award reliant. Very few organisations make over-award payments to employees. The Commission notes that in recent times a few organisations have moved to pay over-award in order to retain key staff, however, these situations appear to be the exception.

According to Mr Smith approximately 40 enterprise bargaining agreements have been struck with community services organisations within the sector in Queensland not all of which would be covered by the State Award. The evidence of Ms Robertson is that in general these agreements have not delivered wage increases above those granted as national or state wage increases, except for a few larger organisations which have federal coverage. As the QCU noted Ms Robertson's evidence was that the agreements are predominantly conditions-based and have been made largely at the instigation of employers who are seeking to preserve award conditions or formalise particular working arrangements such as shift or travel allowances.

Mr Smith gave evidence of enterprise bargaining activities in other industries where his union has members. In local government the eighth round of bargaining is underway; the energy sector membership anticipates higher than average wage outcomes and in Queensland Rail enterprise bargaining has been occurring since 1992. In the latter two sectors members may take industrial action to support their claims. In these industries the approach to enterprise bargaining is structured, planned and members expect certain outcomes. This, Mr Smith said, was in contrast to the community services sector where employees were difficult to organise because of the nature of the workplaces (small); and the limited knowledge of employees about enterprise bargaining.

Further in Mr Smith's experience the gender composition of the workforce and the age of the workers influence their attitudes to bargaining. [The evidence from both Mr Westbrook and Associate Professor Healy is that the care workforce in the sector is relatively old and ageing at a more rapid rate than the labour force as a whole.] Women, and older women in particular, have had less exposure to enterprise bargaining and this influences how they think the union should progress their wages outcome. They are concerned to ensure that service delivery does not suffer and prefer funds be directed in this way.

This point was enlarged on by Ms Robertson who linked the unwillingness of workers to aggressively pursue improvements in their wages and conditions. She said that workers are primarily client focussed and find it difficult to place their industrial interests over the interests of their clients. Ms Robertson then drew a link between the willingness of predominantly female community services workers to prioritise their clients' interests with the view that community services work is an extension of women's traditional caring role.

In all, the QSU submitted that the low incidence of enterprise bargaining in the sector is attributable to:

- the large number of small organisations;
- the lack of a dedicated human resource capacity such that the organisation does not have the time or skill to embark on negotiations;
- reliance on government funding that does not cater for wage increases or the administrative costs of bargaining. In smaller organisations there is limited capacity to raise funds beyond those which the government provides and because most funds are directed to service delivery few additional funds are available for bargaining; and
- volunteer committees of management which have limited time and in some cases limited expertise to dedicate to bargaining govern the majority of community services organisations.

In addition the historical and cultural development of the industry was also said to limit the capacity to bargain. Making claims to improve salaries and conditions that may impact on the organisation's ability to deliver services to service users without commensurate funding increases is viewed as unsustainable and is an approach avoided by many employees and organisations.

The difficulty in enterprise bargaining was reinforced in the submissions of the QCSEA. Two points in particular were made. Firstly, governments only fund award rates of pay and if wages increase beyond the award rates then organisations must find the additional money within their own resources. Funding of rates outside the Award puts pressure on services and community services workers are more likely to think of their clients before themselves. Secondly, QCSEA conceded that industrial action in support of wage increases was "unthinkable" because of the effects of such action on the service users. Accordingly, legitimate demands may be compromised by the community services workers' commitment to their clients.

The QCU submitted the evidence supported the conclusion that workers in the community services sector have not used bargaining to achieve over-award payments and this has contributed to pay inequity in the sector. Bargaining has had little penetration with the Award providing the principal form of wage regulation in the sector.

The incapacity to bargain in this sector is attributable to two key factors. The main reason is that organisations are generally not funded by governments for wages beyond the first Paypoint of the Award. This stands in stark contrast to many other services or projects that are funded by government. For example, the Commission understands that funding of local government projects by government is at enterprise bargaining rates. Another example can be drawn from cleaning contracts let by the State Government. The Code of Conduct for Cleaning Contracts requires contractors to comply with industrial instruments and contemplates enterprise bargaining increases occurring during the life of a contract having a financial impact on the purchaser of the services. An unanswered question is why, unlike governments' purchase of other services, their purchase of community services does not accommodate for enterprise bargaining increases. It is also legitimate to question whether the improbability of industrial action in this sector, attributable to gender factors, is, perhaps unconsciously, reflected in the purchasing models for community services.

The other key reason for the incapacity to bargain picks up the issue of the gender of the workforce. The evidence from academics, Mr Smith and the QCSEA, an employer body, is stark: the gendered nature of the workforce relates directly to a general reluctance to become active industrially even when pay and conditions are not adequate.

4.5 Conditions under which work is performed

This is an element of work value which the Commission is required to address in assessing the value of the work. Paragraph 2 of the ERP provides that the expression "conditions under which work is performed" has the same meaning as in Principle 7 "Work Value Changes" in the Statement of Policy regarding Making and Amending Awards. Paragraph (f) of Principle 7 Work Value Changes provides that the expression relates to the environment in which the work is done.

The QSU submitted that the consideration of the conditions under which work is performed should include:

- Increase in violence associated with work of this nature;
- Difficulties in balancing life and work;
- Changing organisational context including rapid change, expectations of policy and procedural adherence and public expectations that things should be done well despite resource deficiencies; and
- Dealing with service users in conflict.

To the latter I would add dealing with service users experiencing trauma such as domestic violence.

The first three mentioned matters were raised particularly in the context of contributing to increased work stress. It is clear that the nature of care work, dealing as it does with an increasing number of disadvantaged and distressed people in circumstances where funding to provide services is limited, contributes to stress. However, it is also useful to consider relevant issues in the context of the work value element of the conditions under which work is performed.

A number of witnesses referred to service users increasingly presenting with multiple issues, who can be extremely violent or who have major psychological or emotional problems. There have been increased incidents of violence, abuse and assaults of community services workers. The evidence of Ms Woodbridge referred to various employees in her service having to withstand the resistive and aggressive demeanours of men and the requirement for them to have a heightened awareness of safety. Although employees are trained in conflict resolution skills the environment in which the work is performed is one in which service users in conflict are the "bread and butter" with whom community services workers work. In those services which do not have the capacity or resource to provide adequate professional supervision employees internalise the service users' issues leading to stress and burnout.

Another environmental factor shown by the evidence is that many employees work without direct supervision, often away from a dedicated work site - in service users' homes or in outreach settings. This requires employees to develop skills of self sufficiency, resilience and safety and for their employers to develop protocols to ensure the employee's safety. Work performed in outreach settings such as with homeless people (who usually present with multiple issues) can also involve physical disabilities such as working in dirty locations and work on the streets.

Ms Jansen gave evidence about Youth Workers in her organisation who are required to clean up the effects of illness including vomit, remove and dispose of soiled or blood stained bed sheets. Such workers are trained in

occupational health and safety processes. Mr Maddern gave evidence about the exposure of employees to communicable diseases such as hepatitis.

As will be considered in more detail under the heading of "*Funding*" the organisational context is one where funding agreements come with increased reporting and accountabilities. This has contributed to work intensification. While generally recognised as a means to improve standards of service delivery funding is not provided to organisations to monitor compliance or to deliver training about the standards. The requirement for increased compliance without associated funding places pressure on organisations and consequently on community services workers to deliver improved services without commensurate increases in funding.

Another issue contributing to work intensification is the carrying of long term vacancies resulting from minimum funding levels. The consequent low wages have proven to be a disincentive to attracting and retaining employees. The evidence is that as a consequence employees strive to ensure that quality service delivery is not compromised despite staff shortages.

4.5.1 Conclusion

Community services work is provided in a range of settings. Not all conditions identified above are present in all settings. However, the evidence is clear that many conditions such as dealing with service users' experiencing trauma or service users in conflict resulting in increased exposure to violence and abuse and the organisational context are common across community services organisations. The evidence further shows that while these conditions may have been present to some extent when the Award was made they have become more prevalent. In addition, work has intensified due to funding issues, the increased numbers of service users and the difficulties in attracting and retaining staff. These are all factors to be considered in assessing the value of the work.

4.6 Other relevant work features

In *Worth Valuing*, the Commission said that this "element was included as both the NSW and Queensland case studies identified features of work which did not fit neatly under the other work value components yet may be indicative of undervaluation of work." (p. 146). Two examples of such other relevant work features were given: firstly undertaking training outside of work hours and at the employee's own expense; and secondly, the working of unpaid overtime. *Worth Valuing* went on to comment that:

"To gain an accurate picture of the totality of the work in order to establish its true value, these types of matters need to be examined. 'Other relevant work features' seems to appropriately capture these matters." (p. 146).

In the *Child Care Case* decision the Full Bench said:

"This work value element is not designed to consider those activities that do not form part of the regular role or duties performed by the occupation in question. The activity may be sporadic, intermittent or even an annual "once-off"; (for example, organisation of an annual conference) but it must be a regular feature of the work performed. We do not limit this by saying that the activity must be undertaken at the direction or request of the employer." (p. 345).

The ERP requires that these types of activities be brought into the open and appropriately assessed as part of determining the value of the work.

The QCCI extracted from the evidence the types of activities that fall within this element:

- Very little overtime is paid as normally overtime is not funded under the programs;
- Employees perform work in their own time for which they do not claim;
- Employees attend meetings with other professional organisations for professional development purposes;
- Employees also work out of hours for community development purposes;
- Employees write up their case notes in their own time;
- Interrupted meal and rest breaks; and
- Limited training is available due to lack of funding of such activities by funding agencies.

In relation to the second dot point above the evidence also showed that long term vacancies, an increasingly common situation in community services organisations, has meant that other staff are required to perform extra duties outside of their position description and without additional remuneration.

On the issue of limited training opportunities QCOSS also noted that workers will undertake training and study in their own time as the employer often does not have the ability to resource it. Further, employers in the sector are unable to pay fees such as HECS despite the need for ongoing professional development and the

requirement for professional practice. The high incidence of post-school qualifications and the concomitant limited funding to obtain those qualifications was attributed by QCOSS to the gender composition of the workforce.

Several witnesses identified problems with time in lieu rather than being paid for overtime. The first is that the Award only provides for time in lieu to be taken on a single time basis. This is different to most predominantly male awards where payment for overtime is found, including the two Awards covering professional employees used by the QSU as comparators the *Professional Engineers Award - State 2002* and the *Surveyors (Private Practice) Award - State 2006*. The second concern is that time in lieu is often difficult to access because absence from work takes away from service delivery.

Other relevant work features identified in the evidence include some community services workers being required to possess and maintain first aid certificates to assist service users who are sick or dealing with health issues.

4.6.1 Conclusion

The evidence establishes a number of work features prevalent in this sector which ought to be taken into account in assessing the value of the work performed by community services workers. In particular, the Commission considers those identified by the QCCI and the limited access to paid training as being especially relevant to this consideration. They are similar to those identified in the *Child Care Case* where the Full Bench noted that although they are not unique to the child care industry, "they tend ... to be more prevalent in industries and occupations where the work is characterised as female. We are unaware of many - or indeed any - male dominated industries or occupations where such features are either found if they exist or tolerated for any length of time." (p. 348). These comments are also apposite to the issues identified with respect to time in lieu.

4.7 Funding

The last factor which the evidence shows has contributed to the undervaluation of work in this sector is government funding models.

The QSU submitted that increasingly governments are outsourcing work that was once provided by government or in institutional settings. Approximately 10% of the State budget or \$2.4 billion dollars is allocated to non-government organisations for the provision of community services. The Australian Community Sector Survey 2008 showed that in Queensland in 2006/07 nearly 90% of the sector's income came from federal, state and local government sources.

These levels of government are the purchasers of community sector services. They set the price for the funding levels, funding criteria and accountability measures and in many cases the award classification level and number of employees. QCOSS submitted that government funding bodies use the industry award as the benchmark for funding. The sector is highly reliant on government funding and in many organisations the funding received from government for wages will usually be the only source of income to meet their employing obligations.

The evidence from witnesses showed that the major government funding sources include:

Queensland (Departments as they then were prior to the 2009 state election) -

- Department of Communities;
- Department of Housing;
- Department of Child Safety;
- Queensland Health;
- Disability Services Queensland;
- Department of Employment and Industrial Relations;
- Department of Education and Training; and
- Legal Aid Queensland.

Commonwealth:

- Department of Education, Employment and Workplace Relations; and
- Department of Families, Housing, Community Services and Indigenous Affairs.

The evidence showed a variety of funding arrangements. For example, YFS have 38 funding agreements. Of those 70% are State grants and 30% are federal grants. The Atherton Neighbourhood Centre, which only

employs two full-time staff, but a number of part-time and casual staff, provides 15 programs with 11 funding agreements from state and federal sources. In contrast, another organisation, the Gold Coast Centre Against Sexual Violence Incorporated, only receives funding from one State source however its funding has not increased, apart from indexing, since 1997.

Funding may be provided subject to a contract to provide a particular type of service. Depending on the nature and type of the funding the contract may be for one, two or three years. At the expiry of the funding the organisation must re-apply, assuming the program is still seen as worthwhile to be funded. At a federal level where once an organisation was funded for many years to provide a particular service it may now be required to be engaged in competitive tendering with other organisations. Some funding is provided for "projects" offering no opportunity for ongoing funding.

Another method is to fund a particular program with each position receiving funding in accordance with the award rate. In this scenario the government funding effectively dictates the wages that an organisation can pay its employees.

The funding which is provided by government usually only covers the wages for the first Paypoint of a Level within the salary scale and on-costs. Funding is not generally provided for subsequent Paypoints, team leaders, co-ordinators or managers. Direct funding is also not usually provided for administration of services, financial or management positions. Organisations such as YFS use the grants received to contribute to the personnel costs in these areas and the budget is restricted based on the limits to charging grants for staff members who are not providing direct client service delivery. In smaller organisations community services workers may be required to make the applications for funding or undertake reporting. This has the effect of redirecting funds away from service delivery to administration.

QCOSS advised of a recent Funding Policy Project conducted by the State Government which was completed at the end of 2008. QCOSS said that in the setting of benchmarks for appropriate levels of funding for a particular type of service the award rate of pay is used to determine the wage component.

In addition to applying for funding the organisation is obliged to report periodically to the funding body about the delivery of services being funded. In particular performance indicators (both quantitative and qualitative) may be specified as well as governance and human resource requirements and financial accountabilities. Industry standards are also being introduced in various areas and the organisation must ensure it is compliant to receive funding.

The form of application and reporting requirements are not consistent between departments at a State level or at federal level resulting in increased administration for all organisations. The Queensland Auditor-General's Report to Parliament No 2 for 2007, *Results of Performance Management Systems Audit of Management of Funding to Non-Government Organisations*, highlights a number of difficulties with present funding practices. In particular the Report noted that "[T]here is no overarching whole-of government policy and matching accountability regimes for the NGO sector" such that "from a NGO sector perspective the reasons for diversity in practice across government departments are not transparent and may be perceived as adding to their compliance and regulatory burden". The evidence of Ms Bartolo, Ms Walsh and Ms Meredith confirmed this view.

The funding of community services organisations in the manner described has various impacts on both a community services organisation and its employees including:

- Difficulty in attracting and retaining staff when funding levels do not increase (beyond indexing) or when funding does not allow for increments within a salary level to be paid;
- Precarious employment arrangements when only short term or project funding is available;
- As organisations are not funded for writing grant applications or meeting reporting requirements staff resources are redirected to this work with the concomitant effect that service delivery is reduced during this period. Alternatively, money is redirected from service delivery to administration.
- Services, networks and infrastructure which have been established over many years can be put at risk if applications for continued funding of an existing project are not successful;
- Staff may not be remunerated in accordance with the classification Level the organisation believes is appropriate for the work value of the position in order to keep within funding provision or because the funding agency specifies the wage level an employee is to be paid; and
- Provision is not made for the payment of overtime.

In addition given the nature of care work (and care workers) the organisations struggle to find ways to do more with less and, as the evidence of Associate Professor Healy shows, the workers may internalise the funding shortfalls in order to maintain service delivery by performing unpaid or underpaid work.

Associate Professor Healy contends, and I accept, that this view is capable of being challenged on gender equity grounds as the work should be measured against the value of the work and not the service users. In essence the true value of the work expected by government to be performed and in fact delivered should be funded. Arguably, the benevolence and commitment of the workers and unlikelihood of industrial action is assumed in government funding models. As the QSU submitted, and again I accept, that this situation would not be tolerated in predominately male occupations or industries.

4.8 Conclusions about factors contributing to undervaluation of work

Throughout this section the Commission has identified a number of factors which have contributed to the undervaluation of work in this sector. That the sector has its origins in work performed by women was made clear by Professor Lonne and Associate Professor Healy. The nature of care work is considered to be an extension of women's work in the home; an inherent part of mothering. For these reasons community services work is characterised as female. Care work is predominantly performed by women and notions of a vocation remain in career choice and the commitment to service users over and above the industrial needs of the community services workers themselves. The commitment to others is also shown by the sizeable proportion of the workforce holding post-school qualifications but receiving lower gross wages and has proved to be an impediment to bargaining. These characteristics of the community services workforce are likely to stem from the gendered nature of the workforce. Governments have been able to benefit from this through their funding methods which provide funds consistent with award rates of pay. Predominantly male occupations or industries would not have endured award wages as evidenced by the electricity and rail industry workers approach to enterprise bargaining.

The Commission believes that each of the abovementioned factors has a gender or gender associated cause. When considered as a whole a pattern emerges that gender is at the core of present work value of the community services sector. Accordingly, the Commission finds, that based on all of the above the work has been undervalued on a gender basis.

5. Work value changes

In this case the QSU has also argued that the work value of employees in this sector classified at Level 4 and above has increased. Given the ERP requires an assessment of the current value of the work it assumes any work value change which has occurred. Although it was unnecessary to conduct such a case in terms of the requirements of the ERP, the Commission will nonetheless consider the evidence presented.

The QSU argued that the following work value changes had occurred since 1996:

- Greater requirements for knowledge and skill acquisition and utilisation. These changes have been considered under the heading "*Qualifications*" above;
- Changed practice methods. This refers to the changes from case work to case management to community development. According to Professor Lonne case work was a long standing practice method in use until the early to mid 1990s. This method involved working with a client individually using counselling as the primary technique. Case management was a fundamental shift in practice that involved undertaking assessments of service users and co-ordinating interventions. Community development involves working with large groups of people in complex systems. Analytical and assessment skills are still used but to ascertain how a community is functioning and to assist the community to realise its needs through awareness and linking the community with government. Usually work in the community services sector involves all three methods of practice;
- Greater complexity of service users and client need. This has been addressed under the heading, "*Nature of care work*";
- Greater adherence to legislative standards. The evidence showed that over the last five years approximately various government departments have been introducing standards with which community services organisations must comply. For example, Ms Bartolo gave evidence that her organisation is required to comply with the following standards:
 - Disability standards linked to the Disability Act;
 - Community Legal Service Standards;
 - National Housing Standards;
 - Family and Relationship Standards;

- Home and Community Care Standards;
- ISO Quality Assurance Standards; and;
- Community Services Standards associated with the new *Community Services Act 2007*.

These are all standards against which the organisation is audited for compliance and the standards are tied to the funding of the organisation. Contracts often specify the specific standards with which the organisation must comply. In addition to these standards YFS complies with a number of other standards against which they are not audited but are considered to be good practice. These include mental health standards and domestic violence encompassing both working with victims and working with perpetrators.

- More complex reporting relationships and requirements. The introduction of standards has led to an increased level of reporting by community services professionals and in some cases to the attainment or upgrading of qualifications by employees in order to meet the standards.

In addition the QSU referred to the Queensland Auditor-General's Report where a timeline is provided detailing various government initiatives about funding non-government organisations from 1999-2007. These show changes to funding models; legislative changes; reviews by other agencies e.g. CMC; changes to government departments and the introduction of standards by government departments to be met by non-government organisations. This timeline, which runs to 2½ pages, provides a snapshot of the constant change with which community services organisations and their employees have had to deal since the introduction of the Award.

Evidence was also given by a number of witnesses about the duties and responsibilities and increasingly complex role required to be performed by management staff of community services organisations. Reference has previously been made to the level of staff and number of funding agreements in place at YFS. Ms Bartolo, who has been employed at YFS since 1996 and for the last seven years as CEO, is responsible for a budget in excess of \$7 million dollars largely received from government sources. Senior staff are responsible for ensuring compliance with contracts and industry standards which in turn affects the ongoing funding of programs.

YFS operates from five worksites but many staff work off site such as in service users' homes; in courthouses; performing outreach work and community development work in the evening. Until recently Ms Bartolo was paid as Level 8 but is now paid in excess of the Award in recognition of the size and complexity of her role. Other senior staff, notably in the business services and finance areas, have received wage increases in order to retain them.

Ms Walsh is the Co-ordinator of Micah Projects Inc., another medium sized organisation employing 84 staff at five locations. It has a budget of nearly \$6 million dollars of which 94% comes from government funding. Ms Walsh is paid at Level 8 of the Award. She directly manages a number of direct care staff as well as being line manager for other team leaders.

Ms Walsh explained that as the person in charge of the organisation she is responsible for ensuring the committee of management receives all relevant information so that it can operate in accordance with good governance standards. She also must ensure that the committee of management receives all appropriate planning instruments such as financial management, human resource management, occupational health and safety. To achieve this Ms Walsh is responsible for ensuring that such work is performed within the organisation. In her evidence Ms Walsh noted that not-for-profit organisations are now required to meet the same corporate governance standards as corporations.

The QSU noted that the increased expectations around corporate governance and the procurement and management of government contracts is generally born by those classified at Levels 6, 7 and 8 of community services organisations. Management positions classified at Level 7 e.g. Ms Woodbridge and Ms Jansen, perform a similar range of duties and have similar accountabilities as those classified at Level 8 albeit with a smaller budget, a smaller staff complement and fewer programs to administer. However, as the evidence of Ms Woodbridge shows, similar complexities in the role to those at YFS and Micah Projects Inc. exist in the form of being responsible for a worker who is located in Mt Isa (the main part of the service is located in Townsville) and in the case of both positions have responsibilities for workers who work at night or off site.

6. Consideration of claims

Before turning to a consideration of the rates claimed by the QSU and in the counter claim two other matters included in the counter claim will be considered, viz.:

- Graduate entry; and
- Increments.

6.1 Graduate entry

The counter claim seeks that there be no distinction between a three year and four year degree. The counter claim also proposes a reduction in increments at all Levels from four at Levels 2, 3 and 4 and from three at all

other Levels to two. Accordingly, all degree holders would commence at Level 3.2 with an annual salary of \$46,460.00. Relevant degree holders with one year's relevant experience would then commence on Level 4.1.

The claim for a single entry point for degree holders is connected with the reduction in increments. Jobs Australia submitted that at Level 3 the top two increments have been collapsed into one and thus it is no longer necessary to distinguish between three and four year degrees. Further, the amounts sought in the counter claim for degree holders are comparable with the degree entry rates in the Queensland Public Service (QPS) and local government.

The QSU opposed the counter claim for a single graduate entry point and submitted that for many years in many industries, including the community services sector, a distinction has been made between three and four year degrees. The distinction is based on value. Four year degree holders have spent an additional year in training and in this regard reference was made to the evidence of Professor Lonne who compared the training undertaken by social workers with those who possess a three year degree. Further, the QSU submitted that the employers had failed to call any evidence in support of their counter claim to alter the graduate entry point.

The Commission accepts the submissions made by the QSU opposing the establishment of a single graduate entry point. Besides there being no evidence in support of the counter claim there is clear evidence establishing the difference in value between three and four year degree qualifications. In particular the evidence of Professor Lonne outlined the training required to complete a four year social work degree and the type of training undertaken for a three year degree in various social welfare/social science fields. It was his evidence that four year trained social workers had superior skills and knowledge to a three year trained graduate.

The claim for a single graduate entry point for both three and four year degree holders is refused.

6.2 Increments

The counter claim seeks to reduce the number of increments which apply to two for each Level of the classification structure. In their submissions Jobs Australia noted that although there are a range of funding formulae by government departments increments are not always specifically funded. In that light the counter claim seeks a reduction in the number of increments by removing the lower increments at each Level. Jobs Australia recognised that increments are a feature of this industry and the argument that performance is likely to be higher after one year's experience at a given Level. To that end Jobs Australia sought the retention of two increments for each Level.

Several arguments were advanced in support of this aspect of the counter claim by the QCCI. One such argument was that collapsing the Paypoints is beneficial to the employee as the employee reaches the highest Paypoint earlier than is presently the case.

Another argument returned to the submission of Jobs Australia that funding is generally provided only for wages at Paypoint 1 of each Level. As the QCCI submitted this has caused financial stress to organisations in seeking to find monies to cover the extra wages when an employee moves to the next Paypoint. The QCCI said this was unlikely to change but providing a second more highly remunerated Paypoint may encourage governments to provide increased funding.

The third submission made in support of reducing the number of Paypoints relates to the history of the Award. The QCCI submitted that when the Award was made it was coming off an extremely low base rate. It was submitted that increments were included to assist employees receive a reasonable wage rate each year. If equal remuneration increases are granted then QCCI submitted that the reason for increments no longer exists. The incremental structure has served its purpose and should thus be removed.

In response the QSU referred to clause 5.7 of the Award which makes provision for incremental progression. In addition to the usual requirement of 12 months' satisfactory service the QSU noted that the clause makes provision for increments to be accessed only where the employer requires the employee to acquire and utilise new or enhanced skills and that certification is made by the employer to that effect after an assessment process. Accordingly, the QSU submitted that the clause had work to do in that increments are recognised in this Award (and others) as providing an incentive to employees to acquire skills and to provide satisfactory performance.

The QSU rejected the employers' argument regarding funding and submitted that the argument may be more sustainable if only one Paypoint at the highest level was sought. Moreover, the employers had not run a case to reduce the number of increments.

In considering this aspect of the counter claim the Commission has had regard to the evidence before it. In particular I note the submission of both Jobs Australia and the QSU that increments have been a feature of the Award which applied in this State since 1996 and their contention that increments recognise increased

performance. This view was accepted by Cartwright SDP in the award simplification decision referred to earlier. There, he agreed to maintain increments in the award because they included an element of work value and were not just service based: at paragraph [22]. This decision supports the QSU's arguments about clause 5.7 of the Award having work to do. It requires more of an employee than for example the increments clause provide by the *Queensland Public Service Award - 2003*. As noted by the QSU it provides recognition for skill acquisition and utilisation as part of a staff development or performance review and as such provides encouragement to employees to gain new or enhanced skills.

I am concerned about the QCCI's arguments as to how employees would benefit from the reduction in the number of increments. This seemed to be contrary to the evidence which showed that lack of career progression was a major concern with this Award. It seems that this would only be exacerbated if the Paypoints were collapsed.

The argument about funding has a certain attraction, especially in relation to Levels 6, 7 and 8 of the Award. The evidence showed that in medium sized organisations funding is not provided for senior staff. Later in this decision consideration is given to the classification of Advanced Practitioner and comments are made about the desirability of restructuring managerial classifications to recognise the varying complexity of roles and sizes of organisations. With this in mind the Commission has decided against removing the middle increment at these Levels so as to assist the parties in any deliberations around these matters.

Given present government funding models the reality is that any incremental structure is going to cause difficulties for organisations in finding money for wages in excess of the first Paypoint. Community services organisations have proven to be remarkably resilient in being able to fund increments and even though this decision provides substantial wage increases the Commission considers that the benefits of increments in this Award by recognising work value outweigh any disadvantage in their reduction.

Finally, it is also noted that in the decision of Cartwright SDP approval was given to an additional Paypoint at Level 2 in recognition of the nature of the duties. This was a relatively recent amendment and nothing has been put in evidence by the employers in respect of this classification to reduce the number of increments.

For all of these reasons the Commission refuses that part of the counter claim which seeks to reduce the number of increments at each Level.

6.3 Value of the work

The QSU submitted that the evidence in these proceedings demonstrates that:

- The rates at Level 4 of the Award are incorrectly set and should be realigned having regard to the skills and responsibilities required to be exercised at this level;
- Pay equity will not be achieved without having regard to the actual rates being paid for comparable work including enterprise bargaining rates; and
- Pay equity will not be achieved without incorporation within the Award of an ongoing percentage amount to compensate for future inequities given the indicators that enterprise bargaining is unlikely to be a relevant feature in this industry.

In his evidence Mr Smith explained how the rates contained in the application were calculated. The further amended application reflects the QSU's position that the key classification in the Award is the entry point for four year degree holders. This is consistent with the decision of Cartwright SDP in 2002 outlined earlier. Given that no work value or other scientific method was used to set the rates of pay at Level 4 or above and in light of the evidence of the value of the work being performed by employees at these Levels, Mr Smith contended these rates were substantially undervalued.

He said new base rates for Level 4 and above were calculated by reference to this evidence and then reconsidering the appropriate alignment against the metal trades standard in the first instance and also cross-checking this with the rates in the professional stream in the QPS. By my calculations the adjusted base rate (without being adjusted further for the bargaining component or the ERC) at Level 4 Paypoint 1 results in an increase of 5.5%. The increase is lowest at Level 6 ranging from between 3.4% and 5% whereas at Level 8 the increase is more than 10% for each Paypoint.

In addition the QSU had regard to the wage differential between community services workers and local government employees. Mr Smith said that the QSU local government members received between 11% and 42% above the Queensland Local Government Award rates which have incorporated all National Wage Case and Fair Pay decisions. Mr Smith also referred to the Pay Equity Inquiry Report which found a gender wage gap of between 11% and 18%.

Taking all of the foregoing into account Mr Smith said that the QSU therefore decided to incorporate 18% into the adjusted base rates to compensate for the inequality arising from the lack of enterprise bargaining. To this a further 1.25% ERC was added to ensure that the new rates do not lose value over time. Mr Smith said that the final increases sought were approximately 19% at Levels 1, 2 and 3. At Level 4 the increase is approximately 25% and at Level 8.3 the increase was said to be 42%.

6.4 Employer responses

The counter claim filed by Jobs Australia and supported by the QCCI and QCSEA sought varying percentage increases depending on the Level.

The employers recognised and accepted the incapacity of this sector to bargain for wage increases for the reasons outlined by the QSU. Jobs Australia submitted that the evidence indicates that the rates should be adjusted to redress:

- Historic undervaluation;
- Lack of bargaining; and
- The unlikelihood of significant bargaining for the foreseeable future.

However, all of the employers were opposed to the quantum of increases sought by the QSU believing them to go beyond an appropriate level of remedy. In particular concern was expressed about the increases at some Levels (30%) and noting that this far exceeded increases granted in other pay equity cases. The employers were also concerned about the potential for leapfrogging and over-classification of jobs.

The wage rates sought by the QSU and the employers are shown below in Table 1. These include the first and final Paypoints for each classification Level only and do not include the 7.5% loading which applies under the Award to Community Services Workers Levels 6-8 and Crisis Accommodation Workers Level 4. The classifications of Crisis Accommodation Workers included in the Table are Category A workers only.

Table 1: Comparison of wage rates sought by QSU and employers

Classification	QSU Rate + ERC 1.25% per annum \$	EMPLOYERS Rate + ERC 1% per annum \$
Community Services Worker Level 1		
First Paypoint	37,527.00	32,821.00
Final Paypoint	40,251.00	34,026.00
Community Services Worker Level 2		
First Paypoint	40,251.00	36,225.00
Final Paypoint	44,029.00	38,380.00
Community Services Worker Level 3/ Crisis Accommodation Worker Level 1		
First Paypoint	44,029.00	43,935.00
Final Paypoint	47,929.00	46,460.00
Community Services Worker Level 4/ Crisis Accommodation Worker Level 2		
First Paypoint	51,828.00	48,985.00
Final Paypoint	58,080.00	51,106.00
Community Services Worker Level 5/ Crisis Accommodation Worker Level 3		
First Paypoint	59,380.00	55,550.00
Final Paypoint	61,980.00	57,570.00
Community Services Worker Level 6/ Crisis Accommodation Worker Level 4		
First Paypoint	64,581.00	58,251.00
Final Paypoint	68,481.00	61,070.00
Community Services Worker Level 7		

First Paypoint	71,536.00	63,419.00
Final Paypoint	75,773.00	65,767.00
Community Services Worker Level 8		
First Paypoint	77,864.00	69,056.00
Final Paypoint	81,604.00	70,465.00

6.5 Consideration of claim regarding undervaluation of work

The ERP requires the Commission to undertake an assessment of the current value of the work. To this end the QSU presented considerable evidence from employees working at various classification Levels within the sector. In addition to the changes in work value which have already been outlined elsewhere in the decision this evidence included descriptions of duties performed together with position descriptions.

While all of the evidence given by employee witnesses has been considered it is unnecessary to detail the duties performed in this decision. As the QSU noted the Award contains descriptors of each of the classification Levels which, while generic, attempt to capture the skills and responsibilities required at each of them. While the evidence from Ms Robertson is that these descriptors were developed from the community and environmental services stream of the then federal *Queensland Local Government Award 1992* no attempt was made by the QSU to identify where these descriptors are deficient in listing or describing the duties, skills or responsibilities required such that the true value of the work was not appropriately assessed. In fact no variation to the descriptors is sought by the application - one of the possible remedies to undervaluation identified. As the rationale of the ERP is to allow the assessment of work in a transparent, non-discriminatory way and to uncover past institutional failure to recognise the skills of women's work the decision not to unpack the duties and skills has hindered the Commission in being able to properly assess the value of the work.

In its submissions the QCCI said that because the work was previously award-free, the rates were fixed by consent and no work value exercise has previously been conducted by an industrial tribunal. The "soft" skills of community services workers would not have been taken into account in fixing the rates of pay.

In relation to the issue of "soft" skills a number of such skills from the evidence of the QSU witnesses can be identified. Although he did not use the terminology of "soft" skills Professor Lonne also touched on some of these and others. Listed below are some of the "soft" skills:

- Active listening;
- Acknowledging strengths;
- Reflective questioning and listening;
- Use of language (and body language) appropriate to the situation and client comprehension;
- Problem solving;
- Negotiation skills;
- Empowering techniques; and
- Observation skills to appropriately assess service users' needs.

Although it may be argued that these skills have always been part of the work of social workers and other care professionals a review of the job descriptors contained in the Award reveals that these skills are not explicitly identified. In my view the lack of such specificity gives rise to a concern that, as the QCCI submitted, these skills were not taken into account when setting the wage rates. Moreover, the absence of any work value exercise means that there has been no previous opportunity for an industrial tribunal to either identify them or consider them in determining work value. In this light the history of wage setting in this Award has not allowed for a proper assessment of the value of the work in a transparent, objective and gender neutral way.

The Commission also accepts that there has been historical undervaluation of rates in this Award at Levels 4 and above and particularly at Level 5 and above. In his decision to adjust the four year graduate entry rate Cartwright SDP referred to the principles in operation when the SACS Award was first made. Principle 3.4(1)(b) provided:

"In the making of a first award other than an interim award, the main considerations shall be that the award meets the needs of the particular industry or enterprise concerned while ensuring that employees' interests are also properly taken into account. Structural efficiency considerations shall apply in the making of such an award."

Cartwright SDP considered that the parties had taken advantage of the flexibility provided by the principles to negotiate an outcome that met the needs of an industry that had not previously been regulated by an award and which was "coming off a reasonably low base". Relevantly, he said that:

"This principle did not require the Commission to have regard to whether the rates of pay were properly fixed minima or to consider relevant minimum wage rates in other awards (see, by contrast, the current wage fixing principles)." PR 914950 at paragraph [8].

Cartwright SDP said he was satisfied that with the amendments made the wage rates contained in the award were properly fixed minimum rates. The process before Cartwright SDP arose out of the requirement to simplify awards under Item 51 of the Transitional Provisions of the *Workplace Relations and Other Legislation Amendment Act 1996* and did not include a review to see whether other relativities had been appropriately set on work value grounds at the making of the award. Certainly, the QSU believes that the relativities were not appropriately set at Levels 4 to 8. At that time the 160% rate, that is, Experienced Professional Engineer or Scientist Level II in the *Metal, Engineering and Associated Industries Award 1998* was set at Level 5.2 whereas the Professional Engineer or Scientist Level III classification with a 180% relativity was set at Level 6.3 and the Professional Engineer or Scientist Level IV classification with a 210% relativity was set at Level 8.3. In adjusting the base rates to correct historical undervaluation the QSU realigned the relativities such that the 160% relativity is set at Level 4.2; the 180% relativity is set at Level 5.2 and the 210% relativity is set at Level 6.3.

Jobs Australia have cautioned against the over-classification of jobs and given the realignment of relativities used by the QSU to correct for past undervaluation of work this point is well made. The Commission has not had the benefit of expert evidence about the metal trades classification structure nor has the QSU put specific submissions drawing comparisons between the nature of the work, skill and responsibility requirements under the (federal) *Metal, Engineering and Associated Industries Award 1998* for the relevant levels and the Award under review. Nonetheless given Ms Robertson's evidence about how relativities were initially set in this Award and a perusal of the classification descriptors of the various levels of professional engineer/scientist as against those for comparable Levels in this Award I am reasonably satisfied that from Levels 5 to 8 the relativities initially established understated the nature of the work, skills and responsibilities at those Levels when the Award was first made. The Commission considers that while there may be some misalignment at Level 4 it is not as significant as that found in higher Levels. Although I do not intend as part of this decision to fix or realign relativities as against the *Engineering Award - State 2002* (the state counterpart to the *Metal, Engineering and Associated Industries Award 1998*) this historical undervaluation will be taken into account.

In addition the conditions under which work is performed and the other relevant work features have not previously been able to be considered in setting rates. Earlier in this decision I detailed the evidence which showed that the low pay found in care work has been influenced by gender considerations. When these matters are taken together I consider the evidence demonstrates that the rates in this Award have been undervalued on a gender basis.

6.6 Comparisons with other industries

Although the ERP does not require the use of comparators to establish undervaluation on a gender basis they may be used to provide guidance in ascertaining appropriate remuneration. The proper basis for comparison is not restricted to similar work.

The proposed approach was addressed in *Worth Valuing*. There it was said that although comparison does not have to be made of similar work it will be necessary to establish a proper basis for comparison. Some matters for consideration included education, training, qualifications and competencies. Qualifications and training are an objective means by which to assess skills and knowledge and hence the work value of the position (p. 152).

The QSU provided a number of comparators for the purpose of providing guidance in assessing appropriate remuneration:

- Queensland Public Service professional stream;
- Local Government; and
- Engineering.

All of the comparators have higher salary rates than those prescribed by the Award. For the purposes of this discussion the three and four year graduate entry rates will be compared. The QSU's original claim for the new graduate entry points with the adjusted base rate, the additional 18% bargaining component and the 1.25% ERC for the three year graduate is \$46,628.00 and for a four year graduate is \$47,929.00.

The QCCI argued that an appropriate comparator was the *Children's Services Award - State 2006* which had recently been through a pay equity review.

6.6.1 Public Service

The QSU contended the Queensland Public Service professional stream rates are appropriate for the following reasons:

- Social work and social care workers are trained across both public (including local government) and private sector settings to achieve the same skills and to perform work which is the same or similar;
- the work being performed in public settings (including local government) is comparable with the work in the community sector;
- Some of the work carried out in the community sector was once work carried out in the public sector;
- Workers transfer from the community sector to the public sector (including local government). The disparity in wages and conditions is increasing the pace of this transference;
- As a result of the loss of skilled employees from the community sector to the public sector, organisations are having difficulties attracting and retaining skilled employees - this has the potential to impact on the quality of service delivery to service users; and
- This difficulty is acknowledged as a major problem for the industry.

The QSU provided rates from the professional streams of the *Queensland Public Service Award 2003* (QPSA) and the *State Government Departments Certified Agreement 2006* (SGDCA). The annual three and four year graduate entry rates under the QPSA are \$39,003.00 and \$40,571.00 respectively and under the SGDCA are \$46,071.00 and \$48,657.00 respectively. It is important to note that the SGDCA rates are the actual rates paid.

6.6.2 Local Government

The QSU submitted that local government was an appropriate comparator because the Local Government Officers' Award was used as the basis of the structure in this Award. The evidence of Mr Smith and Ms Robertson is that the work performed in local government community services is the same or comparable to the work of community services workers. In addition, the evidence highlighted the transferability of skills from one sector to another.

Salary rates from the Local Government Officers' Award and the Logan City Council EBA were provided. The QSU informed the Commission that executive salary scales apply for positions beyond the general pay scale contained in the Award. The rates are dependent on the application of a methodology which take into account such matters as net expenditure; number of employees and separately valued properties.

The three year graduate entry rate under the Local Government Officers' Award is \$38,260.00 and under the Logan City Council EBA is \$46,294.00.

6.6.3 Engineering

The QSU provided the rates that apply in the *Professional Engineers Award - State 2002* and the *Surveyors (Private Practice) Award - State 2006* as well as the mean rates of pay taken from the Professional Engineer Remuneration Survey Report December 2008 published by The Association of Professional Engineers, Scientists and Managers, Australia. From the information provided the graduate entry rate (four year) under the Surveyors Award is \$47,112.00; under the Professional Engineers Award is \$37,602.00 whereas the mean rate from the survey is \$62,502.00. The QSU submitted that the mean rate is more likely to reflect the actual rate paid rather than the Award rate.

Although the QCSEA did not make specific submissions about this proposed comparator reference was made to the case where the rates for private practice surveyors were substantially increased by a Full Bench of this Commission (2005) 179 QGIG 16. In particular the QCSEA drew parallels between the evidence in the Surveyors Case about the difficulty in attracting students to university to study surveying and Professor Lonne's evidence about the diminishing pool of entrants to social work courses at university. The QCSEA submitted that just as the Commission had accepted the economy would suffer if there was a continued shortage of surveyors as the cadastre could not be kept current the Commission should accept in this case that a shortage of professional social workers would have significant social impacts. The costs of not providing appropriate remuneration in both cases would have to be borne by the community.

6.6.4 Child Care

The QCCI submitted that the appropriate comparator should be the *Children's Services Award - State 2006* as this Award was subject to a recent pay equity decision from this Commission. In that case the Commission was presented with substantial, detailed evidence about the nature of the work, skills and responsibilities; the conditions under which work was performed and other relevant work features so as

to enable a proper assessment of the current value of the work to be undertaken. The QCCI also pointed out that consistent with the Award now under review the workers in the child care industry also possess a range of qualifications which are recognised and compensated.

The QCCI made detailed submissions in respect of each Level of the Award and made comparisons at each Level with employees under the Children's Services Award who hold equivalent qualifications. Under the Children's Services Award a Group Leader who holds a three year degree and has two years' experience is paid \$832.60 per week. This compares with the QSU's claim at Level 4.1 of \$993.51 per week. The QCCI submitted that the QSU's claim could not be justified as it is well in excess of a comparable employee who has recently had their rates considered under the ERP.

In response the QSU rejected the Children's Services Award as an appropriate comparator. The QSU argued that it was not seeking to use the comparators below Level 4 and was seeking to use the comparators with respect to the tertiary trained rates and above. According to the QSU the QCCI was not comparing like with like.

6.6.5 Conclusions

The ERP does not make the use of comparators mandatory. Rather, whether comparators are used is a matter for the parties in a particular case. Here, a range of comparators have been used in an endeavour to provide guidance about appropriate remuneration to be paid, especially from the QSU's perspective at Level 4 and above. *Worth Valuing* makes clear that comparators are not designed to be used to import notions of comparative wage justice; only that comparisons may be useful in providing a measure of reliability in ascertaining appropriate remuneration (p. 152).

In this matter the evidence from the employee witnesses attested to the work performed by them compared to the work performed by their counterparts in the QPS. The employee and employer witnesses also attested to the difficulty in attracting and retaining staff in the community sector given the wages paid in the QPS. The evidence clearly established that the public sector and the QPS in particular is seen as a more attractive employer and that many employees are leaving community services organisations for more highly remunerated positions in the public sector.

While each of the comparators has value in my view the most worthwhile comparators to be used for this Award are the QPS rates and local government rates. The QPS rates are seen as appropriate because much of the work performed by community services organisations is funded by the Queensland Government and the evidence establishes that some of the work performed by those organisations was once performed by the public service. In addition, clear comparisons can be drawn between certain of the work performed by the community services sector and Queensland Government services. For example, the core function of Counsellors employed by the Gold Coast Centre Against Sexual Violence Inc. that is sexual assault counselling is comparable to the sexual assault counselling performed by counsellors in Queensland Health. Further, the evidence of the QCSEA witnesses supported the comparability of certain work between the community services sector and the QPS.

Local government is also considered to be an appropriate comparator because the Award now under consideration had its genesis in the *Queensland Local Government Officers' Award 1992*. Further, Ms Robertson gave evidence in this matter and also to Cartwright SDP in 2002 attesting to the similarity of work performed in the community services sector and local government.

The evidence of Professor Lonne also established that the training given to social workers is generic in the sense that they are trained to work in any industry - public sector, local government, community services organisations or the private sector more generally. Their skills and qualifications are transferable and they do in fact move between industries.

6.7 Enterprise bargaining

After the base rates had been adjusted at Levels 4 and above to remedy past undervaluation of work a further increase of 18% at all Levels was sought to take account of the inability of this sector to enterprise bargain. The QPS and local government enterprise bargaining rates are then used as a guide to ascertaining appropriate rates.

The QSU was transparent about the reasons for adjusting the rates to take account of the inability of this sector to bargain. The QSU modelled its position on the decision in the *Dental Assistants Case* where a Full Bench of this Commission adjusted pay rates to take account of enterprise bargaining increases that had been achieved in a range of industries. In that decision the Full Bench considered whether rates from certified agreements ought to be taken into account in determining equal remuneration and in particular had regard to the views of the NSW Inquiry into Pay Equity which found "significant reasons why the Commission would wish to have

regard to enterprise agreements in undertaking any appropriate work value comparison under any principle designed to consider equal remuneration or pay equity": for this discussion see paragraphs [184]-[187] of the *Dental Assistants Case* and the references to the NSW Inquiry, Volume II, p 102.

After reviewing public interest considerations the Commission in the *Dental Assistants Case* said:

"[192] We are prepared to give consideration to providing rates in excess of those provided by the Engineering Award for comparable classifications on the grounds of the effect of the lack of access to or participation in enterprise bargaining because of the small, non-corporate, non-unionised workplaces in which DAs are found and the fact that the workforce composition of dental assisting is an overwhelmingly female occupation, which has contributed to the pay inequity of DAs. In so doing we also acknowledge the evidence given by various Dentists that the rates prescribed by the Award are too low."

The QSU submitted that the circumstances of the present matter are analogous to the *Dental Assistants Case* and that the amount of the increase should be 18%. In calculating that percentage increase the QSU noted that the Full Bench in the *Dental Assistants Case* had found that the difference in the percentage increases delivered by way of General Ruling from 1997 to 2004 and the percentage increases delivered under enterprise bargaining for the same period as evidenced by the (then) Department of Industrial Relations Enterprise Agreements database was between 11% and 40%. The Full Bench determined to grant a one-off increase of 11%. Using this figure and extrapolating it to include changes in safety net increases and other increases in minimum rates the QSU contended the figure today would be a minimum of 16-18%.

The QSU noted that the DIR database was no longer available and therefore regard was had to other data. The QSU calculated that from 2005 to 2008 the increase in federal rates (both AIRC and Fay Pay Commission increases) was 14.78%. The federal Department of Education, Employment and Workplace Relations (DEEWR) database for federal wage agreement for June Quarter 2005-2008 Queensland shows that the average outcome for all federal agreements in Queensland was 16.4%. The QSU contended that the marginal difference between the minimum award rate increases and enterprise bargaining increases was conservative as the data include both individual and collective agreements under WorkChoices and have produced lower averages. If the enterprise bargaining outcomes in electricity, gas and water supply were considered then the difference between the increases to award minima and enterprise bargaining over the period since 1995 was close to 5%. When added to the 11% differential found in the *Dental Assistants Case* a percentage increase approximating that sought by the QSU's claim was reached.

The QSU submitted that the while such an increase, estimated at 16%, narrowed the gap between QPS rates and the community sector it did not completely close it.

6.8 Equal remuneration component

In addition to the adjusted base rate at Level 4 and above the QSU claim seeks a further 1.25% to ensure they maintain their currency. Again, the concept of an ERC, its quantum and rationale is taken directly from the decision in the *Dental Assistants Case*. In that case the Full Bench said:

"[195] To only grant a one-off increase would rectify the current problem but would do nothing to deal with the differential that will continue because of the presence of enterprise bargaining in other industries, the almost total absence of bargaining for this occupation and the reliance on State Wage Case increases to deliver pay rises for DAs. There is no evidence before us to suggest that, enterprise bargaining is likely to become a reality any time soon for DAs except for those employed by Teachers Union Health. As a result DAs will continue to depend on increases delivered by State Wage Cases into the future and as history has shown these increases are less than the average increases obtained from enterprise bargaining."

Importantly, the employers do not oppose either the concept or rationale of an ERC. They do however oppose the quantum and seek that it be set at 1%. According to Jobs Australia a cautious approach to the setting of the ERC should be adopted given the slow down in the economy. Jobs Australia does not wish to further discourage bargaining where circumstances would allow it. Further, if bargaining outcomes are lower in the next few years due to the economic downturn then setting the ERC too high may result in award rates overtaking some other industries. For that reason an ERC of 1% is sought. The QCCI added that the 1% figure in conjunction with future wage increases will maintain equity with industries that will derive their wage increase by enterprise bargaining.

6.9 Salary sacrifice

A number of employee witness statements referred to community services organisations making available salary sacrifice arrangements to employees. Accordingly, the Commission asked the parties to provide information about the arrangements that are made with employees so that the Commission could properly consider them in determining appropriate wage rates.

The QSU submitted that the Commission should not offset salary sacrifice benefits against wages as the evidence is that these provisions are limited to the sections of the workforce, are accessed by employees differently and are of different value to each employee, are controlled by the employer and are often subject to administrative fees and charges, have lost their benefit over time, particularly to employees with HECS debts or who have child and family payments, and do not provide a substantial benefit.

The QSU noted that whereas once salary sacrifice arrangements provided an attraction to work in the community services sector its value had diminished since public sector employees in health have been able to access these arrangements. Accordingly, the QSU submitted that community services workers cannot rely on salary sacrifice arrangements to provide an increase in wages and they should not be considered an offset against wages.

The QCCI rejected the submissions made by the QSU and contended that even though the value of salary sacrificing arrangements may have diminished they still hold a value.

The Commission's initial assessment of the evidence presented in witness statements from employees was that salary sacrifice arrangements provided a benefit to employees and that it was a factor relevant to the determination of wages. I am now satisfied, particularly having heard the evidence from Ms Walsh and Ms Bartolo, that it is now not a factor which should be taken into account in determining wage rates. I have reached this view for the following reasons. Firstly, not all organisations offer the benefit and it seems that a minority of employees in those organisations which offer it take up the offer. According to Ms Walsh only 41% of the employees in her organisation access the arrangement. Secondly, it is clear that its value has eroded over time. Finally, equivalent salary sacrificing arrangements are available to public sector health employees and this is not a matter taken into account in their enterprise bargaining negotiations for wage increases. In fact, health practitioners in the public sector are paid substantially more than their similarly qualified counterparts in community services organisations and also receive the benefit of salary sacrifice arrangements.

7. Determination of wage rates

The QSU has sought to rectify pay inequity in three steps:

- (i) adjust the base rate at Level 4 and above to correct historical undervaluation;
- (ii) increase the adjusted base rates at Level 4 and above and the rates for Levels 1 to 3 by 18% to adjust for the past incapacity to bargain; and
- (iii) increase these rates by a further 1.25% to ensure the rates now set maintain their currency.

Earlier the Commission concluded that some historical undervaluation of work had been able to be established on the evidence presented. The Commission does not intend to specifically respond to the QSU's claim which adjusted the base rates to remedy the undervaluation. Suffice to say that the rates determined have taken undervaluation into account.

The Full Bench in the *Dental Assistants Case* carefully considered the issue of whether enterprise bargaining rates should be taken into account in setting appropriate rates in an Award where pay inequity had been found. The Full Bench first had to consider whether the Act permitted such an approach and in this regard referred to the decision in the *Margarine Case* (2001) 168 QGIG 233 which addressed this point. The Full Bench in the *Dental Assistants Case* concluded:

"[175] ... s. 129 acts only as a fetter to the discharge of the duty imposed on the Commission under s. 126 or in exercising the power at s. 125 of the Act. Section 125(1) gives the Commission power to make, amend or repeal an award to provide, amongst other things, fair and just employment conditions. Section 126 of the Act deals with the content of awards and provides that the Commission must ensure that an award, amongst other things, provides for secure, relevant and consistent wages and employment conditions and provides for equal remuneration for men and women employees for work of equal or comparable value. This last requirement was inserted as a consequence of Recommendation 3 of the Queensland Pay Equity Inquiry.

The Full Bench in the *Margarine Case* described the situation thus:

[176] ... it seems to us that s. 129 confirms that in making, amending or repealing an award to provide fair and just employment conditions and to ensure that the award meets the benchmarks at s. 126, the Commission may not only have regard to the terms of the certified agreements but may base the provisions of an award on a certified agreement (which in consequence of s. 32C of the *Acts Interpretation Act 1954* - singular includes the plural - presumably extends to basing the provision on more than one certified agreement). However, having confirmed the scope of s. 125, s. 129 also imposes each of two limitations on the exercise of the power. The first limitation is that the Commission must be satisfied that the provisions are consistent with principles

established by the Full Bench that apply for deciding wages and employment conditions. The second limitation is that the Commission must be satisfied that the provisions are not contrary to the public interest."

There is an issue about whether the QSU's application or the employers' counter claim in fact seeks to include in the Award provisions based on a certified agreement. Unlike the *Dental Assistants Case* where the applicant union sought to obtain similar outcomes to rates provided in predominantly male certified agreements the QSU has used the SGDCA and the local government certified agreements for comparative purposes only. That is the QSU has used the certified agreement rates as a guide to ascertaining appropriate remuneration rather than seeking to incorporate those rates into the Award. The QSU has made clear in its submissions that it does not seek the rates in this Award to mirror the SGDCA rates or those which apply in local government. A measure of comparability is nonetheless sought.

However, in the event it could be shown that the application seeks to include into the Award rates based on certified agreement rates consideration will be given to the requirements of s. 129(1)(a) of the Act. As the Commission in this matter is constituted by a single Member I must first be satisfied that the provisions based on the certified agreements which are sought to be included in the Award are consistent with principles established by the Full Bench that apply for deciding wages and employment conditions: s. 129(1)(a). The Act does not distinguish between the Statement of Policy and the ERP, both of which provide mechanisms for deciding wages and employment conditions. The ERP was also established by a full bench as a separate Principle for making such decisions albeit in the more limited circumstances of equal remuneration cases. There is no reason in my view why the relevant Principle could not be the ERP. Insofar as the SGDCA is concerned it is a requirement of certification that the rates included provide equal remuneration for men and women employees for work of equal or comparable value (s. 9 (p) Industrial Relations Regulation 2000). In this light I do not find any impediment exists to considering the SGDCA rates as a basis for the rates in this Award. The local government agreements are more problematic because the ones presented were made under federal legislation and did not have the requirements of attesting to equal remuneration. However, as the agreements were only presented for comparison purposes I do not consider that they should be excluded from consideration.

The next issue is whether the incorporation of any provision from a certified agreement into the Award is contrary to the public interest. The Commission has an obligation under the ERP to rectify pay inequity where it is found and under the Act to ensure that awards provide equal remuneration for men and women employees for work of equal and comparable value. The Commission is also required by statute to be governed in its decision-making by equity, good conscience and the substantial merits of the case having regard to the interests of the persons immediately concerned and the community as a whole: s. 320(3) of the Act. As acknowledged in the *Child Care Case* these obligations can sometimes cause tension.

In my view the overriding public interest consideration in this matter is to ensure that employees in this sector are remunerated commensurate with their work value and in a way that is affordable to the funding bodies. This will ensure that qualified, competent employees are attracted to and retained in the sector to provide quality services, that services users receive appropriately funded quality services so as to properly assist them to increase their capacity in the manner outlined by Associate Professor Healy and finally, that the services can be provided at a cost that is reasonable to the taxpayer. In their own ways both the application by the QSU and the counter claim, by not seeking the same rates as those that apply in the QPS or local government, have recognised these public interest imperatives.

How then to achieve pay equity?

7.1 Salary rates

The evidence establishes that the current Award rates of pay do not properly reflect the work value of the various classifications. The work has been historically undervalued when considered in the light of how the rates were initially struck and the apparent lack of consideration given to the various work value elements including other relevant work features. The current work value has also been established through the evidence of the witnesses, only a small portion of which has been recounted in this decision. Added to this is the incapacity of workers in this sector to bargain.

For the reasons outlined earlier the Commission is satisfied that in considering equal remuneration certified agreement rates help in making work value comparisons and such rates are a useful guide to ascertaining appropriate rates to apply in this Award. The enterprise bargaining rates reflect the present work value of classifications. In particular, the classification and rates from the SGDCA are considered to be especially relevant given the equal remuneration undertakings.

The Commission has decided on new rates of pay to apply at all classification Levels and Paypoints. The decision does not set out a formula in the way that Mr Smith explained the QSU's claim. Rather a global approach has been taken to fixing appropriate rates of pay taking into account all of the elements included in

the QSU's claim. The rates now set reflect the current value of the work. This is the overriding purpose of the ERP.

The Commission has had regard to the all of the material that has been put by the parties including the comparator rates and the comprehensive submissions of the QCCI regarding appropriate rates to apply. In considering this material for the professional Levels in this Award the Commission has placed most weight on the professional stream rates from the SGDCA for the reasons outlined above. The rates at Community Services Worker Levels 1 and 2 have attracted the lowest increases, reflecting the QSU's claim that undervaluation was not a factor here. The Commission has established graduate entry rates at Level 3 which recognise the value of the work performed. Higher increases have been awarded at Levels 4 and above particularly in recognition of the past undervaluation of work, the current work value of these classifications as well as the incapacity to bargain.

In relation to Community Services Worker Levels 1 and 2 the Commission has had recourse to the rates provided in the administrative stream of the SGDCA on the grounds that the work performed under the Award at these Levels is administrative in nature. Level 1 in the professional stream of the SGDCA is an entry level for employees completing tertiary qualifications.

In setting the graduate entry points for three year and four year degree holders the Commission has had regard to Paypoints one and two of Level 2 of the professional stream of the SGDCA as these are the respective entry points for three year and four year degree holders in the QPS.

At Community Services Worker Levels 4 and 5 and Crisis Accommodation Worker Levels 2 and 3 of this Award the Commission has had regard to Levels 2 and 3 of the professional stream and for the remainder of the Levels both the professional stream rates and the administrative stream rates have been considered. In my view the relativities previously set did not give proper recognition to the duties, skills and responsibilities required at Community Services Workers Levels 5 and above and the equivalent Crisis Accommodation Worker classifications and accordingly the larger salary increases are found at these Levels.

Significant increases have been awarded at Community Services Worker Level 5 and Crisis Accommodation Worker Level 3. These are the classifications where skilled and experienced professionals are performing service delivery work at a high level. The affidavit and evidence of Ms Anderson attested to this. The complexity of the service users has previously been discussed. This translates into workers at this Level performing complex work with service users who are traumatised, stigmatised or are violent. Often workers at these Levels are required to supervise other professional staff or university students on placement. Depending on the size of an organisation Level 5 workers may operate without direct supervision and off site from the service. Although the Award classification descriptor provides that these workers may exercise a degree of autonomy the evidence is that they are operating at levels of significant autonomy with of course some reporting and responsibility to a manager, however described.

The evidence shows that some administrative workers are also classified at Community Services Worker Level 5. These workers are also performing complex tasks such as budget preparation, day to day financial management and liaison with government funding bodies about contract issues.

The evidence is that both administrative work and professional work is being performed at Level 6. In general an employee at this Level would be undertaking managerial responsibilities which might include managing a program. For example, in her position of Manager/Social Worker - Community Support Worker Ms O'Reilly not only has a service delivery role working directly with clients providing services such as crisis counselling, advocacy support, information and referral but is also responsible for writing budget submissions and program/project evaluations for funding bodies as well as other activities including the development of education programs and coordinating with other services.

The evidence is that as employees reach the more senior levels in community services organisations more administrative work is required to be performed although some professional responsibility is maintained. For this reason the higher classifications found in the administrative stream of the SGDCA have been considered to ascertain appropriate remuneration for these Levels.

At Level 7 an employee would be managing a service or be a senior manager within an organisation. Earlier in this decision I referred to the evidence of Ms Woodbridge and Ms Jansen about the type of work performed, level of responsibility undertaken and skills required for a manager of an organisation at Level 7. Evidence was given about the role of Co-ordinators at YFS which are mostly paid at Level 7. These positions supervise a team of professional staff, deliver services to individual service users, are responsible for a budget and have a range of management responsibilities both to their team and to the organisation.

The greatest increases have also been awarded at Level 8 in light of the complexity of the role. The Commission was concerned during these proceedings about whether the managerial positions in medium sized

organisations such as those held by Ms Bartolo and Ms Walsh are suitably classified at Level 8. These positions are responsible for a sizeable number of employees; multi-million dollar budgets; multiple worksites; significant amounts of plant and equipment and have substantial accountabilities to their committees of management and to funding bodies. Despite the level of increases granted there is a compelling case that positions with such significant responsibilities should either not be classified under the Award, or alternatively, if this is not industrially acceptable, for the Award classification structure to be amended to accommodate employees performing such duties and having such responsibilities. The approach adopted in the Queensland Local Government Award for executive classifications and salaries is recommended for consideration for all "chief executive" positions of community services organisations but particularly those of medium sized organisations.

The salaries shown below in Table 2 more appropriately reflect the value of the work performed by employees under this Award. They compensate for historical undervaluation of work, recognise current work value and provide redress for the incapacity to bargain. These rates do not include the 7.5% loading payable to Community Services Workers Levels 6 to 8 or Category A Crisis Accommodation Workers Level 4 in lieu of hours of work, on call overtime and other Award provisions. The rates given in a schedule to this decision include this loading.

Table 2: Award rates of pay as at 13 July 2009

Classification	13 July 2009 per annum \$
Community Services Worker Level 1	
Paypoint 1	35,000
Paypoint 2	36,500
Paypoint 3	38,000
Community Services Worker Level 2	
Paypoint 1	38,000
Paypoint 2	39,500
Paypoint 3	41,000
Paypoint 4	42,500
Community Services Worker Level 3/ Crisis Accommodation Worker Level 1	
Paypoint 1	42,500
Paypoint 2	44,500
Paypoint 3	45,500
Paypoint 4	47,000
Community Services Worker Level 4/ Crisis Accommodation Worker Level 2	
Paypoint 1	50,000
Paypoint 2	51,500
Paypoint 3	53,000
Paypoint 4	54,500
Community Services Worker Level 5/ Crisis Accommodation Worker Level 3	
Paypoint 1	57,500
Paypoint 2	59,000
Paypoint 3	60,500
Community Services Worker Level 6/ Crisis Accommodation Worker Level 4	
Paypoint 1	63,500
Paypoint 2	64,500
Paypoint 3	65,500
Community Services Worker Level 7	
Paypoint 1	68,500
Paypoint 2	70,000

Paypoint 3	71,500
Community Services Worker Level 8	
Paypoint 1	74,500
Paypoint 2	76,000
Paypoint 3	77,500

The Commission rejects the submissions of the employers that rates set in excess of those set out in the counter claim could lead to leap frogging. The rates have been set having regard to the (higher) salaries payable in the SGDCA effective 1 July 2008. Although there is some speculation the State Government is reconsidering its position it is public knowledge that agreement was reached between the State Government and unions prior to the 2009 election for further wage increases to apply over the next three years to public servants. Further, the rates applicable to health practitioners in the Department of Health and public hospitals currently are in excess of those granted. The Commission preferred the SGDCA rates given its application to the broader public service including the Department of Communities, which now encompasses child safety, disability services and housing, three of the key areas with which this sector interacts as well as the other State Government Departments providing funding to this sector. Given the evidence about the history of enterprise bargaining in local government and the Queensland Public Service and its operation in most other industries, the Commission considers this decision is unlikely to lead to similar claims from other occupations.

The Commission is aware that community organisations not covered by the Award in Queensland are likely to come under pressure as a result of the rates now awarded. The effect of a disjunction in rates between those covered by the State Award and those covered by the Federal Award in Queensland was not a matter ventilated before the Commission to any great extent. It is noted however that Mr Bienstock said that the Board of the QCSEA in not opposing wage increases for the sector recognised the repercussive effects of such increases on employing organisations not subject to the Award. These repercussive effects do not necessarily lead to leapfrogging, which is the concern of the Commission under the ERP. Otherwise, they are not matters over which this Commission has any control. How they respond to this decision is a matter for affected community services organisations and their funding bodies. The Commission notes that the *Fair Work Act 2009* (Cth) now provides similar equal remuneration provisions to those prescribed by the *Industrial Relations Act 1999*.

7.2 Equal Remuneration Component

When an ERC was granted in the *Dental Assistants Case* the Full Bench went to some lengths to try to limit ERCs being introduced into other Awards: see paragraph [269]. This protection was addressed by the QCU which drew an analogy with the *Dental Assistants Case* by arguing that workers in the community services sector also face barriers to bargaining which are unlikely to change and which will continue to hinder the capacity of workers to address pay inequity. Reference was made to the gender composition of the community services workforce; the sector being dominated by a large number of small organisations; the absence of corporate employers and in their place, voluntary committees of management. Further, consistent with the distinction drawn in the *Dental Assistants Case* this application does not involve a small pocket of a predominantly female occupation in a common rule award but essentially all employees covered by the Award.

The Commission acknowledges the similarities between the positions of Dental Assistants and Community Services Workers as outlined by the QCU. For those reasons and in light of the consent to its establishment by the employers and the support of the QCU and QCOSS the Commission is prepared to include an ERC in the Award, albeit with some reluctance. That reluctance stems from a reservation about the proposition that an ongoing barrier to bargaining exists in perpetuity because of structural impediments. In this case the evidence showed that although a number of impediments to bargaining exist, some of which are considerable, QCOSS with the co-operation of the sector, the QSU, the AWU and the employers which have appeared in this case have been conducting a campaign for better wages for this sector. One of the key objectives of the campaign is that the State Government develops with the sector stakeholders, and funds, a strategy for the funding of enterprise bargaining to allow wage rates to be adjusted annually as is the case with comparable industries.

The Commission recognises that this objective has not yet been achieved. The Commission also recognises that community services organisations have been unable in the past to enterprise bargain because of constraints imposed by funding models and, without a change in approach by government, this may continue into the future. However, while past practice is often a reliable guide to the future I am not satisfied that this will necessarily continue in perpetuity. In light of the campaign and the possibility this decision may act as a catalyst there is some prospect of government reconsidering funding models for this sector to compensate for enterprise bargaining outcomes.

Accordingly, I propose to grant an ERC but with a sunset clause. The last ERC is to apply in July 2015. This will allow the increases granted by this decision to be implemented and at the same time for community services organisations, their peak body, QCOSS, employer organisations and unions to have discussions with

government about adopting the broader public service purchasing model of paying enterprise bargaining rates. Of course, if enterprise bargaining was to become a common feature of this industry prior to the expiration of the sunset clause the Commission would consider an application for its earlier removal.

The ERC will be set at the rate of 1% of the Award rate. The ERC is set at a lower rate than that provided by the *Dental Assistants' (Private Practice) Award - State* because the ERC there included a component for disabilities incurred: see especially paragraph [260].

A separate clause will be required in the Award to provide for the ERC which will become payable on the July anniversary date set by this decision. It will take effect in the July following any State Wage Case decision which is usually granted with a September operative date. Rather than adding further impost during a funding cycle the July date has been selected in light of the timing for funding submissions.

Importantly the ERC will be added to the Award rate and become part of it and paid for all purposes. The wages shown in the wage rates clauses of the Award will assume the addition of the ERC.

7.3 Phasing

The QSU's primary position is one of opposition to phasing in of increases. That opposition stems from a concern that the longer it takes for workers to achieve these rates the greater the inequity they will experience. However, without resiling from that position the QSU submitted the following:

- any phasing should be reduced to the minimum period possible to minimise the compounding of the inequity;
- there should be an immediate substantial payment given the length of time these employees have been without pay equity and in light of the time taken since the original application was made;
- any phasing should be completed by July 2010; and
- there should be no absorption of any State Wage increases.

The counter claim sought that the increases be phased in over three years from a date determined by the Commission but no earlier than July 2009.

The QCCI opposed the primary position of the QSU of no phasing on the grounds this would be contrary to the public interest: government funding bodies need time to arrange for increased funding. Moreover, without phasing it is likely that organisations would not be fully funded for the wage increases leaving staff vulnerable to job losses and service users facing reductions in services.

The QCCI proposed a four year phasing in period given the significant wages increases sought by both the QSU and in the employers' counter claim. The QCCI requested that any phasing in commence in the next financial year to allow government funding bodies to make the necessary calculations about available additional monies or alternatively, to allow organisations time to find additional funding sources if none or only part of the increases are funded. The QCCI also referred to the need to take into account a potential State Wage Case increase in September each year and incremental progression.

Having regard to all of the above the QCCI submitted that the most appropriate phasing in period was six monthly, spread over four years commencing from Monday 13 July 2009. The proposed first increase is \$40.00 per week.

The Commission has given consideration to the competing submissions made on this question. Given that the increases granted are significant it is appropriate that they are phased in. While the Queensland Premier has given a written commitment to one of her Members of Parliament to fund the increases granted the Commission recognises that the budgetary position of the Government has altered since that time. The Commission expects the State Government will nonetheless honour the commitment to fund the increases, however, it would be a substantial impost on the budget if no phasing in was granted.

The Commission is also mindful of the arguments put by the QSU about the existence and persistence of pay inequity in this sector and that because of the magnitude of that inequity a substantial increase should be granted. Accordingly, the Commission has decided to grant an initial increase of 6% from Monday 13 July 2009. For most classifications the phasing will conclude in July 2011. For Levels 1, 2 and 3 the phasing will effectively be completed in July 2010 with only the 1% of the final rate (attributable to the ERC) being payable in July 2011. Because of the magnitude of the increase granted at Level 8 compounded by the 7.5% loading the phasing will conclude in January 2012. Higher phased increases apply at Levels 5-8 to ensure the final rates are achieved within a reasonable period. Also at Levels 6-8 the phased increases are higher to take account of the 7.5% loading. The increases granted for each of July 2010 and July 2011 include a 1% ERC.

In addition to the 6% that applies to all classification levels at 13 July 2009 the other phasing arrangements are outlined below. The same phasing arrangements apply to Crisis Accommodation Workers Category A. Salaries are not shown in the schedule arrangements for Crisis Accommodation Workers Category B as the Award does not make clear how the loaded rates are calculated. The same phasing arrangements are to apply to these employees once the draft Award amendment is prepared.

Community Services Workers Level 1

- an increase of 4% in January 2010 with a lesser increase in July 2010 incorporating the 1% ERC and a further 1% payable in July 2011.

Community Services Workers Levels 2 and 3

- an increase of 4% in each of January and July 2010, except for those on Level 2 Paypoint 1 who will receive a lesser increase in July 2010 to ensure that the 1% ERC is paid on both July 2010 and July 2011.
- those on Paypoints 2, 3 and 4 of Level 2 and Community Services Workers Level 3 will receive the balance of the increase in January 2011.

Community Services Workers Level 4

- an increase of 4% in each of January and July 2010 and January 2011.
- the balance of the increase including the 1% ERC in July 2011.

Community Services Workers Level 5

- an increase of 6% in each of January and July 2010.
- an increase of 4% in January 2011.
- the balance of the increase including the 1% ERC in July 2011.

Community Services Workers Levels 6 and 7

- an increase of 6% in each of January and July 2010 and January 2011.
- the balance of the increase including the 1% ERC in July 2011.

Community Services Workers Level 8

- an increase of 6% in each of January and July 2010 and January and July 2011.
- the balance of the increase in January 2012.

Given the differential in wage outcomes awarded some employees will receive a lesser proportional increase than others. Some may receive as little as 2% on 12 July 2010 and zero increase on 10 January 2011. However, no employee will receive less than 1% on 11 July 2011.

The 1% ERC will continue to apply on the July anniversary date for each of the years 2012-2015. It is anticipated that over the next six years the community services sector will negotiate with government funding bodies an arrangement whereby enterprise bargaining increases can be funded. If this cannot be achieved within that period then the Commission will hear argument about the extension of the ERC, however, the granting of such an extension should not be considered automatic.

A schedule showing the amounts of the increase and phasing arrangements is attached to this decision.

7.4 Absorption

Although the evidence is that over-award payments are not a feature of the community services sector the Commission still believes it necessary to make a decision about absorption of the increases. The QCCI acknowledged that while there is a low incidence of over-award payments, any increases flowing from this decision should be capable of absorption but that the increases should not be absorbed into State Wage Case decision increases.

The Commission agrees with the position put by the QCCI. For clarity, I adopt the position of the Full Bench in the *Child Care Case* (see p. 43) which determined as follows:

- The increases may be absorbed into any formal or informal over-award payment.
- The formal over-award payments would include certified agreements or other written contracts. The informal over-awards refer to payments that are made as part of a community services worker's regular wage but do not include bonus or incentive payments. The employer retains the discretion not to absorb the increases or to consider whether bonuses, incentive payments or similar payments are continued.
- The increases are not to be absorbed into any State Wage increases that might be awarded over the relevant time period. Where these occur they are to be in addition to the wage rates that have been determined in this decision.

8. Advanced Practitioner

The QSU submitted that during the inspections and hearing the evidence suggested that there is a need to consider initiatives to provide an expanded career path for professionals who may wish to continue in practice without taking up management responsibilities. The term used to refer to such positions was "Advanced Practitioner". The QSU did not include this provision in its application because of the wide divergence of views about the nature of the role and how it would be defined and remunerated.

Reference was also made to the evidence of Professor Lonne who supported the introduction of such a classification but also referred to the divergence of views in universities' approaches. The QSU sought that, as part of this decision, the Commission recommend that the parties confer about a proposal for the inclusion of an Advanced Practitioner stream in the Award and to facilitate discussions between the parties.

The employers generally considered it worthwhile to have discussions about the concept of an advanced practitioner level and if necessary for some Commission involvement in that process. However, the employers were concerned that such discussions may delay this process and further, as the application before the Commission did not include provision for advanced practitioner believed that separate consideration may be necessary. Concern was also expressed over the practical difficulties in including such a level or stream within the existing classification structure and the funding of such positions.

It is apparent that presently advanced practitioners are working within organisations but are not being compensated for their advanced level of practice. The evidence from a number of employee witnesses and Professor Lonne is that value is added to organisations, service users, other employees and in-service delivery by those advanced practitioners and that they deserve to be recognised and remunerated as such. At the risk of singling one witness out reference is made to the evidence of Ms Cleverly who is employed as the Child Adolescent Support Worker at the North Queensland Domestic Violence Service. Aspects of Ms Cleverly's work were viewed on inspections and this together with her evidence revealed the high level of skill and knowledge she requires to perform her work and achieve beneficial outcomes for the service users is demonstrable.

The lack of salary recognition through the career path currently available under the Award is a clear disincentive to employees to remain in the sector. Although as Ms Robertson's evidence suggests it may have originally been the intention for Level 6 to be applicable to a skilled practitioner, this has not eventuated. Accordingly the classification structure needs to be reviewed to determine how best to accommodate such a classification. The parties are encouraged to have discussions about this issue. The Commission is available to assist, if required. Whether an agreement is reached or not a separate application to the Commission would need to be made to incorporate an advanced practitioner classification(s) into the Award.

9. Draft Award Amendment

The QSU is directed to draft an appropriate amendment to the Award and lodge it in the Registry no later than 22 May 2009. The draft amendment is to include calculations and phasing in arrangements for Crisis Accommodation Workers Category B. Consideration should also be given to standardising the titles given to Crisis Accommodation Workers in the classification descriptors and the wages schedule. The Commission does not require the "Original Relativity" column to be maintained in the wage rates clause. A new clause dealing with the ERC will need to be drafted. The Commission considers it desirable for the number of columns ultimately included in the Award (after the completion of phasing) to be kept to a minimum to ensure clarity about the total rate payable.

In preparing the draft amendment the QSU is to confer with Jobs Australia, the QCCI and QCSEA to see whether agreement can be reached on its terms. In the event of any disagreement the amendment will be settled by the Commission.

Order accordingly.

G.K. FISHER, Commissioner.

Appearances:

Ms L. Heap and with her Ms J. Moran, Queensland Services, Industrial Union of Employees.

Mr P. Eldon, The Australian Workers' Union of Employees, Queensland.

Mr B. Watson and Mr D. Holloway, The Queensland Public Sector Union of Employees.

Mr S. Ross and Mr M. Dougherty, Queensland Nurses' Union of Employees.

Mr J. Spreckley, Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees.

Ms J. Lang, Queensland Council of Social Service Inc. and with her Ms M Robertson (on secondment from Queensland Services,

Hearing Details:

2008 15 May

18 June

17 July

18 August

19 September

6, 10 and 11 November

10 December

2009 16 January

5 and 6 February

Released:

Industrial Union of Employees).

Mr A. Rich of Slater and Gordon and with him Ms J. Sheppard, Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland.

Mr S. Nance, Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers.

Mr M. Pegg, Jobs Australia.

Mr G. Muir, Employer Services Proprietary Limited on behalf of Queensland Community Services Employers Association.

Mr N. Tindley and Mr J. Moore, National Retail Association Limited, Union of Employers.

Mr R. Shields, Livingstones on behalf of Australian Community Services Employers Association.

Mr J. Martin, Blue Care.

Mr G. Burns, Spiritus (formerly Anglicare).

SCHEDULE

Wages - Community Services Workers and Crisis Accommodation Workers

Classification	13 July 2009 per annum \$	11 January 2010 per annum \$	12 July 2010 per annum \$	10 January 2011 per annum \$	11 July 2011 per annum \$	9 January 2012 per annum \$
Community Services Worker Level 1						
Paypoint 1	33295	34627	35346	35346	35700	
Paypoint 2	34447	35825	36861	36861	37230	
Paypoint 3	35711	37139	38396	38396	38760	
Community Services Worker Level 2						
Paypoint 1	35711	37139	38396	38396	38760	
Paypoint 2	36865	38340	39874	39874	40290	
Paypoint 3	38019	39540	41122	41122	41820	
Paypoint 4	39063	40626	42251	42251	43350	
Community Services Worker Level 3/ Crisis Accommodation Worker Level 1						
Paypoint 1	39063	40626	42251	42251	43350	
Paypoint 2	40215	41824	43497	43497	45390	
Paypoint 3	41369	43024	44745	44745	46410	
Paypoint 4	42523	44224	45993	45993	47940	
Community Services Worker Level 4/ Crisis Accommodation Worker Level 2						
Paypoint 1	43675	45422	47239	49129	51000	
Paypoint 2	44831	46624	48489	50429	52020	
Paypoint 3	45983	47822	49735	51724	54060	
Paypoint 4	47027	48909	50865	52900	55590	
Community Services Worker Level 5/ Crisis Accommodation Worker Level 3						
Paypoint 1	48179	51069	54133	56298	58650	
Paypoint 2	49223	52176	55307	57519	60180	
Paypoint 3	50377	53400	56604	58868	61710	
Community Services Worker Level 6/ Crisis Accommodation Worker Level 4						
Paypoint 1	55395	58719	62242	65977	69628	
Paypoint 2	56635	60033	63635	67453	70724	
Paypoint 3	57875	61348	65029	68931	71821	
Community Services Worker Level 7						
Paypoint 1	59114	62661	66421	70406	75110	
Paypoint 2	60354	63975	67814	71883	76755	
Paypoint 3	61596	65292	69210	73363	78400	
Community Services Worker Level 8						
Paypoint 1	62835	66605	70601	74837	79327	81689
Paypoint 2	64075	67920	71995	76315	80894	83334
Paypoint 3	65314	69232	73386	77789	82456	84979

NB: The rates for Community Services Worker Levels 6, 7 and 8 and Crisis Accommodation Worker Level 4 include the 7.5% loading payable under the Award.