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## EVALUATING WOMEN'S WORK: NEW SOUTH WALES NURSES AND PROFESSIONAL RATES

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The transformation of nursing from a menial occupation akin to domestic service to professional status has taken more than one hundred years. Taking NSW public hospital nurses as an example, this paper examines the course of this transformation in the last couple of decades. It concentrates on the role played by institutions of labour regulation in reorganising the labour process and hierarchical structure of nursing. This emphasis allows insight into the broader problem of sex inequality in the labour market. Although institutional rules and processes supporting unequal treatment of men and women in the Australian labour market have been progressively overturned since World War Two, a significant gender wages gap remains.

A major cause of pay inequity between men and women derives from the gendered nature of skill definition and valuation. Cultural norms which define and differentially value skills are embedded in wage-fixing practices, thereby shaping the distribution of work and income along gendered lines. It is argued here that the trajectory of nursing change has been plotted in part by the masculinist principles underpinning determinations in the industrial arbitration system. Because certain skills and attributes could not be 'recognised' by the system, wage fixing principles and practices (among other pressures) have facilitated the predominance of hierarchically organised, technically based nursing practice at the expense of other models. Masculinising the representation of nurses' work has been the means by which the significant industrial successes were achieved in the 1980s in this quintessentially feminine occupation.

### Art or Science? Conflict and Change in the Practice of Nursing

In the decade or so before the industrial victories of the 1980s, the daily practice of nursing experienced a period of rapid transformation. Changes to medical technology and to administrative practices in the health care system profoundly affected the nursing labour process. At the same time, an explicit 'professionalising project' (Chua and Clegg 1989:201) emerged within the nursing elite.

Medical technological change is a complex process, governed by the shared interests of medical technology producers and the medical profession. The medical profession, directly or indirectly, exercises virtually complete control over the definition of health care problems and the specification and execution of solutions (Kermode 1993:104, Willis 1988 *passim*). Developments in medical science and technology have extended medical understanding of bodily functions and the diagnostic and therapeutic repertoires of medical practice. The emergence of a range of electronic measurement techniques and the explosion of drug and other therapies in recent decades have increased the range of treatable diseases. As a result, the clientele or 'case mix' of the health care system has become simply (and often chronically) sicker and older than it used to be.

Increases in the cost of hospital-based medical care associated with the introduction of new diagnostic and therapeutic equipment and consumables have been partially offset by reducing the average length of stay in hospitals. This further increases patient dependency rates, and therefore the intensity and complexity of nursing work. Changes to hospital funding and budgeting practices have also affected nursing work in other ways. Nurses' management roles have expanded, and detailed planning and documentation of nursing care have evolved, based on nursing theory now developed and transmitted in universities. Reallocation of responsibility for a range of tasks from medical practitioners to nurses, and from nurses to other paramedical, domestic or clerical staff has occurred through a range of processes both deliberate and otherwise. This reorganisation of the division of labour in hospitals has been accompanied by considerable conflict between occupational

groups (Game and Pringle 1983). These processes have changed the amount and kinds of work performed by nurses.

The actions of nurses themselves have influenced the course of nursing change. This is particularly evident in successful campaigns for university education and professional rates of pay. Although not always in agreement about means and ends, nurse academics, senior managers, unionists and others have aimed at improving the position of nursing in relation to medicine and other health care disciplines within the hospital division of labour, as well as in society as a whole, often using the language of the need to achieve 'full professional status'. However, nurses' drive for professionalisation takes place in a context shaped by "a comprehensive and interrelated set of obstacles" (Kermode 1994:113) not experienced by professions such as law and medicine in their accession to social power. Rather, "positioned as wage workers," nurses find themselves in a setting "mostly within a large public bureaucracy; consistently dominated by another professional group and by multiple layers of bureaucrats; and [with] a female-dominated work force" (Kermode 1993:113).

In the face of enormous social, economic and technological pressures for change, nurse leaders have sought to define and maintain the specificity of nursing as a discipline and practice as a means to improve the status of nursing. This has not been easy - one senior nurse wrote in 1992 that "[u]ncertainty brought about by change over the last ten years in nursing has left the profession searching for an independent identity" (Arthur 1992:712). To date, medical domination of health care has included considerable control over nursing practice. It is against this aspect of medical dominance which nurse 'professionalisers' have most strongly railed in their quest for the autonomy of nursing practice and a body of knowledge unique to nursing. Indeed, amongst all those nurses who have articulated their desired futures for nursing in the literature, there is a common rhetorical thread: nurses must not simply be the 'doctors' handmaidens.' The desire to distinguish nursing from other health care occupations and to protect the domain of nursing from encroachment is also frequently expressed (see for example Game, 1992:31; Pilkington 1989:23). Ideally, nurse writers assert, nursing should be 'separate but

equal,' not subordinate to medicine and other health professions (Dahl 1992:121).

As nursing increasingly encompasses tasks previously the preserve of medical practitioners, the traditional sexualised dichotomy between 'curing' and 'caring,' which has operated to differentiate (masculine) medicine from (feminine) nursing, is challenged (Brewer 1983a, 1983b, Lemin 1982, Professional Issues Study 1988:258). Universal reliance on some version of 'care' as essential to the definition of nursing continues to prevail (see, for example, NH&MRC 1991, RANF 1984). Yet there have been tensions within nursing about the meaning of care and the direction of change.

Subject to vigorous ongoing debate, the theoretical definition of the domain of nursing remains paramount. During the 1980s, models of 'art' versus 'science' competed to define nursing. An advocate of the scientific approach has claimed that "Yes, nursing is a profession, it is a scientific and scholarly discipline that is research based and it reflects a body of knowledge unique to nursing" (Jiwani 1988:3.19). Moreover, on this view, 'practice settings' (the places where nurses work) should be conducive to research in order to further nursing as a discipline. A different perspective emphasises the altruistic and holistic values of nursing, and its basis in *service*, the precise nature of which is defined by the needs of its clients as individuals (Sikes 1988:3.41). A proponent of this view argues that "we need to remember that increased education does not necessarily equate with increased quality of nursing care. Patients appreciate practical skills carried out with respect for their dignity and safety far more than qualifications" (Green 1988:3.10). Thus the sexualised dichotomy of cure and care is recast, as models of care drawing on the masculine power of science challenge feminine models based on altruism and practical service.

More recently, the art/science dichotomy has itself been challenged with the recognition that "so much of what is 'scientific' and what is 'artistic' collide within the various activities of nursing," and that a consistent and logical description encompassing the totality of nursing work is yet to be articulated (Kermode 1993:108). Nursing is a complex discipline, incorporating an enormous range of tasks. Its core in patient care is diffuse and includes psychosocial dimensions difficult to measure with

the technocratic criteria used in hospital administration and industrial regulation. The institutional environment of the hospital demands that only the definable and measurable dimensions are systematically expressed, and so not only the measurement but the performance of the 'psychosocial' dimensions of nursing are under threat.<sup>1</sup>

Defining nursing is as much a political as an academic exercise because "[t]he pursuit of nursing theory has been intertwined with the pursuit of professional status and the pursuit of control over work" (Kermode 1993:105). Moreover, the 'definition of nursing' takes place not only in the writings of nurses seeking to represent and create nursing as a discipline. Nursing is constantly being defined, in practice and in language, in a variety of contexts. The academic, industrial and practical contexts in which definitions are constructed each have their own 'logic' and *modus operandi*. This means that the material consequences of particular representations of nursing can differ according to the site of expression. Analysis of the arguments used in the prosecution of industrial claims demonstrates how wage fixing criteria have required the emphasis of the technical dimensions of nursing work and the neglect of psychosocial concerns.

### Nurses In The Arbitration System

During the 1980s nursing unions pursued a number of important industrial claims, achieving major advances in remuneration and occupational structures for Australian nurses. In 1989 the NSW Nurses Association made a successful claim for Professional Rates for public hospital nurses in the NSW Industrial Relations Commission. This judgement closely followed a similar claim by the Royal Australian

<sup>1</sup> This is not a new problem, but an old one taking a new form. In the past, psychosocial care may have been sacrifice to the need to 'look busy' so that the tidiness of the linen cupboard took priority over soothing the anxieties of patients. However, because so much of the 'nursing struggle' has been about autonomy in the definition and practice of a holistic discipline, the continued failure to establish institutional means to express care for the whole person deserves comment.

Nurses Federation in the Victorian Commission, with which the NSW Commission had conferred. These cases represented the culmination of years of efforts to increase nurses' salaries and establish an appropriate career structure. They provided a benchmark for fixing entry and middle level salaries in proceedings in the Australian Conciliation and Arbitration Commission (ACAC), wherein the RANF was pursuing equivalent claims for nurses under federal awards. The ACTU actively supported the claims of the RANF in the ACAC, intervening in the effort to establish both improvements and greater uniformity in rates of pay and award structures across the nation. By 1990 rates of nurses' pay were equivalent (at entry level) to those of professional scientific officers in hospitals for the first time.

In 1985 a federal award for nurses was also the subject of a well-known test case, put by the ACTU, the RANF, the Hospital Employees Federation and others. This 'comparable worth case' aimed at introducing a new concept into the existing framework of wage-fixing principles to overcome sex discrimination in awards for female-dominated occupations. The Full Bench rejected the doctrine of comparable worth. However, it acknowledged "that a number of special factors may be relevant to a review of nurses' salaries," (ACAC 1986) not least of which was the continuing availability of the principle of equal pay for work of equal value as set out in the equal pay decision of 1972. Although the case failed to bring about a fundamental change to discriminatory wage-fixing criteria, the consequent referral of the matter of nurses' salaries and award structures to the Anomalies Conference began a series of proceedings in which the narrower goal of improvement for nurses was achieved.

The significance of NSW public hospital nurses' actions in the industrial relations system can be interpreted either in terms of their outcomes (improvements in wages, better career structures and improved conditions, deserved and won from employers), or as part of the process of achievement of professional status. The outcomes also need to be interpreted as part of a process of nursing change involving confrontation and compromise with structures of class and gender power. This latter interpretation requires a conception of the nature of the

relationships constituted and mediated within the industrial relations system.

The legal relationships and processes of industrial relations embody complex and dynamic social relations. The outcomes (awards etc) arising from the operation of the legally structured and regulated industrial relations system are not simply the automatic outcomes of the operation of the *law*, but of the adopted practices and structural qualities of the parties to the system (Mitchell, 1988:499). By extension, relationships (such as that between employers and employees or between the government and the industrial tribunals), and the institutions which mediate and constitute them, are the 'outcomes' of a complex historical *accretion of social practices*.

The criteria for wage fixing institutionalised by industrial tribunals in the 1980s were those of needs, capacity to pay, real wage maintenance, and wage equity. They embody not rational legal principles, but a political process through which conflict and compromise over social distribution between classes and sexes is organised. The institutions of the industrial relations system also offer opportunities to groups such as nurses to make gains when their opportunities in other spheres might be more constrained. Yet wage-fixing principles are used to circumscribe both the grounds upon which award change can be sought and the outcomes of the wage determination process.

Industrial awards incorporate career structures and wage relativities between various classifications under their regulation. In this way awards governing nursing constitute and legitimate nursing's *internal* hierarchy. Access to social power gained by different groups within the occupation depends on their capacity to realise the possibilities enshrined in the improved career and salary structures of their award. This capacity may be compromised by the continuity of a domestic division of labour which ascribes responsibility for child care and domestic work to women. Even in this female-dominated occupation, the whole-hearted pursuit of a career may require the capacity for a pattern of individual labour force participation equivalent to that generally experienced by men.

The way nurse unionists approached the industrial relations system changed significantly during the 1970s and 1980s. Part of the problem

nurses faced in 'professionalising' was that practitioners in the model professions of law and medicine were rarely waged workers, operating instead in the market on a fee-for-service basis. In the 1970s nurses began to threaten and take industrial action in pursuit of their claims. Growth in white collar employment and sporadic white collar militancy coincided with restraint in government spending on health care and the establishment of nurses' concerted drive for professionalism. This configuration nourished the dormant industrial muscle of nurses and nurse shortages of critical proportions considerably increased their bargaining power. Nurse unionists came to repudiate explicitly the 'dedicatory ethic' which had previously made the pursuit of material reward for service unseemly in the nursing profession (Lamp, April 1975), removing a cultural barrier to the pursuit of the profession's objectives by *industrial* means. In 1982 the NSWNA voted in a controversial militant new leadership team of Jenny Haines and Bronwyn Ridgeway on a reform ticket. The new leaders took a hardline industrial posture, opposing the educational route to professional status. In 1987, Haines was replaced as General Secretary by the more moderate Patricia Staunton who oversaw the introduction of professional rates.

Nurses' collective action in the conciliation committees and Courts of the industrial relations system is formally pursued within the relatively narrow legalistic framework of the system of industrial relations. In this institutional setting, nurses are legally constituted as a collective agency, subject to one major industrial award and represented by one legally recognised union in each jurisdiction. Here they confront some of the structures of social power and give expression to some social power themselves. Nursing unions were able to use means available in the existing wage fixing principles to secure the revaluation of their work. The achievement of 'professional rates' seems the practical and symbolic consummation of a long struggle for recognition in a long undervalued occupation. Close examination of the judgements setting out these gains and losses tells another story.

### The Glynn Decision, 1981

In a series of judgements (NSWIC 1980a, 1981a, 1981b, 1981c) delivered during 1980 and 1981, Justice Glynn of the NSW Industrial Commission, awarded cumulative increases of from 16.6% to student nurses to 23.75% for Directors of Nursing.<sup>2</sup> These constituted "*the largest salary increase granted for work value change to anyone in New South Wales during the past six years*" (Lamp Dec 1981:41). Moreover, Justice Glynn did not make the award for a fixed term, leaving the NSWNA at liberty to apply for a further variation at any time.

These decisions mark the beginning of the road to professional rates. The case was drawn out, occurring at a time of upheaval in the federal industrial relations system with the pending collapse of the system of centralised wage fixing. The case was brought at a time of relatively high levels of inflation and unemployment, and the industrial relations system in the federal jurisdiction was operating without the support of the Government. Neither indexation of wage increases to the Consumer Price Index nor the abandonment of wage indexation had been successful at moderating wages growth in a time of high inflation. Federal government funding for health care to the States had been progressively tightened during the late 1970s and the NSW government began an ongoing program of hospital rationalisations in 1979, involving the setting of staffing restrictions, bed closures and other cost cutting measures. Nurses were engaged in industrial action about these cuts and further action was threatened around this pay claim in the face of the 'go slow' tactics of the Health Commission and the Public Service Board (Lamp Aug 1980:3).

2 The increases finally granted had been congruent with those sought by the NSWNA before the collapse of wage indexation. However, the Association made an amended claim seeking increases ranging from 20% to 52% shortly after the collapse. Mr Cullen, for the NSWNA, argued that lower claims were made in the context of wage indexation because regular adjustments in accordance with State Wage Cascs could be expected (NSWIC 1981c: 4).

Filed in March 1980 to the Public Hospital Nurses (State) Conciliation Committee, judgement was finally handed down in October 1981. At the time of application, wage indexation was in force, and the grounds upon which wage increases could be sought were limited to work value increases, 'catch up to community wage movements' and anomalies and inequities (Dufty and Fells 1991:239). All three principles were applied in some form when the final judgement was delivered, although wage indexation had been abandoned in July by the ACAC, and in mid August by the NSW Industrial Commission. Work value changes were the main grounds of the application and decision.

Justice Glynn did not grant the full amounts of the amended claim of the NSWNA. However, she did grant more than the Health Commission wanted to pay, despite its arguments for her due consideration of the public interest. Increases were granted on the basis of submissions detailing the increased workloads and skill requirements of contemporary nursing practice and hospital funding cutbacks. Changes to the psychosocial dimensions of nursing practice are considered in the judgement. However, increased needs of patients for 'continuous comfort and support' (NSWIC 1981c:9) are *not* articulated in terms of greater nursing skill. Rather these 'needs' are considered to cause 'emotional stress' to nurses, and so form part of 'the conditions of employment.' This 'stress' forms part of the grounds of the wage increase without acknowledging 'comfort and support' as measurable dimensions of nurses' work to be compensated as such.

In her Judgement, Justice Glynn made some important acknowledgments. In her view, the 'public interest' required the provision of a satisfactory standard of nursing care, and evidence indicated that "many competent and dedicated nurses [were] vacating the profession as a result of various pressures...not compensated for financially". Further, she added that inadequate hospital staffing was a false economy - that human and material resource waste would result, and that nurses' increasingly *technical* skills were fundamental to the effective functioning of the modern hospital. Finally, in support of emerging social mores critical of the dedicatory ethic in women's 'vocational' occupations, citing a decision referring to teachers, she said "an approach that some work is so vital that those who make it their

vocation can be expected partially to live off their dedication, is today completely outmoded" (NSWIC 1981c). Less than six months later public hospital nurses were awarded a further 7 percent increase across the board. The Health Commission appealed this decision seeking a reduction to an increase of 3 percent. A period of industrial action by nurses followed, until the Industrial Commission ordered that work bans and a strike threat be lifted. The Full Bench upheld the Health Commission's appeal and the nurses' salary increase was cut to 3 percent. The decision coincided with further hospital funding cuts and nurses were not prepared to take further industrial action, to the disappointment of their new more militant leadership (Lamp Sept-Oct, Nov-Dec 1982, SMH July 29, Aug 6 1982). In December 1982, under the direction of State and federal ministers and in the context of recession, State and Commonwealth industrial tribunals instituted a six month wages freeze.

It was at this time that the ACTU and the ALP established the Accord, which embodied the promise of a return to centralised wage fixing and full indexation of wages to increases in the CPI. Interestingly, the general secretary of the NSWNA, Jenny Haines, was "the only dissenting voice among more than 200 delegates" (SMH Feb 24 1983) at the meeting to ratify the Accord, although the other delegate from the Association voted to support it. After the ALP Government was elected and the Accord ostensibly became policy,<sup>3</sup> the four six monthly decisions from September 1983 to April 1985 were consistent with full indexation of wage increase to the CPI (Stilwell 1986:43). Order had returned to the wage fixing system, although full indexation was no longer applied after 1985.

Throughout this period hospital rationalisation proceeded rapidly, vigorously opposed by nurses and other health professionals. Nursing shortages were acute, and nurses' working conditions difficult. A wages campaign was called for (Lamp 1985:2). In December 1985, a crisis precipitated action on the nurses' award. Statements, allegedly from the Premier's department, suggested a return to hospital-based training of

3 The 1983 National Wage Case was "substantially in line with the Accord proposals but somewhat more stringent" (Dufty and Fells 1990:298)

nurses to offset severe nursing staff shortages. Nurses demonstrated and marched outside Parliament House and the State Office Block in protest.

Nurse leaders then met with the Premier, the Ministers for Industrial Relations and Health and appropriate advisers, and a series of eight initiatives designed to overcome the shortage of nurses was advanced. The eighth was the referral by the Minister for Industrial Relations, of the appropriate rates of pay, classifications and conditions of employment for persons covered by the Public Hospital Nurses (State) to the relevant Conciliation Committee. Nurses' career structure and wage increase applications were thus expedited. The outcome was the Wells Decision.

### The Wells Decision, 1986

The climate of unrest precipitating the referral of this case to conciliation continued. The negotiating parties - the NSWNA, the Health Administration Corporation (previously the Health Commission) and the Public Service Board - came to agreement on many aspects of the case. However, some matters remained in dispute - both specific issues such as the new classification structure and the general question of the principles upon which wages claims should be made (NSWIC 1986). The Conciliation Commissioner decided on the salary rates to be applied.

The NSWNA's claims were made on the basis of Principles 4 and 11 of the State Wage Case of 1983. These deal respectively with work value and changes to the conditions of employment (NSWIC 1986:8). The Health Administration Corporation made a counterclaim that, in addition to these principles, Principle 9 (re allowances) be used to offer what are effectively piece rates for extra tasks rather than increased salaries across a classification or the creation of a new classification. This was rejected by Conciliation Commissioner Wells (NSWIC 1986:8). As might be expected, the Health Administration Corporation was anxious to minimise the rate of salary increases. Its advocate appealed to the Commissioner, in the name of the public interest, to consider the local and national economic impact of his decision. Further, he challenged the reliability of aspects of the evidence of changes to work, and argued that

the Commissioner should not regard this decision as a panacea for the shortage of nurses.

The Association's 'work value' claims built on the areas of change identified in the 1981 review (the subject of the Glynn Decision) and identified new areas of change. The evidence put to the Committee in hearings and inspections reveals the great extent of the drift of tasks from medicine to nursing, and an increase in the management aspects of the nursing role. Technological changes and increased work intensity were stressed. One example among the many documented was an increase from eleven to twenty nine between 1981 and 1986 in the number of intravenous drugs nurses were authorised to administer. This required detailed knowledge of pharmacology and a range of new skills in the introduction and maintenance of the apparatus of drug administration. Significantly, some psychosocial aspects of nursing work, such as counselling patients and dealing with their relatives, were presented and accepted as demanding 'interpersonal skills.' Nevertheless, dealing with the anxieties of patients and their relatives continued to be articulated as a 'stress.' Regardless of the variety of aspirations nurses may have had for the development of their profession, success in the forum determining their remuneration and advancement prospects required an emphasis on technical and managerial aspects of their work.

Commissioner Wells remarked, in relation to Principle 4, that "... the changes in the nature of the work under this award constitute such a significant net addition to work requirements as to warrant new rates of pay for all classifications ... . In my experience I am not aware of any such degree of change in any industry; in fact, in my opinion the changes are so great as to border on the revolutionary" (NSWIC 1986:42). Further, in relation to Principle 11, he remarked that "[t]he evidence in this case has shown clearly that every significant development in the public hospital system in the last five years ...ha[s] had a direct, dramatic and adverse impact on the environment in which NSW public hospital nurses undertake their work" (NSWIC 1986:40).

The decision approved a new classification structure and across the board pay rises. The most important change was the development of a

clinical career path.<sup>4</sup> Newly created positions offered promotional opportunities to clinical nurses, who had previously to move into education or administration to further their careers.<sup>5</sup>

At the time of decision, there were 19,000 direct beneficiaries under the award being reviewed. The respondent's offer would have cost \$66 million per annum. (NSWIC 1986:7). The decision does not record the aggregate impact of the *actual* salary awards, but precedent allows the assumption that the result was a compromise between the Health Administration Corporation's offer and the Association's claim. Commissioner Wells remarked that the timing of the modernisation of the public hospital nursing award was unfortunate, but that he was satisfied that the new salaries were essential to the recognition of the importance of nurses' work. He concluded that nurses "cannot be expected to continue to subsidise our health system by working for their present levels of salaries" (NSWIC 1986:47). The Wells Decision was the basis upon which the professional rates case was built.

#### Comparable Worth 1986

During the time these applications were before Commissioner Wells in the Public Hospital Nurses' (State) Conciliation Committee in NSW, a potentially path-breaking test case was put in the federal jurisdiction. In October 1985, the ACTU, the RANF and the Hospital Employees Federation applied to the ACAC for a variation to the Private Hospitals' and Doctors' Nurses (ACT) Award 1972, in relation to rates of pay for

4 Before this decision, "bedside" nurses' pay was administered according to a five year incremental scale. The pay of a general nurse, therefore, reached a plateau after eight years from the commencement of service, training period included. The registered nurse scale was extended to nine increments with this judgement, and two new positions, Clinical Nurse Specialist (with one increment) and Clinical Nurse Consultant were created.

5 Administrative classifications were also reorganised, with charge nurse and supervisor positions deleted and replaced with Nursing Unit Manager.

nurses.<sup>6</sup> This test case was based on the argument that nurses (and by inference certain other female-dominated occupations) had not had applied to them the equal pay decision of 1972, in which the principle of equal pay for work of equal value was set out. The reason given in support of the claim was that "nursing is an occupation which has been undervalued because it is traditionally and predominantly female" (ACAC 1985:2). The applicants argued that gender has played a part in the valuation of nursing work, and that the value of nursing work needed *comprehensive reassessment* in the light of the repudiation of gender differentials in rates of pay in wage fixing principles.

The applicants sought a ruling on two threshold matters: a reaffirmation of the 1972 equal pay ruling and the equal pay for work of equal value principles it contained; and assent that the Commission was not constrained by any wage-fixing principles in giving effect to that decision. Further, it was argued that the notion of comparable worth needed to be considered as a means to this end (ACAC 1985:33). This notion, the applicants argued, was equivalent to the principle of equal pay for work of equal value. Their objective was the recognition of comparability between male and female awards for the purposes of job (re)valuation. Support for this interpretation was, they argued, contained in the ruling of 1972.<sup>7</sup> An affirmative ruling would be followed by a detailed case reviewing nurses' rates.

As a significant test case, the application was subject to a number of interventions: from various State governments, the Confederation of

6 The case was part of an ongoing series of actions by the ACTU to remove discrimination against women in the workforce.

7 In answer to a question from the Bench that equal pay for work of equal value (as ruled by the ACAC in 1972) interpreted in comparable worth terms could be used to compare ballet dancers (of both sexes) with builders labourers, Ms Acton for the ACTU said "We find comfort in response to that question in...principle 5B of the Commission's 1972 principles. I go to that..." In applying the principle of equal pay for work of equal value...in some cases comparisons with male classifications in other awards may be necessary" (ACAC Private Hospitals' and Doctors' Nurses (ACT) Award: Transcript of Proceedings, 26th Nov 1985 page 34)

Australian Industry (CAI), the Council for Action on Equal Pay (CAEP) and others. Thus a wide range of views was put to the Full Bench convened to hear the matter. At one extreme were the arguments of the CAI that the application should be dismissed. The advocate for the CAI charged that the ACTU was seeking to redefine the 1972 decision, and that the degree of comparability sought went far beyond the scope intended by that ruling (ACAC 1985:153). It was argued that the wage fixing principles would be severely compromised by an affirmative decision. The Tasmanian Government also opposed the application on the grounds that its success endangered the system of centralised wage fixing (ACAC 1985:132). These interventions explicitly expressed employers' fear of the economic consequences of the comprehensive revaluation of women's work.

By contrast, the CAEP called for more wide ranging change in its intervention than had the ACTU. It was argued that gender bias in the measuring of skill and in the principles of wage fixation had resulted in a disparity between men's wages and the wages of women in predominantly female occupations, a bias not rectified by the 1969 or 1972 equal pay decisions (ACAC 1985:97). The submission contained detailed statistical evidence of these disparities and analysis of their origins in discrimination against women. Underpinned by the proposed concept of comparable worth, an objective assessment procedure was advocated for the revaluing of low paid women's jobs on a case by case basis.

In its decision in February 1986, the Bench affirmed the continuing availability of the 1972 equal pay principle for implementation in awards to which it had not yet been applied. Nevertheless, the applicant's case can be considered to have failed. The Bench prescribed the Anomalies Conference as the pathway for such claims. This special forum heard claims based on the finding of an anomaly or inequity peculiar to that award under a special wage fixing principle. Referral to the Anomalies Conference would strictly contain the scope of applications and confine

the definition of comparability.<sup>8</sup> The Bench found that the flow-on implications of a ruling which allowed more general access to work revaluation would be so serious that the existing centralised wage fixing system would be jeopardised.

The applicants in the comparable worth case sought to challenge the systematic reproduction of gender inequalities in wage fixing practices. In doing so, they confronted the limits of reform.<sup>9</sup> In her excellent commentary on the 'failure' of the comparable worth case, Laura Bennett argues that successful wages strategies for women in the Australian Conciliation and Arbitration Commission should be based on an understanding of several related aspects of its operation and context. Environmental factors which make for successful cases in the commission, including labour market shortages and effective union representation, must be understood. A close analysis is required of the way the commission's perceptions, environment and objectives limit its capacity to admit particular doctrinal arguments. Finally, applicants must understand how existing wage-fixing practices may reproduce gender inequalities (Bennett 1988:545). Bennett demonstrates how wage-fixing principles (especially work value criteria) and wage-fixing procedures reproduce gender inequalities, in spite of the Commission's expressed "commitment to non-discriminatory wage determination" (Bennett 1988:534). Given the close association of State and federal industrial commissions in during this period, these prerequisites for success may be applied as much to the state as to federal jurisdictions.

To the extent that nurses succeeded where this attempt to remove gender bias from systems of wage determination failed, they did so by fulfilling several of Bennett's requirements. Shortages of nurses willing to work in

8 This option had been explicitly rejected by the applicants as unsuitable. Access to the Anomalies Conference is strictly defined. The applicants argued that guide-lines internal to the 1972 principles provided adequate protection from unwarranted flow-ons.

9 Or in the gentler terms of Bennett's argument, "the political-industrial environment was not conducive to doctrinal changes that might have brought about significant across-the-board increases in women's wages" (Bennett 1988:533)

the hospital system reached critical levels during the 1980s. This situation provided a powerful bargaining point for unions representing nurses throughout the country, who attributed the labour market crisis to the poor rates of nurses' pay and the lack of an appropriate career structure. The ACTU sought by consultation to ensure that the respective claims of nursing unions were pursued "in a coordinated fashion."<sup>10</sup> This facilitated effective union representation, in concert with a reorientation of nursing unions towards industrial militancy and away from the 'dedicatory ethic' which had muted their claims until this time. Successes in New South Wales and Victoria operated as 'precedents' in the federal jurisdiction which expanded to include South Australian, Tasmanian and Western Australian nurses in 1988 and 1989. The federal jurisdiction supported uniform national rates because they removed inequities between States. Claims based on changes in work value were central to the proceedings. Work value changes were linked to the problems of staff shortages as well as to changes in medical technology and administrative practices. Moreover, changes in nursing practice and education made demonstrating fulfilment of conventional work value criteria much easier than previously had been the case. Finally, nurses' work was subject to full work value arbitration, including inspections, witnesses and evidence. In the past, lack of access to this process has compromised women's chances in the industrial relations system (Bennett 1988:540).

Thus it can be concluded that the decision by the Full Bench not to introduce the doctrine of 'comparable worth' was of little immediate disadvantage to nurses. Their advocates were able to demonstrate successfully in several jurisdictions that changes to the nature of nurse training and work were sufficient to warrant substantial revaluation. However, as the number and diversity of interventions in the comparable worth case attest, nurses' salaries were not all that was at stake. The very means by which the work of nurses (and by implication other female occupations) was to be valued was challenged. That the flow-on

<sup>10</sup> Decision of the ACTU Executive Meeting, 25-28 November 1985 on the Nursing Industry Comparable Worth Claim

implications were so feared demonstrates the preference for the sacrifice of women's interests to the system.

### The Professional Rates Case, 1989

In March 1987, new wage fixing principles (the 'two-tiered' system) were introduced in the ACAC and flowed on to the deliberations of the NSW Industrial Commission. The first tier was granted to all wage and salary wage-earners, at a discounted rate which did not maintain real wages. The second tier was distributed according to compliance with certain principles, including restructuring and efficiency, work value changes, supplementary payments, allowances and anomalies and inequities (Dufty and Fells 1990:297).

In mid 1987, the NSWNA began informal discussions with the Department of Health on the matter of professional rates of pay for nurses. Since 1985, all nurse education in NSW had been moved to the higher education sector, and student nurses were no longer available for full time work in hospitals. This strengthened the Association's claim for rates of pay to registered nurses equal to those of scientific officers in NSW (Lamp Aug 1987). The claim was filed with the NSW Industrial Commission to be heard as an 'anomaly' within the wage fixing principles. The wage fixing principles required the agreement of both parties that an arguable case exists in relation to the determination of an anomaly. Where agreement is not forthcoming, the President of the Industrial Commission determines whether or not the case is arguable on hearing reasons from both parties. The Department of Health would not give the necessary agreement, the matter was heard, and the decision handed down in December 1987. Mr Justice Fisher determined that an arguable case existed only in respect of pay claims for college-educated nurses. Hospital-trained nurses would therefore receive lower rates of pay. His decision was based in part on the argument that the Wells decision had, in fact, removed any anomaly, and therefore "[t]he nurses cannot have cake in 1986 and eat it again in 1987" (Lamp Feb 1988:11).

This was clearly unsatisfactory, and the NSWNA immediately filed an appeal with the Full Bench of the Industrial Commission of NSW against

Justice Fisher's decision. The Association again sought agreement from the Department of Health that an arguable case existed and that there was an anomaly in relation to registered nurses' rates of pay which required rectification. Failure to reach agreement would result in a total walk-out by nurses with skeleton staff to be provided only in intensive care areas. Agreement was forthcoming on all major issues. The Department supported the principle of professional rates of pay for registered nurses, agreed that the Association had an arguable case under the anomalies principle, and that there should be no disparity between the rates of pay of hospital and college-trained nurses. Industrial action was averted (Lamp Feb 1988:11).

The NSWNA's appeal was upheld in a decision handed down in March 1988 and the case was removed for determination by the Commission in Court Session. The NSWNA argued that substantial and significant changes in basic nurse education and training had occurred in the 1980s, with the upgrading of hospital training in the early 1980s and the transfer to the tertiary education system in 1985. It was contended that "nurses trained and educated under the new system could fairly be classified as 'professional' employees, in the same manner as newly-qualified persons in such health disciplines as occupational therapy, speech pathology, and medical science and technology were rightly classified as professionals when they took employment in the public hospital system." (Lamp Feb 1988:11). Procedural matters caused considerable delays to the setting down of a hearing date. The case came to be heard and a decision was delivered on November 30th 1988. The decision upheld the agreement that an anomaly existed, and made an interim variation to the award by the rates agreed to by the parties. Two further increments were to follow, at yearly intervals, until full professional rates were reached. Disagreement remained as to the fate of allowances paid for post-basic qualifications, and the precise amounts of further salary increments. Intensive negotiations ensued, and agreements were reached on salary rates, for all classifications.

These residual matters were set down for hearing in July 1989. The Commission in Court Session ordered the phasing out of qualification allowances, against proposals by the NSWNA for their retention. The Commission concurred with the respondents that, on the basis of

principle, allowances were obviated by the very formulation of professional rates; and that the increases in salaries sustained by their maintenance would be unwarranted. Reference was also made to the cost of the retention of allowances - estimated to be \$7 million per annum. Salary rates had been agreed upon by the parties, and the negotiated rates were ratified by the Commission (NSWIC 1989).

Concurrent with the prosecution of the professional rates case, nurses had successfully pursued salary increases under the second tier. The salary figures ratified by the Industrial Commission in 1989 were revised upward according to State Wage Case outcomes as they flowed through. In 1989, under Accord Mark IV, a Structural Efficiency Agreement was negotiated between the NSWNA and the Health Administration Corporation with the primary objective of improving "the efficiency and productivity of the Public Health System" (NSWNA 1989) The demonstration of fulfilment of the substantive elements of the agreement became the grounds upon which subsequent salary increases were bargained for.

The Glynn, Wells and Professional Rates cases represent important achievements by NSW nurses. They chart the course of nursing from an apprenticeship-based occupation to its recognition as a professional occupation in less than a decade, through assertive use of the industrial arbitration system. The character of these achievements, however, reflects the constraints posed by the nature of the industrial arbitration process and of the substantive principles upon which decisions are made. The character of these constraints may be elucidated by the contrast between the outcomes of these three decisions in the NSW jurisdiction on one hand, and the 'comparable worth' test case of 1985-6 on the other. It is in the context of a discussion of the failure of this case that the conflicts and compromises with the structures of social power nurses have made in the industrial arbitration system will become clear.

#### 'Success' And 'Failure' In The Industrial Relations System

The institutionalised criteria for wage-fixing embody not rational legal principles, but a political process through which conflict and

compromise over social distribution between classes and sexes are organised. Nurses confront the structures of social power in a specific form in the industrial relations system. The notion or principle of 'work value' is the pivot around which the cases discussed here turn. Increases in work value were the grounds upon which NSW nurses gained pay increases, and the comparable worth case was an unsuccessful challenge to the hitherto discriminatory operation of the work value principle in relation to the valuation of women's work. NSW nurses have 'succeeded' in their dealings with the NSW Industrial Commission, whereas in the ACAC the comparable worth case 'failed'. Examination of the workings of the industrial tribunals reveals the formulation and operation of this principle to be a means by which social power has been expressed and constituted.

The character of the formulation and implementation of the work value principle has two significant properties (Bennett, 1988). First, it is loosely defined. This may be due to difficulties inherent in the measurement of such complex and elusive variables. O'Donnell (1984), Waring (1988) and others have demonstrated, however, the inherently *conventional* as opposed to *technical* nature of definitions of skill and work and hence of their value; conventions which value (what is defined as) men's work over women's. Indeed, flexibility of the wage-fixing criteria such as the work value principle in industrial tribunals is crucial to their functioning. Economic, political and industrial considerations can be taken into account in the framing of decisions and the criteria can be manipulated to achieve a range of results in any given case (Bennett 1988:535). In a society largely structured by capitalist class relations and the subordination of women, these economic industrial and political considerations are structured through those same sets of relations. Tribunal support of the status quo is a means by which class and gender power are expressed and reproduced.

Second, the implementation of the work value criteria incorporates elements which reflect the subordinate nature of women's work force participation, *in spite of the system's expressed commitment to non-discriminatory wage determination* (Bennett 1988:534). The framing of these criteria (the job attributes measured and valued) "systematically embody a discriminatory bias against the work that women perform"

(Bennett 1988:537). In other words, work value criteria are imposed, without discrimination, upon an extant sexual division of labour which owes its particular form to the political and economic powerlessness of women (Bennett 1988:538). This is "the central contradiction" of the 1972 equal pay decision. This contradiction means an inherently conservative set of institutions can reproduce gender inequality while insulated from criticism by "promoting the belief that all that could legally be done had been done" (Bennett 1988:544).

Recognition of these properties generates some useful insights into the NSWNA's 'success' in the NSW Industrial Commission. The *flexibility* of the system enabled Justice Glynn and Senior Commissioner Wells to accede to the political and industrial strength of nurses in that conjuncture, against the economic arguments of the Health Administration Corporation. Nurses were challenging the class and gender power represented by the state as their employer.<sup>11</sup> But the 'masculinity' of the work value criteria reinforced an emerging (re)definition of nursing as a technical, clinical occupation. Wage rises must be justified within legally-framed wage fixing guide-lines, their relative indeterminacy notwithstanding. Nurses therefore emphasised those aspects of their work which coincided with what is considered valuable *within* the work value criteria. Changes to the nursing labour process attendant upon technological change have involved a 'masculinisation' of nurses' work. Some nurses believe this to be a threat to the (claims for) autonomy and specificity of nursing.

Further, to the extent that the basic care aspects of nursing cannot be highly valued under current definitions of work value; and that the

11 Advocate for the state-employer in the 1986 case, for example, (i) argued that budget constraints and the public interest militated against increases; and (ii) sought to deny that the changes to work cited by the NSWNA were widespread. This response to the nurses' claim relies on unquestioning acceptance of the historically low status and remuneration of nursing work, as a means of keeping wages costs down in the public hospital sector. This low status, of course, derives from the "feminine" character of nursing work. Reliance upon it derives from the willingness to subordinate women to other social objectives.

nursing hierarchy is reinforced by tribunal-sanctioned career paths, the internal structure of nursing will be directed by these 'masculinist' principles. Thus, although important gains have been made, wage-fixing principles have played a role in channelling nursing change in a direction which involved significant compromise with class and gender power structures.

The comparable worth case would brook no such compromise. Indeed, the Council for Action on Equal Pay sought in its submission to efface the very flexibility upon which the operation of the entire system depends, in favour of a rigidly defined process of work valuation which would have had redistributive effects devastating to the structures of class and gender power. The central issue at stake in the comparable worth case was the undervaluation of traditionally female skills and attributes, *skills which remain undervalued, and under-emphasised in the successful cases culminating in nurses' professional rates*. In essence, the comparable worth case demonstrated a paradoxical (and misplaced) confidence in the power of rational legal principles to undermine the structures of social power.

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## RESTRUCTURING THE AUSTRALIAN LABOUR FORCE: FROM FULL EMPLOYMENT TO WHERE?<sup>1</sup>

John Burgess

Profound and widespread workforce restructuring has taken place in nearly all OECD countries over the past two decades. The course of restructuring has been catalogued for Britain (Allen, 1988), USA (Bluestone and Harrison, 1982), France (Caire, 1989) and Australia (Barlow, 1991). Of course, change in labour markets is an integral part of the process of economic growth, so restructuring of the workforce is hardly a new phenomenon. However, the nature of recent changes to the workforce raises some important questions about the future of work into the next century.

Will there be sufficient work available to serve the needs of those who desire employment? Can traditional working patterns and work arrangements survive the impact of technology and labour displacement? How are the material needs of individuals to be supported if access to full-time employment is restricted? These questions are far from futuristic speculation. High unemployment rates together with dramatic shifts in workforce composition have forced the Federal government to evaluate these issues (DEET, 1991; Green Paper, 1993). The official policy prognosis remains largely optimistic and conventional in stressing the need for appropriate supply side policies combined with stable macroeconomic management (White Paper, 1994). However, the underling shift in the employment regime has not been addressed.

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