Fair Work Commission

SIR RICHARD KIRBY ARCHIVES

EQUAL PAY

A history of women's wages and the Commission

1912 - Fruit-pickers Case
Rural Workers' Union and South Australian United Labourers' Union v The Employers, Parties to the Temporary Agreement referred to in the Order of the President, dated the 1st December, 1911 - The Mildura Branch of the Australian Dried Fruits Association and Others (1912) 6 CAR 61
First case to deal with 'the problem of female labour'.
Justice Higgins rejected a union call for equal pay for equal work.
He makes a 'tentative' decision that women should be paid the same rate as men if they are doing male work (e.g. blacksmiths) or work where men and women are in competition (e.g. fruit-picking) .
Women working in women's jobs, however, should be paid less than men.
He sets a rate of nine pence an hour for a woman fruit-packer compared to one shilling an hour for a male fruit-picker.

1907 - Harvester Case
Ex Parte HV McKay (1907) 2 CAR 1
The origin of the concepts of a minimum wage and wages based on the economic needs of employees.
In setting a basic wage of seven shillings a day, Justice Higgins decided that fair and reasonable pay for an unskilled labourer should be based on 'the normal needs of the average employee, regarded as a human being living in a civilised community'.
The average employee referred to in the decision is a male worker supporting a wife and three children.

1919 - Clothing Trades Case (Archer)
Federated Clothing Trades of Australia v JA Archer and Others (1919) 13 CAR 647
Justice Higgins sets a basic wage for women workers of 35 shillings per week compared to 65 shillings per week for men.
In deciding that women should be paid 54 per cent of the male wage he notes that unlike men, women do not normally have to support dependents.
He says the pay rate for women should be 'suitable for a single woman supporting herself only'.
This is to ensure the male breadwinner is not displaced in work by cheaper female labour.
Female wage set at around 54 per cent of the male wage.

Image: Are women taking men's jobs? : a survey of women's work in Victoria with special regard to equal status, equal pay, and equality of opportunity, 1935, Muriel Heagney

World War I - 1914-18

Great Depression - 1929-39

World War II - 1939-45
Women's wages increased to 75 per cent of men's basic wage
Adopted by Commonwealth Court of Conciliation and Arbitration in the 1949-50 Basic Wage Inquiry.

Photo: Women's activities in Australia, prepared for Dr Edith Sumerskill MD, MP, Empire Parliamentary Delegation Australia 1944

1951 - Equal Remuneration Convention
International Labour Organization, a United Nations agency, released the Equal Remuneration Convention which stated that both sexes were entitled to 'equal remuneration ... for work of equal value ... with a view to providing a classification of jobs without regard to sex.'

1972 - Second Equal Pay Case
Administrative and Clerical Officers' Association, Commonwealth Public Service and Others v Postmaster General and Others (1972) 147 CAR 172
Before 1972 male and female jobs are compared to see if they are basically identical.
After 1972 work is compared to see if it is very similar in content or tasks.
Some employers seek to avoid the equal pay rulings by reclassifying, or renaming, women's jobs.
Grants 'equal pay for work of equal value'.

Photo: 1969 Equal Pay rally attended by ACTU President Bob Hawke and Zelda D'Aprano at the Trades Hall, Carlton, Victoria, Photo taken for Australasian Meatworkers Union, Edwin R. Warden

1973-75 Recession

1969 - First Equal Pay Case
Australasian Meat Industry Employees Union and Others v Meat and Allied Trades Federation of Australia and Others (1969) 127 CAR 1142
Before this time women's wages were set substantially lower than that of their male equivalent (on the basis that the male basic wage contains a 'breadwinner' component not applicable to women).
Grants 'equal pay for equal work' - where women perform 'equal work' alongside men they should receive equal pay.
However, that 'equal pay' was not applicable 'where the work in question is essentially or usually performed by females but is work upon which male employees may also be employed'.

Photo: Equal pay activist Mrs Zelda D'Aprano chained to the front doors of the Commonwealth Centre. April 16, 1970, Fairfax Archive

2005 - ACT Child Care Case
Re Australian Liquor, Hospitality and Miscellaneous Workers Union [2005] AIRC 28, PR954938
Engaged in a comprehensive consideration of the work of early childhood education and care workers covered by awards applicable in the ACT and Victoria.
Applied Work Value Changes Principle.
Found 'significant net addition to work requirements'.
Applied principles for the proper fixation of minimum rates set out in the Paid Rates Review decision 1998 (now known as the C10 Metals Framework Alignment Approach).
Rates were set by linking the classification rates in the ACT Award and Victorian Award to the classification levels in the Metals Industry Award.
This was despite the fact that the Full Bench found '. . . the nature of the work performed by child care workers and the conditions under which that work is performed suggest that they should be paid more, not less, than their Metal Industry Award counterparts'.

Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cth)

1991-92 Recession

Equal Opportunity for Women in the Workplace Act 1999 (Cth)

1986 - Nurses Comparable Worth Case
Royal Australian Nursing Federation and Another re Private Hospitals' and Doctors' Nurses (A.C.T.) Award, 1972 (1986) 300 CAR 185, 13 IR 108
Argued that the 1972 equal pay decision had not been applied to nurses.
Wage-fixing principle allowed, in the case of female-dominated work, for comparisons to be made with female and male classifications in other awards, and with rates outside a particular occupation where such comparisons are not available within the occupation on the basis of 'comparable worth'.
Full Bench rejected notion of comparable worth based on gender neutral criteria.
Equal pay claims could still be pursued, this had to occur within the framework of the wage-fixing principles as 'anomalies' having regard to the risk of 'flow-on'.

Photo: First all female Full Bench of the Australian Industrial Relations Commission, from left Deputy President Jan Marsh, Deputy President Judith Cohen and Commissioner Pauline Griffin, 1989, Sir Richard Kirby Archives

Photo: Waterside Workers Federation May Day procession in Sydney, 1960, Noel Butlin Archives Centre, ANU

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)
Added to s.157:
(2B) The FWC's consideration of work value reasons must:
(a) be free of assumptions based on gender; and
(b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

Workplace Gender Equality Act 2012 (Cth)

2011-12 - Equal Remuneration Case
Application by Australian Municipal, Administrative, Clerical and Services Union and others [2011] FWAFB 2700 and [2012] FWAFB 1000
Application for an equal remuneration order (ERO) in the social, community and disability services industry throughout Australia (the SACS industry).
In its May 2011 decision, the Full Bench accepted propositions including that: the work was caring, this characterisation can disguise level of skills and experience required and contribute to devaluing the work; and that because caring work has a female characterisation any undervaluation is gender based.
In the February 2012 decision the majority ultimately concluded that for employees in the SACS industry there was not equal remuneration for men and women workers for work of equal or comparable value by comparison with workers in state and local government employment and that while not solely attributable to the gap, gender had been an important influence.
The Full Bench Majority decided that any ERO should be based on the wages in the modern award and set out a range of percentage increases to those wages. The majority said that importantly, the percentage additions to the modern award wages, as varied from time to time, would provide an ongoing remedy for the part gender has played in inhibiting wages growth in the SACS industry and that the ERO would ensure that for the employees to whom the order applied, there will be equal remuneration for work of equal or comparable value.

2022 - Work value case – Aged care industry stage 1 decision
[2022] FWCFB 200, 319 IR 127
Case dealt with application to increase wages affecting the aged care sector in three modern awards, the Aged Care Award 2010, Nurses Award 2020, and Social, Community, Home Care and Disability Services Industry Award 2010.
Case dealt with in three stages. Stage 1 decision found that modern award minimum wage rates for 'direct care employees' in the aged care sector do not properly compensate for the value of the work performed.
Determined that an interim increase of 15 per cent in modern award minimum wages for 'direct care employees' was justified by work value reasons.

2024 - Work value case - Aged care industry stage 3 decision
[2024] FWCFB 150
Dealt with further wage adjustments for employees in the three awards.
Expert Panel found that the work of aged care sector employees had historically been undervalued because of assumptions based on gender.
Expert Panel found there were 'work value reasons' for the minimum award rates of pay for direct care employees to be increased substantially beyond the 15 per cent interim increase determined in the Stage 1 decision.
Expert Panel identified that the appropriate course was to set a benchmark pay rate for a key classification and then construct a new and uniform classification structure on the basis of that benchmark rate. The key classifications for fixing a benchmark rate were those applying to Certificate III-qualified Personal Care Workers, Assistants in Nursing and Home Care Workers.
Expert Panel concluded that a rate of $1223.90 per week for Certificate III-qualified employees was an appropriate benchmark. Significantly, this is the rate determined by the majority of the Full Bench in the 2011-12 Equal Remuneration Case and that the rates in the ERO issued by the majority have been authoritatively determined to be rates which ensure equal remuneration for work of equal value.
Decision resulted in total work value pay rises of up to 28.5 per cent for direct care employees working in aged care.

Average male wage
Average female wage

48 hour week

44 hour week

40 hour week

38 hour week