

JOINT COSS SUBMISSION TO FWA EQUAL REMUNERATION APPLICATION

CASE NO.C2010/3131, 28 JULY 2011

This submission is made on behalf of the national COSS network

Australian Council of Social Service (ACOSS)
ACT Council of Social Service (ACTCOSS)
Council of Social Service of NSW (NCOSS)
Northern Territory Council of Social Service (NTCOSS)
South Australian Council of Social Service (SACOSS)
Queensland Council of Social Service (QCOSS)
Tasmanian Council of Social Service (TasCOSS)
Victorian Council of Social Service (VCOSS)
Western Australia Council of Social Service (WACOSS)

About the Councils of Social Service (COSSes)

The COSSes are the peak bodies representing the needs and interests of service providers and their clients in the non-profit social service sector in Australia. Our members comprise community service providers, professional associations and advocacy organisations.

We provide:

- independent and informed policy development, advice, advocacy and representation about issues facing the community services sector;
- a voice for all Australians affected by poverty and inequality; and
- a key coordinating and leadership role for non-profit social services across the country.

We work with our members, clients and service users, the non-profit sector, governments, departments and other relevant agencies on current, emerging and ongoing social, systemic and operational issues.

This submission is based on the COSS networks analyses of the implications of work valuation, workforce challenges, government contracting policies and funding arrangements, and the introduction of the modern award on community services in Australia.

THE EXTENT TO WHICH THE UNDERVALUATION OF WORK PERFORMED IN THE COMMUNITY SECTOR IS REFERABLE TO GENDER

Fair Work Australia's interim decision (16 May 2011)

1. The COSSes congratulate FWA on the finding that for employees in the community sector there is not equal remuneration for men and women workers for work of equal or comparable value by comparison with state and local government employment.
2. The COSSes agree with FWA that undervaluation of the work performed in the SACS-covered sector is the result of a combination of factors.
3. The COSSes agree with FWA's conclusion that employers in the community sector
...value the work of their employees and would like to attract and retain the best employees possible and reward them on a fair basis given the work they perform and wages paid in the community.
4. The COSSes urge FWA to set rates which properly value the work of the community sector. We consider this a necessary step towards resolving the gender related undervaluation that exists in the funding and contracting arrangements between governments and the sector.
5. FWA sought submissions from the parties on the extent to which we consider,
...wage rates in the SACS industry are lower than they would otherwise be because of gender considerations, including how the amount of the gender related undervaluation of the work of the classifications in the industry should be calculated and concrete estimates of that gender related undervaluation.

The Applicants' Submission on Remedy (ASU, 22 June 2011)

6. The COSSes agree with the Applicants that quantifying the extent of undervaluation is not a simple task. COSSes further agree with the Applicant's contention that 'complexities arise because the rates differ on a state by state basis for both the SACS industry workers and for the comparable public sector workers. In some states the rates differ markedly.'
7. The COSSes submit that the gendered nature of the industry is the common thread that binds together the various and complex factors that contribute to the undervaluation of work performed in the sector, including differences in pay rates across jurisdictions and in comparable industries.

The QIRC community sector pay equity decision (A/2008/52009) (2009)

8. While the COSSes do not presume to be industrial experts and we make no comment on the technical matters considered by FWA in its initial decision, we submit that the QIRC pay equity decision provides a reliable contemporary example of a proper valuation of the work performed by workers in the community sector.
9. The COSSes note that the QIRC paid particular attention to the evidence of Professor Karen Healy in making its decision. The QIRC noted that Professor Healy's evidence, 'shows that care work has generally been culturally devalued as women's work. (Prof. Healy) gave four reasons for the lack of appropriate remuneration of direct service work commensurate with the level of skill and responsibilities assumed:
 - caring work is associated with the supposedly inherent caring skills of women;
 - both within the sector and the broader community care work is seen as a vocation rather than an occupation;

- 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
- the nature of the client group can cause community services workers to compensate for shortfalls in funding by providing unpaid or underpaid work' (at 4.2.3).

10. The QIRC found that,

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 (*ibid*).

The factors that undervalue community sector work nationally

11. The COSSes submit that gender is the common thread that binds each of the factors that influence undervaluation together. We agree with the Women's Organisations that, 'it can be seen by examining the factors claimed in this case to be "other than gender" that they do all reflect gender influences' (22 July 2011:3). We further agree that 'it is impossible to separate supposedly explanatory variables from gender, since gender has affected the other variables' (*ibid*).
12. This undervaluation has been established through industrial processes also. The original awards in the sector reflected the 'first award principle' which determined pay rates for industries and occupations that were not previously covered by awards. In the community sector this meant that awards entrenched the low rates being paid to workers. These low rates were a direct consequence of the gendered nature of the work and the low value given to it.
13. The greatest challenges facing the community sector include unequal pay, underfunding, and declining capacity to attract and retain the workers our services rely on to meet the needs of people and their communities in Australia. All of these challenges are attributable to the historical, gendered undervaluation of this sector and its workers.

Public sector as an appropriate comparator

14. While there have been questions raised throughout this case about the extent to which the public sector is an appropriate comparator, we submit that much of the work performed by workers in the community sector is mirrored by that performed by state and local government employees. Commonwealth and state government funded community sector organisations are required to comply with legislation, regulations, standards, codes and policies that are either identical to, or at least as onerous as, those binding on public sector workers. In addition to those requirements, not-for-profit organisations funded to deliver community services are required to provide detailed and comprehensive reporting on their work as a condition of the funding.

Government funding and contracting arrangements and gendered undervaluation

15. Possibly the most significant difference between employers in the social and community services sector and other employers is the way that their services are contracted and delivered, including the significant level of control historically exercised by funders over community sector organisations' operations. Significantly, this has often included the wages of their workforce.
16. As previously stated, the COSSes agree with FWA's conclusion that employers in the community sector would like to attract and retain the best employees possible and remunerate them fairly. We submit that the funding and contracting arrangements that have historically been in place act as a barrier to doing this.

17. Most employers in the not-for-profit community services sector derive a majority of their funding from government contracts and service agreements. Historically, funders have established the price of these contracts based on the minimum rates of pay in the relevant awards. Funders have also often required grant recipients to 'acquit' the funding, reporting in detail on the classification of the staff performing the work and the rates paid to those staff. While this practice is less common today, it remains in place in some jurisdictions. It has also had a lasting effect on the cultural practices underpinning the sector's funding relationships, and so still has a significant impact on how contract prices are set.
18. As a result of contracts that undervalue the labour cost of the service, employers have been constrained from paying market-based wages that properly value the work performed. Similarly, the contracting regime has limited the capacity for bargaining between employers and their workforce because of the way the contract prices or funding levels have been set.
19. The COSSes submit that government funders of community sector organisations have historically linked the price of contracts and funding levels to minimum rates in awards because they have not properly valued the work performed. We submit that this undervaluation has been driven by gender considerations.
20. The COSSes agree with the Women's Organisations Final Submissions on Remedy that:

the genesis of the social and community services industries in domestic and community environments, using unpaid labour, largely provided by women, has been intrinsic to the development of funding models that fund services below the cost of provision. To a significant degree the real costs of providing the services, including wages, have never been explicit and evident, nor have they been funded (22 July 2011:5).

The workforce challenges resulting from gendered undervaluation

21. A focus throughout the case has been on the challenge of recruiting early entry level staff, and the impact that the pay disparity has on services' capacity to attract workers. In addition, the ASU's suggested remedy submission highlights the significant wage gaps for community sector workers, particularly in comparison with those who are undertaking similar roles in local, state and the Commonwealth Governments.
22. The Commonwealth's submission submits that, 'non-gender related factors, such as labour market attraction or retention rates, or productivity factors, must be excluded from consideration' (at 3.9). The COSSes strongly disagree with this assertion, both that these are non-gender related factors, and that they are not relevant to FWA's considerations. As we have argued in this submission, we assert that the funding and workforce challenges undermining the viability and effectiveness of community services are fully referable to the gendered undervaluation of this sector and its workers.
23. The capacity to retain experienced and qualified staff is an equally important consideration. The forthcoming ACOSS Australian Community Sector Survey 2011 reports that 68% of surveyed organisations identified salary as a barrier to attracting and retaining staff. The annual ACOSS survey also routinely reports higher turnover rates for community services compared with industry averages, and these are particularly pronounced in small to medium organisations.
24. We agree with the Commonwealth's submission that any relative loss as a result of translation to the modern award needs to be redressed prior to any award increases arising out of the ERO.

25. The challenge of inadequate data on wage gaps and the lack of detailed workforce profiles has also been raised as one of the reasons why calculating the funding implications of any equal remuneration order is so challenging. We submit that the absence of workforce data on the community sector is another consequence of the gendered undervaluation of this sector. Community services have routinely provided data on these issues to their government funders. The failure to analyse and report on these data is a reflection of the historical and continuing view that this is women's care work, essentially voluntary in nature, and therefore unworthy of analysis as an 'industry'. The development of consistent and evolving data sets on the community sector workforce is crucial and the COSS network looks to all governments to invest in this as part of a package of supports to the sector following the ERO.

Anglicare Sydney Submission (21 July 2011)

26. The COSSes agree with Anglicare Sydney that 'it is evident that there is not equal remuneration for work of equal or comparable value when compared with employees in the government sector' (at 3.1); and that, 'the disparity in wages between the community sector and the for-profit and state run services has been a long running issue and justice and equity demand that this disparity be addressed' (at 3.4). We further agree with Anglicare Sydney that, 'pragmatically, if the sector is to be sustainable into the long term then it needs to be able to attract skilled and qualified staff. This requires adequate and appropriate remuneration on a par with other sectors' (at 3.5).

27. We note Anglicare's contention that, 'the sector is poorly paid largely because of the competitive tendering arrangements in place which force organisations to work to minimum budgets in order to secure tenders' (at 3.4). We agree with Anglicare that the tendering arrangements have led to the undervaluation; and we say further that market based wages or indeed genuine competition on labour price are not achievable with the current government contracting arrangements in place, which largely value the labour cost based on minimum award rates. We seek the intervention of FWA to remedy this inequity.

The Commonwealth Government's further written submission (11 July 2011)

28. The COSSes agree with the Commonwealth Government's proposal that the issue of gender undervaluation '... could benefit from all parties working collaboratively to assist the Full Bench identify the gender component of the wage gap and the basis upon which it may be assessed' (at 3.12). While COSSes are not industrial experts, we have significant expertise in the composition, work performed and contracting arrangements in place in the sector and their impact on the workforce, and we offer our support and advice to any collaborative effort to determine the extent of the undervaluation.

PHASING IN (TRANSITIONAL) ARRANGEMENTS AND IMPLEMENTATION

29. As highlighted in ACOSS' submission to FWA (12 August 2010), community sector organisations will require time, funding and expertise to implement any changes that arise from an equal remuneration order. A phased in introduction of any wage increase is vital.

30. The Heads of Agreement between the Australian Government and the Australian Services Union (ASU) detailed that both of those parties supported a six-month lead in time for implementation and a phase-in period of new wage rates. The COSSes support this approach and believe that adequate phase-in periods can only be determined after the outcome of the ERO application is known. This view supports that of the ASU in their submission on remedy.

31. The COSSes support the view of the Commonwealth to ensure that any equal remuneration order interacts with the transitional provisions of the modern award; and the need to preserve the role of modern awards. It is vital that any transition period for the equal remuneration order takes into account the transition to the modern award.
32. Given the low rates of collective bargaining in the community sector, as highlighted throughout the evidence presented in the case, a large majority of sector organisations rely on the modern award as their primary industrial instrument. In addition, those community sector organisations that do have collective agreements relate back to the terms and conditions of the relevant SACS award and now the modern award.
33. The COSS network recently presented a training program, in partnership with Jobs Australia and supported by the Fair Work Ombudsman, to support the sector in the transition to the modern award. This training highlighted the need for intense support for many sector organisations to assist them in the transition to the modern award, particularly around the re-classification of staff. The majority of workshop participants who completed the evaluation stated that they had average awareness of the introduction of modern awards. To further complicate matters for the sector by not aligning transitions with the modern award would have a significant impact on the sector for minimal value.
34. The COSSes support FWA's provisional view that, while any order must be a separate instrument operating independently of the award, the amount could in fact be included in the award. Such an approach would facilitate the interaction of the two, without which there would be significant strain for community services adapting to the implementation of the modern award in advance or separately to the outcomes of the ERO. While we appreciate the legitimate concern that the introduction of the modern award should not be delayed indefinitely, we urge FWA to ensure that these two processes happen concordantly.

The importance of funding following FWA's determination

35. The COSS network firmly believes that all workers in the social and community sector need to be paid at higher wages, not just those who are engaged in direct service delivery with clients. The reality of funding for community services is that it is spread across organisations to support consistent operations and to ensure that services can meet the outcomes required of them and for their clients. The true cost of services includes these 'overheads' and should be adequately compensated for in funding arrangements.
36. This reality of funding caused complexity in Queensland when the QIRC decision (2009) was partially met with funding from the Queensland Government but no substantive commitment from the Commonwealth with respect to Queensland community services. The lack of proper funding for the QIRC decision meant many employers were faced with obligations to pay substantially higher wages with no corresponding increase in funding. Moreover, for many organisations, the requirement to increase wages in these organisations extended to all workers, irrespective of the source of the funding that resulted in their employment; irrespective of whether that funding source had supplemented higher wages; and irrespective of whether community employers could afford to pay higher wages without supplementary funding. This is the reality of employment in the not-for-profit community sector: employers' reliance on external funding sources means that they do not control the amount of money they have to spend on wages. The pressure that results for these vital services when they are not adequately funded must be avoided in the outcome of the national case before FWA.

37. The COSSes partially agree with Australian Business Industrial's contention that,

Commitments by various governments to fund ill-defined portions of the claim have so far failed to ameliorate the unacceptable risks to funded organisations (where the majority of employment lies) that would face serious financial difficulties following the implementation of an equal remuneration order.

The COSSes say that full funding of any decision of the Tribunal by Government is vital for the sustainability of the sector. We further submit that setting new rates of pay which resolve the historic, gender based inequity is a necessary first step in resolving gender based inequities in funding and contracting arrangements.

The principles of funding following FWA's determination

38. The COSS network has long been concerned about the adequacy of funding to community services. Funding has been declining while funders' expectations and client demand have risen. The Productivity Commission has found that even for 'government-funded' services, community service organisations often receive only 70% of the cost of providing them. This inadequacy of funding is undermining the effectiveness of community services to meet the needs of the people and communities who rely on them for support.
39. It is vital that full funding to supplement higher wage costs be based on the principles established by FWA's determination, not in advance.
40. It is vital that there be national consistency in funding the outcome of the case. This will go some way to ensuring that services benefit nationally from the lessons of the Queensland experience.
41. Beyond the adequacy of any supplementary funding to sustain the outcome of this case, that funding of the sector must be adequately and consistently indexed. The failure to pay adequate and consistent indexation rates within funding arrangements is rendering the sector more and more vulnerable to rising cost pressures. The policy-settings that determine indexation are a key issue in this context, including the basis upon which indexation is determined, such as wage cost as compared with CPI or measures that better reflect cost of living; and the impact that measures such as the efficiency dividend have on the value of indexation. For many community organisations delivering government-funded services, the erosion of indexation has been a key driver of declining funding in the face of increased demand. Adequate and consistent indexation will need to be applied to any funding allocated to the equal remuneration order.
42. The Commonwealth's submission implies that outcomes-based funding is the norm across government funding for community services (11 July 2011 at 2.2). It is true that funding relationships across Australia are moving towards more outcomes-based funding models. However this has not happened in all funding programs, even at the Commonwealth level; and in other jurisdictions funding continues to be delivered on the basis of inputs, outputs or agreed budget allocations. Outcomes-based funding cannot be assumed to underpin all funding relationships between governments and not-for-profit community services.
43. In tandem with the ERO, community services urgently require consistency in contracting practices across government agencies and streamlined regulatory requirements within those contracts. This must extend beyond how prices are set and indexation is paid, into some of the broader issues around red tape, micro-management and treatment of surpluses.
44. One example that is worth noting, and has the potential to ensure that funding follows the determination, is the introduction of a single or common funding agreement. This could ensure

consistent reporting processes nation-wide. For example, reporting requirements could include compliance with all industrial requirements.

CORRECTION TO FWA INTERIM DECISION – COSS POSITIONS ON EQUAL PAY

45. In its interim decision FWA noted,

...ACOSS submitted that the survival and sustainability of the SACS industry depends upon redressing pay inequalities as the capacity to attract and retain staff is, in its view, the single greatest issue facing the SACS industry. It also submitted that a phased introduction of any wage increases and government funding commitment are vital. QCOSS, on the other hand, submitted that the lack of a commitment to full funding should not prevent the issuing of an equal remuneration order. It also submitted that salary packaging in the SACS industry should not be taken into account in setting the rates in any equal remuneration order (at 71).

To be clear, ACOSS and QCOSS agree that full funding of any decision by FWA is vital for the long term sustainability of community services. We welcome commitments from the Commonwealth and others to that effect. However, a commitment to full funding should not be a pre-condition of FWA making an ERO to address the pay disparities in the community sector.