

usual day for her. In a number of cases evidence was taken of work being performed through to 3 or 4 a.m. in the morning. Although these were noted as being unusual circumstances, they were not identified as being a one off occasion.

There is consistent evidence that while an outworker may be expected to work these hours by the maker in order to meet deadlines and also may of necessity work these hours in order to obtain sufficient income, it was also the case that performance of work was highly dependent upon availability of work. The time that the Inquiry was taking evidence was identified as a comparatively quiet period with little work and therefore less requirement to work such long hours. This was not identified as a solution to the question of long hours however, as during the quiet period outworkers have no source of income at all.

Although the Award provides for a 38 hour week and provides for penalties to apply to overtime work, as well as providing for part-time work, it is the situation for many outworkers that their hours of work will vary from zero through to part-time through to full-time with an excessive amount of overtime. The hours worked will be invariably irregular and that very irregularity is a source of exploitation of the outworkers. In addition, overtime payments are never made for hours worked in excess of 38 hours.

Mr Tony Woolgar the National Secretary of the TCFUA gave evidence to the Inquiry by affidavit and in oral evidence. Mr Woolgar gave the

following evidence in relation to the nature of the hours worked by outworkers:

Q. Now in relation to what you then referred to as perhaps the part-time or the casual nature of outwork and the full-time nature of outwork the evidence before the Inquiry to date would indicate that for those outworkers engaged the work may not fall easily into what would be ordinarily understood in industrial terms as either full time or part time but, rather may be very sporadic so that an outworker may work very long hours over a very short period of time and then may have no work at all for another period of time?

A. Yes, that is so in our experience. In fact, a situation often arises where someone might turn up at someone's house with a bundle of work and say, on Friday afternoon, "I require this completed order by Monday morning and I will come back and pick it up" and so they could find themselves working all through the weekend with no stops, no breaks.

Q. So when you use the terms full time, part time and casual we should not apply to those expressions our normal understanding in industrial terms but should be more aware of the unusual nature of outworker work?

A. I can assure you there is nothing normal about this sector of the industry.

PAYMENT OF OUTWORKERS

It is widely accepted that outworkers receive inadequate remuneration for the work performed. This Inquiry had the opportunity of taking sworn evidence from a number of outworkers about the conditions under which they perform their work. In taking this evidence the Inquiry was informed of the piece rate system by which all outworkers were paid. That is, makers offer to outworkers a production run with a figure quoted per item for that run.

The evidence from outworkers was that the price offered by makers is fixed and not amenable to variation. A small number of outworkers indicated

that they had, on rare occasions, been successful in obtaining a slightly higher per piece rate, almost invariably in situations where the price being offered was at a lower price than had been previously offered for an identical garment. In those cases the amount of variation was minuscule and did not in any way increase the price paid to anything comparable to an award rate.

Most of the outworkers were able to identify to the Inquiry not only the piece rate, but the amount of time that it took, on average, to sew that piece. They also gave evidence which showed that their rate of production was high, relative to other workers in the industry producing garments of a similar type. From that information the Commission was able to calculate some hourly rates of pay for outworkers. These rates of pay varied from \$2.80 an hour (where the outworker was paid \$0.09 per item) to the highest amount of \$9.30 per hour, which was unusual. The average hourly rate was \$6.00. The evidence from the outworkers was supported by the evidence from the makers taken by Mr Ian Batty and referred to elsewhere in this report. It is plainly the case that these workers were paid well below the award rate of pay.

In addition, a number of outworkers gave evidence that the trend over recent years has been for piece rates to be suppressed and as a result for wages to decrease in real terms over time. By contrast, one outworker pointed to the fact that while to her knowledge factory wages had increased from \$170 to \$330 per week over the last 15 years, the price to make a jacket had decreased from \$10 to \$9 per item in the same time frame.

The outworkers received none of the benefits of regulated wages systems such as holiday pay, long service leave, redundancy pay, meal breaks, overtime or casual loading. No bonuses had ever been paid to any outworker for completion of work by or before a deadline, even when the deadline might be the same day or might involve working over weekends.

One outworker gave evidence that in a production run that totalled a return to her of some \$300, \$90 had been deducted for the late return of the garments. This deduction was made notwithstanding that the outworker had returned the garments within time, and had specifically checked the quality with the maker. The maker had subsequently returned the garments (presumably after the fashion house had rejected the garments) and had the outworker redo part of the garment production. The outworker was not paid for the further work performed and in addition lost the \$90 on the \$300 job. Attempts by the union to collect the \$90 were hindered by the maker stating that the arrangement between himself and the outworker was for the lower amount in any event.

The wages paid to outworkers do not include any payment for work performed by any family member nor any payment for electricity or for wear and tear on vehicles or machinery. Outworkers, in the first instance, attempt to fix their own machines and call in repairers only if absolutely necessary. The cost of repairs range from \$50 to \$140, one outworker giving evidence that if cash money is paid for repairs then the price paid by her is significantly less.

In addition, if an outworker is required to return the garment

completed to the maker, then the outworker will retain the services of other persons to complete a garment. For example, one outworker was paid \$7.50 per blouse. The blouse took approximately one hour to manufacture. The outworker did not do the buttons or buttonholing but paid another person ten cents for buttons to do that work. In addition she paid another person \$1.00 for the blouse to be pressed.

Mr Batty's evidence in relation to small factories indicated that a number of these factories perform buttonholing work. It appears likely that there is some cost reduction available to makers if the work is divided in this way, with buttonholers being paid two cents, five cents or ten cents for buttons. Real questions arise however, as to the overall cost efficiency of operating a business in this way, because it must necessarily involve transporting clothes from place to place in order to have them completed.

The length that makers will go to to reduce costs was demonstrated by the evidence of one outworker who had been offered a jacket production run for \$20 for the whole jacket, but subsequently was provided with only the external cloth and made up the external part of the jacket for \$9.00. The maker then took the jacket for lining by another outworker, presumably at a similar price, thereby reducing the total payment for the manufacture of the jacket by \$2.00. In this case, the outworker, from another source, discovered that the maker was himself paid \$80.00 by the fashion house for that jacket. The outworker subsequently saw the jacket for sale at a retail price of \$699.00.

In many instances outworkers had taken up homework in the expectation that it would return them a higher remuneration than the ordinary weekly wage available at the factories. Invariably, the hourly returns have meant that outworkers may not receive a wage as high as that received at the factory and must put in much longer hours in order to achieve that wage. Even if the wage from time to time exceeds that paid at the factories the personal cost to the outworkers was too high. Three outworkers were reduced to tears in the course of giving their evidence, while all of the outworkers displayed varying degrees of emotion from anger through to frustration at the situation in which they found themselves and from which they could see no escape.

TYPE OF WORK

The evidence from outworkers working on ladies' fashion garments supported the TCFUA's submission to this Inquiry and its submissions to the Senate Economics Reference Committee (SERC) that, almost invariably, outworkers will make up a whole garment.

Mr Tubner in his evidence stated as follows:

When the TCFUA makes claims for underpayment on behalf of outworkers I frequently calculate the payment at a Skill Level 3 or 4. The current classification structure in the award has not worked fully for outworkers because the TCFUA has not had the opportunity to assess the outworkers' skills. The employers have also not tried to assess the outworkers. (Ex 292 para 79)

Outworkers may often be required to perform work on evening wear, which involves sewing materials of a different kind and, in particular,

materials of a delicate nature. They also may sew stretch material which is of a higher level of difficulty than other material. They may also sew men's suits or other heavy material.

Overall, the evidence revealed that outworkers commonly undertook some of the most difficult, complex and skilled garment production work in the clothing industry.

TAX

As stated earlier the Inquiry did not examine outworkers about a number of issues including the payment of taxation.

The non-payment of taxation was raised by Mr Tubner in his affidavit evidence when he refers to the costs to the community of allowing the exploitation of outworkers to continue when that exploitation is accompanied by wide spread tax avoidance across that industry.

In order to assist the Commission, counsel assisting obtained an affidavit from Mr David Butler the Deputy Commissioner, Small Business Income at the Australian Taxation Office ("ATO"). Mr Butler attested to evidence given by Mr Vincent Mitchell to the SERC into outworking. Mr Mitchell had subsequently retired from the ATO, although at the time of giving evidence he was the National Program Manager, Small Business Income of the ATO. In addition, Mr Butler annexed a letter dated 18 May 1998 from the ATO to the

Secretary of the SERC providing a progress report on the Reportable Payment System ("RPS") in the clothing industry.

The evidence from Mr Mitchell in 1996 explained how the RPS was developed as part of the ATO's compliance enforcement strategy, which was a means of systematically extending the tax file number based income reporting arrangements into industries with poor records of tax compliance. RPS applied in the clothing industry to the extent that existing compliance control mechanisms such as PAYE or PPS did not apply (Ex 322).

The RPS is an income reporting system which is designed to ensure that industry participants notify the ATO of payments on which tax should be paid. The legislation supporting RPS defines industry participants who make reportable payments as "Payers" and those who receive reportable payments as "Payees". Under the RPS, Payers are required to report details of all reportable payments - being the name, address and tax file numbers of all Payees along with amounts paid - annually to the ATO. The ATO then, via its income matching systems, compares the amounts reported to it with the amounts stated in the income tax returns of Payees.

Examples of reportable payments in the clothing industry would include most sectors of the clothing manufacturing part of that industry. For example, a payment from a clothing manufacturer to a contractor to have pre-cut material made into shirts is a reportable payment. Similarly, any payment that the contractor then makes to any other person to do any of the work will also be

reportable. If a retailer contracts a manufacturer to make clothing to a design provided by the retailer, then that is a reportable payment, although if a retailer purchases pre-made clothing then that is not reportable.

In 1996 the ATO estimated that the cost of tax evasion in the clothing industry was between eighty and one hundred million dollars. As at 3 May 1996, the ATO had registered some 5,798 Payers and identified 20,561 Payees.

The ATO has estimated figures of 50,000 outworkers Australia-wide. However, the ATO carefully places caveats around that estimation as follows:

The ATO estimated the total number of Payees to be in the order of 70,000. Of these, we believe around 50,000 would be outworkers. In considering this, it must be remembered that these figures are estimates based on the available information at the time the RPS was implemented [that is 1992]. The ATO acknowledges that its own data about industry participation, which is based on participation in the tax system, is limited. This in itself led the ATO to the decision to recommend the implementation of the RPS.

(Ex 322 p 4 of General Submission by the ATO to the SERC)

The candid acceptance by the ATO of the inadequacies of its own data means that the estimates provided by the TCFUA as the numbers of outworkers are as likely to be correct as any other evidence before the Inquiry.

The 1998 progress report on the RPS indicates some improvement in taxation compliance in the clothing industry with an increase in participation

rates and the lodgement of taxation returns. Nevertheless, the ATO notes that the use of shell companies continues to be a significant factor in the low participation rate of the clothing industry in the RPS.

There are also new strategies in place since the taking of evidence by SERC in 1996. In particular, in June 1997, in response to the first report from the Cash Economy Task Force, a national project in high risk industries, which includes the clothing industry, was established. That Task Force has increased interaction with the industry and has enhanced the ATO's awareness of industry practices which, in turn, increased the ATO's ability to address non-compliance.

OCCUPATIONAL HEALTH AND SAFETY

Mr Batty identified a number of occupational health and safety difficulties for the sweat shop area which in my view are also applicable for outworkers. His evidence is as follows:

As opposed to larger well established enterprises, where the standard of occupational health and safety would normally be expected to be superior, the smaller clothing industry factories and workplaces that I have examined in this Inquiry represent potentially significant occupational health and safety problems. These problems will be difficult to deal with because of the transient nature of the businesses and because of the high level of avoidance and because of the obvious state of the reluctance of workers to reveal their own circumstances because of fear. The types of issues which WorkCover has been considering and will no doubt consider under it's programme of auditing in this area are:

- (i) Induction and ongoing training of employees.
- (ii) Manual handling training and systems approach.

- (iii) Ergonomics.
- (iv) Hazardous substances.
- (v) Violence in the workplace.
- (vi) Workplace illumination.
- (vii) Floors, stairs and passageways.
- (viii) Accident reporting.
- (ix) Workers compensation compliance.
- (x) Hazard based risk management.
- (xi) Factory registration.

(Ex 345 para 144)

The conclusion that these findings for small factories are applicable to outworkers, and indeed that the occupational health and safety risks may in fact be greater, is made clear in the study published in January 1998 by Dr Claire Mayhew in association with Professor Michael Quinlan entitled "The Effects of Outsourcing upon Occupational Health and Safety: A Comparative Study of Factory-based and Outworkers in the Australian TCF Industry". They conclude that whilst it is evident that the same types of injury occurred amongst both factory-based workers and outworkers in the TCF industry, the outworkers suffered far more frequent, and more severe injuries than did the factory-based TCF workers. They also concluded that this pattern held across all three main injury questions asked of the 200 interviewees examined and that these injuries represented substantial costs in the industry (Ex 303 p 117).

The observations by the Commission of the work of outworkers and the evidence received from outworkers is entirely consistent with these

conclusions and in my view there are severe occupational health and safety risks for outworkers.

COMPARATORS

This industry area was unusual in that two comparators were chosen with which to compare the work of outworkers and employees in small factories.

Both ABL and the ACM assisted the Commission in locating a suitable comparator in the legitimate clothing industry factories and ultimately the Inquiry selected the workplace of Bonds Industries Limited (Bonds) at Unanderra for the purposes of the first comparison. The Inquiry undertook a site inspection at Bonds, Unanderra and took oral evidence at that location.

Bonds

The Unanderra factory employs 230 clothing workers. It receives cloth from the Bonds textile mills and makes up basic garments - T-shirts; mens', ladies' and children's vests, and athletics for distribution throughout Australia.

The average daily production at the factory is 50,000 garments.

Employment at Bonds is covered by the Bonds Industries Limited - Unanderra Enterprise Agreement 1996 which is a certified agreement made between the

company and the TCFUA. It was registered by the Australian Industrial Relations Commission on 14 January 1997 (Ex 334 para 7).

The 229 clothing workers are employed full time with the only part time employee being engaged in the Administration area of the Bonds factory. There is one male skilled operator and 202 females; 11 female utility operators with the remainder of the males being engaged as mechanics or review staff. There are four floor supervisors and one store supervisor, all female; two store persons, both female and one female review staff. In addition both office staff are female.

Staff turnover at the Bonds factory has been very low in recent years, running at less than 2 per cent. This contrasts with the situation that existed twenty years ago when employment in the clothing industry was relatively easy to come by and employees were able to leave employment and find new employment comparatively easily.

The full time rates of pay by skill level as against the comparable award rate are set out in the following table:

11. The current full-time rates of pay for each classification level is as follows:

Position	Skill Level	Award Rate	Bond's Rate
Trainee		\$359.40	\$377.90
Skilled Operator	2	\$398.60	\$420.30
Skilled Operator (Casual)	2	12.5874 p/h	13.2727 p/h
Utility Operator	3	\$419.50	\$442.90
Trainee Q/C	1		\$442.90
	2		\$542.00
Mechanic		\$451.20	\$477.20
Supervisor - Tex	1	\$419.50	\$522.30
	2	\$451.20	\$576.30
	3	\$451.20	\$605.50
	4	\$451.20	\$622.40
	5	\$451.20	\$632.80

Some of the positions and wages shown above reflect positions that are not contained in the award or Bond's Agreement.

(Ex 334 para 11)

There was no evidence as to the incidence of overtime, but overtime payments are paid when overtime is worked. In addition, employees are paid superannuation.

Ninety-five per cent of the employees at Unanderra are members of the TCFUA. In addition to the ordinary weekly wages, the clothing machine workers are engaged on a bonus system with an average weekly bonus payment of \$71.00 paid to each employee, with possible maximum bonus payments achievable up to \$180.00 a week. The bonus system is based on a

per minute unit calculation. For example, one particular garment may be calculated at a 1 ½ minute production time. A production of 40 garments per hour is therefore necessary to maintain base level production. Any production in excess of 40 garments per hour will count towards the bonus payment.

The two clothing machinists employed at Bonds, who gave evidence before the Inquiry, indicated that they had earned an average bonus over the previous 20 weeks of \$100.32 and \$114.76 respectively.

The evidence given by Mr Cowlshaw, the Bonds Unanderra Store Manager, was marked as confidential, being commercial in confidence. However, it was clear from that evidence that the capacity to produce at a bonus rate was built into the minute rates so that the bonus rate was reasonably achievable for the employees.

An essential element in the bonus arrangement is the work arrangement at Unanderra which is based around teams of workers working on the "Just In Time" or "JIT" system. The use of JIT times has increased production by some 25 per cent, as well as reducing production turn around times from anything up to one week, under the previous system, to a matter of 15 minutes in the event that the company wishes to change colour or garment type. In addition, the work in progress has been significantly reduced. The JIT teams vary in number from 4 to 10 but average around 5 employees. The teams have a much greater degree of responsibility as to how the products are managed and are increasingly multi-skilled, so that each member of the team is

able to help out on any other machine in order to assist in production. The JIT teams work along a production line process, that is, with each member of the team generally undertaking one task such as overlocking or two-needle stitching or quality control but with capacity amongst the members of the team to swap positions in order to assist where a back-log may be building up.

Mr Cowlshaw gave evidence that it was not necessarily the team of the fastest workers who achieved the highest bonuses, but rather the teams that were best able to work together as a team.

Description of the Workplace

During the course of the site inspection the Commission was shown a number of different areas located within one large complex. The first area was the pre-operations area which is equipped with four automated machines, which were described as the most automated machinery in the world that is available for that particular sewing operation. The machines are used for two needle hemming and overlocking, joining the sleeves of garments. Previously two operators would have had to had two separate machines to do that work, whereas now one operator can operate the single machine. In addition, there is a high quality finish on the garment and it is produced approximately three times quicker than the normal manual operation of the same type.

The Commission then inspected the work of two JIT lines, the first

making T-shirts, and the second making baby singlets. The machinery used in these operations, while being the size of a normal sewing machine, were again described as wholly automated, including a lace attachment and an elastic insertion device, and running at much higher speeds than machines that would be found elsewhere. Mr Cowlshaw gave evidence that sewing machinery in the Bonds factory is much more sophisticated than that used in domestic use or smaller factory environments and that this reflected a deliberate approach to investment in research and development and keeping pace with modern technology.

The material and other equipment such as thread and lace required by each JIT team is supplied to the team on an "as needs" basis so that each team is able to continue garment production in an ongoing way.

Each JIT team has a person who counts the production of the JIT team as the garments are checked and folded. Mr Cowlshaw emphasised that quality control is now the responsibility of each member of the team and there is no one single person responsible for undertaking quality control.

The workplace overall was well lit by natural and electric lighting. There is substantial spacing between the aisles to permit movement within the factory and no cramping of the workers in the work location. The machines are cleaned at least once daily by the operators and the sharing of work throughout the team ensures that peak loads are distributed as required.

Work is performed between 7 a.m. and 3.30 p.m., with a ten minute morning tea break and a half hour lunch break from 1 to 1.30 p.m. In addition, there are two three minute exercise breaks, one at 11 a.m. and one at 2 p.m. The Commission witnessed one of these exercise breaks which involved one half of the workforce going for a walk around the building and the other half undertaking aerobic exercises, led by one of their workmates. That employee had been trained in the exercises, which were designed by physiotherapists, who train the people to ensure that the exercises are performed with maximum effect.

Given the low staff turnover, there have been few new recruitments in recent times. When a recruitment occurs, Mr Cowlshaw indicated that "we are basically looking for people who have a level of dexterity and are physically fit. Not everyone can work in textile areas because it requires people to do repetitive type jobs. They need to be able to concentrate all day. That's about it."

Training is provided to employees at the Bonds factory. Ms Katrina Mihalopoulos gave evidence that she had undertaken training in various supervisory training courses, fire training and manual handling training (Ex 333). Another witness, Ms Slavica Ratajkoska gave evidence that she had undertaken training in team building, consultative committee courses, manual handling training, and exercise demonstration (Ex 332). Mr Cowlshaw gave evidence that every employee had undertaken the materials handling course with more training planned for later in the year concentrating on safe lifting.

The Certified Agreement rates the majority of machine operators at Bonds at a level 2 skills classification pursuant to the Clothing Trades Award.

The Certified Agreement states at page 5 that:

- (a) Prior to the commencement of the former Agreement, employees were classified under a skill grades structure contained in the Textile Industry (Bonds Industries Limited - Garment Division) Award 1990.

The parties remain committed to the implementation of the skill based classification structure contained within this Agreement.

(Ex 334, Annex A, p 5)

The Certified Agreement provides for three months maximum induction process, which is treated as a trial period to adjudge whether a new starter will be suited to the industry.

The country of origin of approximately 70 per cent of the Bonds workforce is Macedonian together with some Italians, some Spanish, some Greek, some Turkish and a small number of Asian employees. The cultural mix at the factory was identified by Mr Cowlshaw as reflecting the cultural mix of the local community. Mr Cowlshaw said that most of the workforce could speak some English but that approximately 40 to 50 per cent struggle to be proficient in English, although that language proficiency was continually getting better over time. The average age of workers was approximately 36 with the youngest person employed approximately 23 years old and at the other end of the spectrum the oldest being approximately aged 60.

Mr Cowlshaw said that the employees and the company are concerned about government policy in relation to reductions in tariff and also seriously concerned about the impact of competition from Australian manufacturers who, by using outworkers or other forms of employment, avoid award conditions and thus compete unfairly with Bonds and the workers employed there.

It was clear from the inspections and evidence at Bonds that, unlike outworkers, the factory based workers work on a production line (including the JIT system) in which workers (perhaps with rotation) perform discrete tasks in making parts of the garment, rather than making the whole of the garment. It is equally clear that the complexity of garment making is considerably less than that undertaken generally by outworkers as observed by the Commission.

Metal Industry Award

The other comparator identified for this part of the Inquiry was a metal machinist. Evidence was taken from Mr Geoffrey Graham who is employed as a first class machinist at the BHP Port Kembla smelting operations.

The first class machinist position is described as a trades position and is equivalent to the C10 classification in the Metals Award. Mr Graham's immediate supervisor was a leading hand with a supervisory foreman above him.

The machine shop in which Mr Graham is employed involves approximately 110 persons including machinists, crane drivers, stores people and labourers. All of the employees at the time of taking the evidence were male, although two female apprentices had been employed some time ago, and some years ago a female machinist had been engaged at the machine shop. In addition, some female second class machinists, female labourers and female crane drivers have been employed at the machine shop.

The typical work performed by Mr Graham was described as "read drawings and machine whatever the drawing says. It is mill and turning - basically milling I am doing at the moment to tolerances." The machine shop is basically a maintenance shop with the purpose of replacing broken parts. The function of the machinist is to make those pieces correctly, with the fitter then putting those pieces together.

Mr Graham had undertaken an apprenticeship of four years and since completing that had worked for the last 17 years in the machine shop. In addition to performing the work of a machinist of setting up and operating tools to fine tolerances using detailed drawings and specifications, Mr Graham also had a rigger's ticket and a pendant crane driver's ticket.

Mr Graham gave evidence that with the restructuring over recent years, the incidence of employment of second and third class machinists had declined. When they had been in employment at the machine shop their training was usually limited to one particular task, such as how to operate a radial drill or

how to operate a saw. They would obtain on-the-job training to perform that task but would not be able to perform any other tasks or do any fine measurements at all.

The training required to perform the task of a third class machinist was estimated by Mr Graham to take approximately half an hour and was not skilled work at all. A second class machinist would require a couple of days training to understand the basics. In his experience, the second class machinists would tend to become more interested in their work as time went on and would learn more skills out of choice with some going on to become first class tradesmen. These persons would rarely obtain a trades certificate but would become first class machine persons through the experience gained on the job.

The evidence of Mr Graham was taken at BHP's conference facilities at Warrawong. A little later the Inquiry undertook a site inspection at BHP's Port Kembla machine shop. Mr Graham was not working in the machine shop at that time but the Inquiry had the opportunity to observe work performed, of a similar nature to that performed by Mr Graham, and on the same machine. The workplace was a very large warehouse structure which was capable of housing and did house large metal structures used in the Port Kembla smelting operation. The structure was lit by artificial light with a concrete floor and was quite noisy given the types of machinery being used there.

The machine used by Mr Graham had a computerised screen and

the work involved the machining of metal objects to the specifications that were contained in drawings, which indicated the required size and shape of each piece. The work required the wearing of safety goggles. There was hoisting machinery available for the lifting of heavy objects, although the object being worked on at the time of the site inspections was comparatively small.

VALUATION OF WORK PERFORMED BY OUTWORKERS

The work of clothing trades workers is governed by the Clothing Trades (State) Award ((1994) 282 IG 1) and the Federal Clothing Trades Award 1982 (the awards) (Ex 313). The State award contains four skill levels which are set out in Appendix 11 to this report. Although the Wage Bands are numbered from 1 to 5, no. 5 is not a skill level for reasons made clear in evidence cited later.

In considering the clothing industry in this Inquiry, the Commission was confronted with two relevant issues in relation to wages paid to outworkers. The first was the issue of underpayment (as an issue concerning undervaluation) and the second, the issue of undervaluation per se.

Underpayment and Undervaluation

The evidence from all witnesses in this part of the Inquiry confirmed that there is wide spread underpayment of outworkers. Whilst the early relevant awards and legislation and the long history attaching to each, and

a determination by the TCFUA to ensure that outworkers are paid in accordance with the award, there remains substantial failure to comply with the Awards, outside of legitimate factories. Notwithstanding that the work performed by the outworkers demonstrated a skill level beyond that used by the workers engaged at the Bonds Unanderra factory at a skill level 2, not one of the outworkers gave evidence of having been paid the equivalent hourly rate for a skill level 2 of \$10.40 per hour. Other Award conditions, such as payment of casual loading, holiday pay, superannuation and other entitlements, were of course completely non-existent for the outworkers. Indeed, there was wholesale non-compliance with the Awards in the case of outworkers.

I note that no evidence was produced to me of any case that has considered either the State or Federal Clothing Awards and found that the outworker clauses or legislation are deficient in bringing outworkers within the scope of the Award. To the contrary, there was evidence from Mr Tubner that he used the Award classifications to settle or run cases involving non-compliance with the Award on behalf of outworkers. The Awards plainly apply to the work performed by outworkers.

Given the long history of the TCFUA's attempts to achieve just remuneration and terms and conditions of employment for outworkers, and in circumstances where there has been overwhelming widespread and systemic avoidance of obligations under the Awards by all links in the chain above the outworker, it is not surprising that the first port of call for the TCFUA in obtaining wage justice for outworkers is to try to ensure that the Award is applied.

Mr Woolgar's evidence emphasised the TCFUA's position that outworkers are employees and should be treated as such under the Award. However, Mr Woolgar did embrace any process that would simplify the application of the Award to outworkers as the following exchange demonstrates:

Q. And that improvement could include a variation to the award to adequately or differently or more appropriate [sic] express the work performed by outworkers and the remuneration that should be paid to them for that work?

A. Yes. Yes, if it was, if it was to specifically spell that out then yes, but our view is that these workers, outworkers, are employees and should be paid in accordance with the terms of conditions of the current award anyway. Anything that spells it out and makes it simple for people to understand then, yes, we would not be opposed to that.

It is clear that compliance with the Award would radically improve the remuneration received by outworkers. This is the first aspect of undervaluation associated with outwork, that is the failure to meet Award conditions.

There is a second dimension to the relationship between underpayment and undervaluation, namely that the existence of widespread underpayment actively works against the objective appraisal of the value of the work under the Award.

The evidence from Mr Tubner was useful in explaining the likely deficiencies in the Award when it comes to evaluating the work of outworkers. In particular Mr Tubner's oral evidence reflected the union's frustration in pursuing

a higher valuation classification for outworkers in circumstances where those workers do not currently obtain even a base level Award payment. The following exchange with counsel assisting is illustrative of the complexity of issues in relation to the valuation of the work of outworkers:

Q. Do I take it it is a case of not expressly a classification of outworker appearing in that award, that is, there is not a designated classification of outworker appearing in the award?

A. No, the skill is the same whether you are an outside worker or inside worker. It is a matter of being able to see the skills of a homemaker which is something we only do when we are preparing a case. We just haven't been able to do it for all outworkers because we can't find them and they are not going to get paid any money anyway, they are only getting \$3 an hour. We can say that they should be getting \$15 an hour but they are still not getting it.

Ms Smith also gave oral evidence to the effect that in her view the underpayment of outworkers is in fact in itself a form of undervaluation. Her evidence was as follows:

In that way I see the lack of compliance and the stark lack of compliance as really evidence of stark undervaluation of the work so the first instance people are not getting even a basic wage for the work they perform.

...

Q. In relation to the first part of that answer, that is compliance, how do you say compliance is part of a broad valuation of work?

A. I think earnings are a reflection of the value. They are a reflection of the value that society affords to the work. In this particular instance the earnings that outworkers receive - even on the evidence before the Senate Inquiry - the evidence that has come through the various studies that have been undertaken into outwork, show they are entirely depressed rates.

There might be a compliance but the fact is that the work that they are performing is under valued. It is not being paid at an end level close to the rate that is set.

Q. Are you saying then that in effect that to properly address the value of those earnings, that both compliance and a proper work value arrangement has to be in place?

A. In my view, yes. The issue of compliance needs to be addressed. But aside from the issue of compliance I don't think the valuation mechanisms that presently exist in the award are adequate to assess the skill of outworkers.

Ms Smith also gave evidence that in "classic labour market terms" the outworkers in the clothing industry are on the periphery of this particular labour market, in that they have the insecurity of employment and the low wages that attend the peripheral labour market.

Ms Smith's evidence as to the nature of undervaluation and its relationship with non-compliance with the Award introduces some interesting questions in relation to the nature of valuation and in particular the approach to be taken by industrial tribunals such as this one to the question of valuation of work. The Employers' Federation/Chamber has submitted that valuation should be determined from the viewpoint of the employer. This Commission has consistent authority that that is not the approach to be taken to valuation. Less clear, however, is the extent to which the Commission should take into account community expectations and values when considering the valuation of work. The Commission has traditionally had regard to other awards for some assistance in determining relative values.

In relation to work performed by women, and in particular work performed in female dominated areas examined in this Inquiry, there arises a real question as to the influence of community attitudes in relation to that work.

Certainly, the evidence of widespread exploitation and the apparent acceptance of that exploitation by the makers, fashion houses, retailers, and ultimately the consumer (and by inference not only acceptance, but participation in that exploitation) raises a very real issue. Should the Commission merely reflect those community attitudes or does the Commission have a proper role in challenging those attitudes?

Undervaluation under the Awards

Putting aside the question of underpayment, the next issue is that of undervaluation per se. The Employers' Federation/Chamber submitted that if "the award does not properly value the work of clothing outworkers, then the Commission would be in the position that it cannot conduct the proposed comparison because it has no present value with which to conduct the comparison" (Ex 446, para 9, p 75).

If this submission had any merit, then it would have precluded the Commission from considering any of the occupational or industry areas examined during the course of this Inquiry because, as a matter of logic, the issue in relation to each of the female dominated areas of employment was that their work was undervalued, and concurrent with such undervaluation, was the issue of deficiencies within the relevant awards.

Mr Woolgar stated that the outworker's work would fall within the classifications in the Award, but this was only after a proposition had been put to

him that outworkers would fall within level 5 of the award which, as explained later, is not available as a classification.

Mr Tubner's evidence emphasises the lack of opportunity available to the TCFUA properly to classify the work of an outworker. Mr Tubner clearly identifies the work of outworkers as being at a classification level 4 or 5 under the award with the classification 5 level being a wage rate that used to apply to the old tailor and tailoress classifications. I refer to the following passage from Mr Tubner's evidence:

Q. In terms of the award addressing itself to work performed by employees of the industry, I am referring to outworker particularly, is the present regime sufficient for that class of worker in your opinion?

A. Yes and no. There are not too many factory workers in any of the factories who actually do a complete garment any more. In most factory situations the garments are constructed piece-by-piece so you will have one person who specialises in putting pockets in and another who specialises in setting sleeves, another one putting buttons on and sewing up seams. But the homemaker actually has to put the whole garment together.

It's the sort of skills I would describe as the old tailor or tailoress. It's not something you would come across in the factories as they stand, except that maybe the fashion houses might have sample machinists who put the garments together basically without any supervision.

Q. You said in answer to that question "yes and no." What is the no component?

A. The no is we don't have those people normally working in factories. If they are there, their skills are not used. There may be a machinist in the factory that makes a shirt, that can do the whole shirt but she will never be required to do the whole shirt, she will only be required to make the sleeve. So you don't see that person in the factory.

But the homemaker, if she was doing a shirt, she would do the whole garment. So in the award, yes, the award covers a level 4 but we don't see too many.

The majority of machinists in factories would be level 2 machinists. You get the odd sprinkling of the level 3, unless you have a sample machinist, or cutters and you get the level 4s, who are most of these people. If you just pick them up and put them in a factory, the majority of them would be at level 4.

Q. So are you saying this, in your view it is likely that there would be recognition of the actual skill levels of outworkers, getting recognition which is not contained in the existing award structure?

A. I think that if we had a whole heap of people actually putting the whole garments together, then we would probably have to look at the skill levels again. Because the skill levels were based on what we had from a tailor down, but like I said, at the moment our industry does not reflect that, it reflects basically 80 per cent of level 2, a sprinkling of 3, supervisors or designers, or sample machinists, level 4.

Q. So the classification within the award corresponds to an industry which is working on essentially a pretty low basis?

A. Most definitely, yes.

Mr Tubner considered that much work of an outworker could be reasonably classified at level 5 of the awards. His evidence is as follows:-

...In our industry a tailor is a level 5 but we don't have many tailors any more. Some of these home workers may actually go above a level 4 into the same sort of area that a tailor was.

You really - we really need to look at it and just see what the home workers do rather than just say it would be unwise for me to say that they are all level 3 or they are all level 4, but I do believe there are some people who are higher than what the factory workers are, what are called level 4, only because they have to - most home workers actually fix their own machines when they are broken down. They have to work off nothing, turn all the pieces into fully lined, inside, outside the whole lot, and I don't think too many machinists that we have got in the factories could actually do that at the moment.

Q. In the example you gave of a wedding dress or something like that, and you are saying that's of a skill higher than a level 4, would that be encompassed by a level 5, the tailor?

A. Yes, I would say yes.

Q. So your evidence is an out worker - with the proviso that the union really hasn't had an opportunity to properly classify these people properly - your evidence is most would be a 4 and some, particularly higher skilled ones, would be a 5 and there would be a few 3s?

A. Yes.

The important proviso inserted by Mr *Nettheim* in asking the last question, namely that the TCFUA has not had an opportunity properly to assess the skills of outworkers, is illustrative of the limitations of the Award and, at the same time, the necessity for the TCFUA to use the Award as it currently stands with those limitations, insofar as it is possible, to assist outworkers to obtain payment.

The Inquiry also heard evidence from Ms Barbara Jenson, an organiser employed by the TCFUA. Prior to being an organiser, Ms Jenson was engaged as the workplace change adviser for the TCFUA in New South Wales. Between 1967 and 1993 Ms Jenson was employed by King Gee, including some period of time as a clothing machinist.

With this breadth of experience Ms Jenson was well placed to give evidence about the work performed by outworkers and the proper classification of that work.

Ms Jenson's affidavit included her account of the one occasion when she undertook an examination of outworker's work during her employment as a workplace change adviser. That account was as follows:

11. For reasons of the protection of that person I will not reveal the name of the outworker who was examined by me. However the work was carried out by the outworker in Cabramatta. The person was of Vietnamese nationality and carried out the work in her home. The work performed by the outworker on the occasion of my examination consisted of preparation of a heavy duty jacket which was worn for work purposes for workers engaged in outdoor and all weather work. The person who I interviewed and with respect of whom I examined her work made up the whole of this garment. The work was carried out on one sewing machine however the garment remarkably had approximately 30 separate pieces of heavy material. This was an extremely difficult task and I as a person well experienced in the clothing industry amazed that one person could carry out the function of making quite a number of these garments on one sewing machine. I was more amazed to learn that the person was paid \$15 per jacket. It would take her approximately 2.5 - 3 hours to complete one jacket and this would equate to somewhere between \$5-\$6 per hour. The Award rate at that time was \$15.20 per hour for casual work and \$11.40 per hour full-time. The reason I calculated casual rates is because she never received any other Award entitlements for example annual leave, public holidays etc.

(Ex 335 para 11)

The evidence of Ms Jenson was consistent with the evidence taken by this Inquiry at the homes of outworkers, where I viewed articles comprising eleven separate pieces of material and lining, all of which were sorted and sewed by the outworker. Outworkers also were provided with clothing in different sizes, and were responsible for sorting and maintaining order across the different sizes, as well as for sewing the correct label on to those garments. They were occasionally required to make up samples of garments.

Ms Jenson in Exhibit 335, supplemented by her oral evidence, identifies the differences between factory production work and outworker work as follows:

- Outworkers work without supervision. (para 31(i))
- Outworkers perform all the work in their own home at the one work location. (para 31(i))
- An outworker will commonly make up the whole of garment. (para 31(ii))
- In making up the whole of garment the outworker will generally be required to perform the more difficult types of functions such as attachment of a collar, insertion of sleeves into a lined jacket. (para 31(iii))
- The outworker sews the garment by looking at a sample, not by pattern. (para 31(iii))
- Where the cutting of the pieces of the garment is not precise the outworker has the responsibility of taking whatever steps are necessary to ensure that the garment is nevertheless properly sewn. (para 31(iii))
- The outworker performs all of the functions of the team in a modern work organisation applying the JIT process. (para 22)
- The outworkers will normally be engaged in the making up of garments for fashion houses and therefore are more likely than not to be engaged in making fashion garments and dresses which involves a much more complicated form of sewing than that performed in the modern factory operations such as Bonds Unanderra. (para 32)
- A factory that is involved in the make up of more complicated fashion garments such as a dress are likely to have a range of machines available to perform that work including plain sewing machine, overlocker, blind hemmer, button/buttonholer, bar tack; by contrast an outworker is likely to have access to only a plain sewing machine and an overlocker to make the same garment. (paras 33 and 34)

In oral evidence Ms Jenson described an outworker as normally a fully multi-skilled operator and contrasted that position with that of a machine operator engaged in a factory, not using the more modern JIT production processes. She stated that machinists engaged in such factories would normally

operate only one machine all the time and perform only one job. Ms Jenson further gave evidence that the skills levels in the current Award do not direct themselves to the work of an outworker. Ms Jenson said:

...The skill level structure within the award was done on the assessment of machinists inside the factory. To my knowledge there has never been a skill structure done for outside workers who work on sewing machines at home. In my experience, and I did a lot of the skill-based classification structure with my job when I came into the union to assist the union in assessing everybody, putting them into their correct skill levels, it is very easy to assess the inside worker's skill level by referring to what is in the skill level structure in the award, but when it comes to assessing an outworker's skill level he or she has skills which go far beyond what is in the award. The outdoor worker possesses skills the award does not cover and the highest skill level you can attain within the award is a skill level 4 and the outdoor worker, the majority of them who are outworkers make up complex garments and also possess skills beyond what is in the award so in my opinion they would probably be graded over and above the skill that is in the award.

Ms Jenson also explained that although the skill level 5 appears in the Award as a wage rate, there is in fact no skill level 5 classification operating in the Clothing Trades Award at present. To her understanding, the union is currently working on the above trade levels which are levels 5, 6 and 7. In relation to outworkers, Ms Jenson indicated that their work was capable of being likened to the work performed by tailors and tailoresses but that, nevertheless, the proper assessment of outworkers could put them at or above a classification skill level 5. Other factors, beyond the variety of work and necessary skills required to do that work by an outworker, include negotiating skills.

Thus, some work performed by outworkers is caught by existing classifications in the Award (up to level 4) but there is work commonly performed

by outworkers with respect to which the Award does not cater. This is because the work of outworkers has not been fully and properly evaluated. I again refer to the evidence of Ms Jensen as follows:

Q. Ms Jensen, if I can take you now to paragraph 37 of your statement and I am quoting what you said. You refer to the classifications in the award and say, "However, it would have equal application in the assessment and classification of an outworker. It is true that an outworker would be normally attracting the higher classification levels within the award".

So how do you balance that with your statement that they are over and above level 4?

A. What I referred to here was that the outworker has the skills to equate to level 4. Clearly when I go and do an assessment on a worker, if they have skills at level 4 - once they have the skills that put them into that skill level, it's irrelevant what other skills they have because we don't have anything above skill level 4 so that is what I was saying here - that the outworker - they would have an award application and in the assessment and classification of outworker to equate to skill level 4 - but it's my opinion that the outworker would possibly - and a lot of them have - possibly have skills over and above what is classified in that award.

Ms Megan Smith of Labour Market Alternatives prepared for the Pay Equity Inquiry a document entitled "An Overview of the Classifications and Rates of Pay for Clothing Industry Machinists and Metal Industry Machinists". Ms Smith undertook a review of the award changes in both the clothing industry and metals machinists' areas. In particular, Ms Smith referred to the introduction of a new classification structure in proceedings conducted before Deputy President Riordan in 1989. Ms Smith states as follows:

The decisions which introduced the new skills-based classification structure in the clothing awards did not include a specific consideration of the work of outworkers. The amendments to the award in 1987 (Decision G6996 Orders G9473, H0141) that addressed the employment of outworkers did not specify a set

classification rate of [sic] outworkers. The piece rate for outworkers is based on the weekly award rate for the classification in which the employee is employed.

This provision concerning the classification of outworkers was not amended by the introduction of the new classification structure. This is despite evidence that suggests that outworkers are increasingly engaged in the production of complete garments (Senate of the Commonwealth of Australia - Senate Economic Reference Committee 1996, Labour Market Alternatives/Community Enterprise Network 1987). The increased domestic orientation of the industry to women's fashion is an indication that an increasing proportion of domestic production is involving work that would be viewed by the industry as more complex (Labour Market Alternatives/Community Enterprise Network 1987). The consistent shift by the industry to an increased employment of outworkers suggests that outworkers are involved in this segment of domestic production.

The engagement of outworkers in whole of garment production is indicative of a change in the system of work organisation pertaining to outworkers. This can be contrasted to the situation in 1987, when at the time of the outworking amendments, D P Riordan provided an overview of an industry characterised by fragmentation:

Usually, outdoor workers are members of a production team, although unknown to each other, with each one making up part of the garment, they are clearly part of an integrated manufacturing process (G6996, p20).

Outdoor workers are clearly performing work which is integrated into the business of garment manufacture. They are concerned with sewing parts of garments, which have been cut by some other person, usually an employer, to a predetermined design and pattern. In some cases their work represents the final state in manufacturing but in other cases it is not. In any event it is only one part of the total process of manufacturing garments. (G6996, p24)

(Ex 336 p 19-20)

Ms Smith points out that under the current clothing industry award, level 5 does not possess a skill level (p 11). She points out the following as to the structure of the award:

Under the terms of the new classification structure it is *possible* that *machinists* can be employed at levels 2 (87.4%), 3 (92.4%) or 4 (100%) of the award. The descriptors for these levels are contained in Table 4. For machinists in clothing trades the key factors that are important to them being classified *above* level 2 centre on the extent to which they make "whole garments" and their ability to independently carry out work to specifications (for level 4), and the complexity of the tasks or the range of machine operations or machine types that skills are required in (for level 3 employees). The descriptors for level 4 indicate that it is not necessary to hold a trade certificate for classification at level 4. A combination of skill and work function that would meet the requirements of level 4 would be if that employee:

- *applies skills and knowledge, equivalent to that of a qualified tradesperson, that have been acquired as a result of training or experience,*
- *works largely independently (including developing and carrying out of a work plan to specifications), and*
- *makes a whole garment to specifications or exercises equivalent skills.*

(p 17)

Ms Smith's evidence indicates that post 1989 there has been no change from the process of classification which was derived from a factory based system of work. There is no separate and discrete classification system for outworkers. Ms Smith explains the deficiencies in the current award as follows:

The divisional nature and narrow designations that characterised the classification structure in operation prior to the period of change in 1990 - 1993 are an indication that the process of classification was derived from a factory based system of work organisation. The system reflected Taylorist and Fordist approaches to production and work organisation. The new skills based classification structure is reflective of a broader approach to both skill deployment and recognition. While this breadth in approach is potentially conducive to the recognition of the skills of outworkers, a

key consideration is whether the classification structure itself and its inherent classification processes are sufficiently reflective of the work organisation of outworkers. For example, in the context of the way in which work is allocated to outworkers how should the provisions of skill level 4 in the award regarding the independence of work functions and whole of garment production be interpreted. Similarly how are the functions carried out by outworkers regarding work planning and scheduling, machine maintenance, finishing, bundling and distribution contemplated by the classification process.

The award's existing classification provisions does [sic] not therefore on a broad analysis explicitly address two related factors:

- the integrated nature of the work that outworkers are required to perform and the differences in the work organisation that impact on the work undertaken by outworkers as opposed to factory based machinists;
- the less than ready access of outworkers to the skills based classification procedures established by the award.

(Ex 336 p 21)

It should be noted that the current State Award does refer to a level 5 in the classification table but there is no provision for a skill level for level 5 in cl.7A. Moreover, none of the relevant classifications in the Award relating to the work performed by outworkers provide access to a level 5 (see cl.7).

The submission by the Employers' Federation/Chamber as to the valuation of outworkers is somewhat unclear. It is proposed that if the Commission finds that outworkers do fall within the Award, and if it is assessed that the work of an outworker would be assessed at either levels 3, 4 or 5, then the Commission must find that, on the basis of the comparisons put forward, outworkers are not undervalued but in fact are valued more highly than the two comparators. I cannot follow this argument. Level 5 does not have an appropriate descriptor nor is there relevant access under the Award provisions to

level 5. Moreover, the evidence makes plain that the existing levels do not adequately comprehend the level of skill exercised by many of the outworkers observed during this case. As to this proposition, the Employers' Federation/Chamber says that the Commission would then be placed in a position that it cannot conduct a proposed comparison because it has no present value with which to conduct the comparison. I cannot understand how this proposition can be seriously put. The evidence shows that both on the face of the Award (by the existing skill definitions) and by comparison with other workers such as factory workers the work of outworkers is undervalued. The evidence is quite plain. It seems to me that the better approach would be to constructively look at the difficulties confronting outworkers and attempt to find a solution.

CONCLUSIONS AND FINDINGS

Taken together there is no doubt in my mind that the following findings can be made in relation to the work performed by outworkers in the clothing industry in New South Wales:

1. Outworkers are predominantly female.
2. Outworkers are predominantly drawn from comparatively new areas of migration to Australia including in particular China and Vietnam.
3. The extent and consistency of the employment and use of

outworkers indicates an industry substantially structured around and reliant upon outwork.

4. Manufacturers, wholesalers and retailers who engage outworkers gain an unfair advantage over those manufacturers, wholesalers and retailers who engage clothing machinists under the terms and conditions of the relevant Award, Federal or State.
5. The wide spread closure of factories making ladies' fashions does not wholly reflect competition from cheap overseas manufacturers, but rather, at least partially, reflects a wholesale shift of the clothing industry as far as ladies' fashions are concerned from factories to outwork for the express purpose of obtaining manufacturing production work at a much cheaper rate than available in the factories. In other words, the move of the industry into outwork achieved, and continues to achieve, avoidance of scrutiny by industrial parties, whether they be union or employer organisations, government enforcement authorities such as WorkCover and Department of Industrial Relations and any other associated review mechanisms.
6. The benefits of engagement of outworkers, including excess profits, accrues to all parties involved in the manufacture, wholesaling and retailing of clothing wear, other than to outworkers themselves.

7. There is wide spread endemic failure to comply with the Award provisions. Examples include the following:
 - (i) systemic failure to comply with the Award, including failure to pay proper wages;
 - (ii) manipulation and enforcement of deadlines, thereby forcing the outworkers to work excessive hours without proper remuneration and with no regard for occupational health and safety issues; and
 - (iii) failure to compensate for product and services necessary for the production of garments including thread, electricity, maintenance of machines.

8. It is likely that the failure to comply finds its origin in wide spread lack of knowledge of those Award provisions, together with wide spread ignorance of the existence of an industrial relations system, of centralised wage fixing, and of the legal imperatives attached to government and judicial structures. Mostly significantly, I consider that there is a combination of factors which strongly contributes to the undervaluation of work in female dominated industries (as described in a later section entitled the Wider Dimensions of Undervaluation), which factors are particularly visible in the case of outworkers, although the force of the suppression is much greater.

9. The non-compliance with Award conditions has resulted in

treatment of outworkers that can only be described as exploitation.

10. The exploitation of outworkers is assisted by the limited English language capacity of these persons, which, in turn, limits both their ability to have knowledge of their proper rights and entitlements; to achieve those proper rights and entitlements; and to find employment in other industries or occupations.
11. The work undertaken by outworkers is undervalued. This arises in two ways. Firstly, outworkers are undervalued as a consequence of the underpayment of their award entitlements. Secondly, they are undervalued in terms of the classifications that apply under the current Clothing Trades Awards. The work is also undervalued by reference to the selected metal industry comparator.
12. Although no work value case has been undertaken in the Commission in relation to the work performed by outworkers, it is clear on the evidence before this Inquiry, that the classification structures and descriptors contained in the award do not address some important aspects of the work performed by outworkers, nor do they address the employment structure which sees outworkers forming a significant and substantial part of the ladies' fashion industry, a fact which impacts strongly on the nature of their work. The nature of their work is such that it is neither adequately, nor properly described, by classifications in the current Awards which

are derived from factory based employment.

13. The outworkers are presently exposed to significant occupational health and safety risks.
14. The present initiatives of the New South Wales Government to expand the enforcement activities of its agencies is highly commendable. These initiatives should be carried out in the fullest possible manner and the Award rigorously enforced.
15. However, there are significant difficulties with enforcement due to difficulties of detection and investigation, which include the veil of secrecy, intimidation and fear that covers the industry of outworkers.
16. The maintenance of the current Award protection for outworkers is essential. So too is the process of developing codes of practice. It is important that all retailers, fashion houses, governments and government agencies become party to appropriate codes of practice/conduct. The current government model is an appropriate initial minimum standard. If all relevant participants do not sign, then consideration should be given to making the code mandatory. However, the principals in the industry, such as retailers and fashion houses, must also apply ethical standards to processes which lead to the engagement of these workers. There must be a

transparent process of scrutiny and auditing by these bodies so as to ensure proper standards are met for outworkers. A consultative industry council consisting of representatives of government, retailers, fashion house and trade unions to overview this process would be highly desirable.

17. These strategies should be combined with approaches designed to inform and educate outworkers as to their rights. This will require language training as well as education as to industrial and other rights. Community support bodies and the TCFUA should be supported in carrying out programmes of this type.
18. The relevant statutory and award conditions should be so structured as to put beyond doubt the access by outworkers to the industrial relations system, including removing the basis for challenges to the operation of the Awards based upon the employment status of outworkers (no matter how spurious those claims might be). If necessary, a special legislative regime should be created to ensure clear access to, and enforcement of, minimum entitlements for outworkers in New South Wales, including provisions in addition to the existing deeming provisions, such as a statutory definition of the outworker as an employee or a special statutory regime to relate to outworkers.
19. Furthermore, given the work carried out by the TCFUA on behalf of

outworkers, the high rate of deliberate Award avoidance and conduct aimed at avoiding detection, the right of entry provisions of the Act should be changed to allow the TCFUA rights of access without notice in all circumstances concerning outworkers.

20. Given the size and complexities of the industry, the difficulties of investigation and enforcement, I consider that there is some warrant in holding a specific inquiry into outworkers. This would greatly assist in achieving the aforementioned outcomes and fashioning remedies to achieve those outcomes. Such an inquiry could examine the work performed by outworkers with a view to examining, at the very least, the following issues:
- (i) the employment status of outworkers, this particular reference being to ensure that the provisions of the Industrial Relations Act 1996 and relevant clauses in the Award are sufficient to ensure beyond doubt the employment status of outworkers and thus their rights and entitlements under the Award;
 - (ii) the non-application of Award conditions;
 - (iii) practices of exploitation and intimidation;
 - (iv) the occupational health and safety issues;
 - (v) the proper valuation of the work;
 - (vi) the elimination or reduction of factories and legitimate operators;

- (vii) the effectiveness of codes of conduct and practice and the role retailers and fashion houses should play in rectifying the problem;
- (viii) the special needs of the workers including assistance with language, access to community support centres and the like;

Any such inquiry must work with DIR and WorkCover inspectors in order to properly investigate the area. The inquiry is likely to be inquisitorial in nature.

21. Clearly, that inquiry should give recommendations as to remedial action. The outwork inquiry should also have as a specific object, recommendations as to legislative reform of the *Industrial Relations Act 1996* and any other relevant Act as necessary to address the complexity of issues which in part has allowed the exploitation of outworkers to continue. In other words, the outcome of an outworker inquiry should be directed at determining a holistic approach to the significant problems faced by outworkers in obtaining proper remuneration.
22. Finally, I consider that the enormity of the outworker problem not only in New South Wales, but in Australia, would justify the adoption of international standards for this work. I consider that the New South Wales Government should encourage the Commonwealth Government to adopt the *ILO Convention on*

Homework No. 177, and, in the meantime, consider reflecting in its own legislation the spirit of that Convention.

SEAFOOD PROCESSING

This section of the Inquiry concerned the fish processing and canning operation of the Greenseas Division of H J Heinz Company Australia Ltd (Heinz Greenseas) at Eden. The classifications level 5, All Others, and level 4, Butchering and vessel unloading, within the Fish Canning &c (State) Award were selected as examples. The “all others” classification essentially included an analysis of ‘trimmers’ and ‘general hands’ engaged at Heinz Greenseas.

The Commission undertook inspections at the company’s operations on 30 March 1998 and took evidence on that day and on 31 March 1998.

The fish canning operations were acquired by H J Heinz Ltd in 1997 from Kraft. Heinz Greenseas has continuously maintained the operation since that time. The present controller of finance and administration of Heinz Greenseas is Mr Brian John Horner who gave evidence to the Inquiry.

A brief history of the operations is set out in Mr Horner’s statement (Ex 149 para 2) as follows:

1. There has been a canning operation at the site since the 1940s. Initial canning was confined to Australian salmon.

2. Canning of tuna commenced in the 1950s and there was a combined output, tuna and Australian salmon, of about 3000-4000 tonnes per annum. Over time the proportion of Australian salmon being processed has decreased.
3. In the 1980s the cannery changed from bluefin tuna to yellowfin and skipjack tuna.
4. The plant was modernised by Heinz Greenseas. The most substantial change was the introduction in 1996 of the Bluestar programme which resulted in a capital investment of approximately \$2.3 million.
5. Current production is about 7000 tonnes of tuna and 700 tonnes of Australian salmon per annum. Canning takes place throughout the year with production of approximately 200 tonnes per week.

AWARD HISTORY

The award applying to the canning operations at Eden, throughout the history of Heinz Greenseas involvement, is the Fish Canning &c (State) Award (the award). In its current form (300 IG 892) the award applies to all employees within the jurisdiction of the Fish Canning &c (State) Industrial Committee. The industry and callings for that committee, leaving aside exceptions, are "all employees in fish preserving and canning factories engaged in cleaning, treating, preserving, canning, labelling and packing fish, and all

other employees employed in operations in or in connection with the factory incidental to the above in the State”).

An award history appears as annexure F to the statement of Mr Horner (Ex 149). I summarise the relevant and significant aspects of that history below:

1. The earliest record in the award history is the award variation published on 31 March 1971 (180 IG 1573). There are different rates prescribed for adult male and adult female employees.
2. The Adult Male Classifications are:
 - i. Fish sorting and/or cleaning and/or scaling and/or sawing and/or cutleting;
 - ii. Cooking retorts - employees in charge;
 - iii. Fish Pre-cooker;
 - iv. Clinching and seaming machine-employee operating;
 - v. Operator of packing machines and labelling machines;
 - vi. Fish meal plant-employees operating and feeding;
 - vii. Tray washing machine operator;
 - viii. Fork lift operator;
 - ix. Employee washing factory equipment;
 - x. All others.

There is also a leading hands classification for adult male employees.

3. The Adult Female Employees classifications are as follows:
 - i. Forewoman;
 - ii. Assistant Forewoman;
 - iii. All others

4. The female "all others" classification is paid \$2 less than the same male classification. Clearly, there are a number of classifications which are not available to female employees, including the classification titled "fish sorting and/or cleaning and/or scaling and/or sawing and/or cutleting".

5. The fish pre-cooker classification became redundant with the introduction of the Bluestar system and the elimination of cooking of whole fish, before various operations were undertaken. Changes brought about by the Bluestar operation will be explained more fully below.

6. The classification "fish sorting and/or cleaning and/or sawing and/or cutleting" is the predecessor classification to the later classification "butchering". Mr Horner explained that the cutleting and sawing operations were previously carried in relation to Australian salmon and are not now carried out in relation to tuna.

7. The male "all others" classification is the classification which applied to

general hands. The female "all others" classification was offered to trimmers. Thus in the case of female employees the margin per week for that classification was \$2.80 per week less than the employee classified in the butchering section and \$2.00 less than the general hand.

8. It is also interesting to note that the 'forewoman' classification was actually paid less than a forklift truck operator.
9. The award published on 3 July 1994 (194 IG 29) maintains a classification system providing an expressed distinction in rates of pay between male and female employees. However, equal pay loadings or instalments are provided for in cl.4 of this award (p 30). Clause 6 of the award provides for overtime at the rate of time and a half for the first three hours and double time thereafter for all work performed in excess of 40 hours in any week, or 8 hours in any day, and all time worked before the usual starting time and after the usual ceasing time (p 32). The award also provided a meal allowance of \$1 if an employee was required to work overtime for any period in excess of one hour after the usual working time (cl.16, p 36), and a freezer room allowance, in which an employee who was engaged in duties requiring entry into freezer rooms, was paid 17 cents per hour for each hour or major portion thereof (cl.24, p 38).
10. Awards variations published on 20 November 1974 (195 IG 1007) and 9 July 1975 (198 IG 239) provide for equal pay instalments. It is only in the award variation published on 8 December 1989 (253 IG 1061) that the

adult female classifications are deleted from the award. Thus, the adult female classifications were retained in the award until 1989. In the award as at 1988, the butchering classification titled "fish sorting and/or cleaning and/or scaling and/or sawing and/or cutleting" remains. This classification of employees is paid \$3.30 per week above the "all others" classification. Thus, the marginal rate difference between trimmers and general hands has been removed.

11. This same award variation incorporated a new classification titled "vessel unloader". The vessel unloader received the same margin as the "all others" classification (253 IG 1061 at 1062). Mr Horner explained the introduction of this classification. In the mid 1980s the cannery predominantly canned a species of tuna called bluefin or southern bluefin. That particular species became endangered and quotas were placed on fishing vessels to match the quota. In the result the company sought a different source of tuna and started to gain the skipjack tuna and yellowfin. Prior to that time the company used to unload fresh fish from vessels at its own wharf and handle these vessels using its own employees and fork lift drivers. The company was interested in procuring raw material from the world market and, in view of the anticipated arrival of deep sea vessels, negotiated the introduction of a new classification for the unloading of those vessels. The actual function of these persons was similar to deck hands engaged on fishing trawlers. They work in refrigerated holds to unload the fish.

12. In the award variation published on 6 September 1991 (264 IG 1781) the pre-existing classification structure was deleted and a new classification structure containing five levels was introduced. I note that there was an apparent error in this award as it reintroduced the notion of “adult male employees”.
13. Level 4 of the new award provided for butchering. The level 4 duties of butchering were defined as “remove skin and bones from cooked fish in preparation for canning”.
14. Level 5 classification was described as “all others” and the duties of these employees was described as “remove skin and bones from cooked fish in preparation for canning”.
15. As will be later seen these definitions broadly, and in some respects inaccurately, described the duties of the butchers and trimmers prior to the introduction of the Bluestar system. It will be seen in the evidence which I later describe, the butchering operation never involved the removal of skin or bones from a fish. The butchering operation involved the removal of the head and the gutting of the fish prior to it being cooked. The skinning and boning operation was carried out by trimmers. However, the trimmers filleted the fish and removed red meat, work which was highly repetitive. This intensity of this work increased over time but was not recognised in the award.

16. Level 5 was also the level for vessel unloaders. There is no rate set out for the Level 4 (butchers) or Level 5 (vessel unloader) classifications although the classification hierarchy still remains in the award which showed the distinction between the rate for a butchering classification and the rate for the 'all others' classification. The structural efficiency clauses, that were incorporated in the award by this variation, contained provisions designed to develop a more highly skilled and more flexible workforce, provide for career opportunities for appropriate skills and remove barriers to the utilisation of skills required, in line with the needs of the enterprise (cl.4A (vi), p 1786). As again will be seen from later evidence, it is doubtful that these objectives were achieved in relation to the allocation of work as to butchering and trimming activities between men and women employees. I note that at this stage the overtime provisions provide for time and a half for the first two hours and double time thereafter (cl.6).
17. It is clear from the next published variation of the award (21 February 1992, 268 IG 1) that the rate fixed for butchering at Level 4 was higher than the rate for the Level 5 classifications, "all others" and "vessel loaders". The differential which was struck at that time was \$3.50 per week. It is also clear by this variation that the definition of butchering, originally provided in the award made pursuant to the structural efficiency principle, was erroneous. The new definition of Level 4 duties was altered to read "remove heads and eviscerates fish in preparation for pre-cooking". Nonetheless, the rates remained different between the butchering and trimming classifications, and it is unclear whether there

was any reconsideration of relativities or salary levels in the light of this variation in classification definitions.

18. In the award published on 29 August 1997 (300 IG Vol 892) there are two noteworthy matters. Firstly, the classification of vessel loader (p 897) was moved to Level 4 even though the classification definition remained unchanged. This alteration was apparently entirely accidental and not within the knowledge of the company. Secondly, and more significantly, this award was made to operate from 3 February 1997, after the introduction of the Bluestar system. The duties and functions of classifications of butchering and trimming appearing in the award, as will be seen from a later discussion of the evidence, do not reflect the duties performed by these classifications after the introduction of the new system. As at the award published on 29 August 1997, the differential between the trimmer's rate and the butchering rate was \$4.70 (300 IG 929).
19. Indeed, Mr Horner in his evidence says that the award has not been varied to reflect the changes in work bought about by the Bluestar operations. In particular, there has been no change to the definition of butchering and "all others" work (Ex 149 para 5.9).
20. Like its predecessors the current award provides for both part-time and casual employment. Both part-time and casual employment are paid the same percentage loading (300 IG 898). However, the part-time

employment clause operates by reference to the definition of a part-time employee, which definition retains a pre-existing definition containing the following words "a female employee who is engaged by Kraft Foods Pty Ltd".

INDUSTRIAL AGREEMENT

The Heinz Greenseas Enterprise Improvement Agreement 1997 which was approved on 30 October 1997 and operates until 1 July 1999 applies at the cannery (Ex 149 Annex B).

The agreement relies on the existing award classification structure and provides a staging series of percentage increases. There are four stages resulting in a 12 percent wage increase across the period.

The agreement has, as its objectives, the improvement of productivity and returns to the company, improvement in wages and in communications between the company and employees. Clause 8 of the agreement provides for the introduction of an integrated pay structure. It is agreed that such a structure will reward highly specialised skills as well as the breadth of skills which contribute to operating flexibly. It is also agreed that the employees will be paid on the basis of competencies. Clause 9 provides that there will be a systematic approach to training employees which approach will operate upon the development of standard operating procedures, the analysis of competencies and the assessment of training over a period of time. There are a

number of key performance measures identified in cl.12 which include "trim rate" and "kilograms/man hour" (which should read "kilograms per hour").

Clause 18 of the agreement deals with equal employment opportunity and harassment. In essence, this clause provides that the parties to the agreement will observe the H J Heinz policies on Fairness in employment/Discrimination and Harassment.

The affirmative action programme for women and the policy on discrimination for H J Heinz Company Australia Limited were respectively marked as exhibits 154 and 155 in the proceedings. The affirmative action programme provides a statement of policy as follows:

1. To eliminate any discrimination against women and to ensure that all employees and applicants for employment are treated according to their skills, qualifications, abilities and aptitudes.
2. The Industrial Relations Officer will be responsible for coordinating the various aspects of affirmative action within the Company. He will also forward an annual report to the Federal Government in respect to the steps taken to implement the programme and results achieved.
3. The programme will be developed in consultation with Management and Unions who have members employed by the company. The company will communicate to employees through Attitude Survey Groups or similar consultation groups within subsidiaries.
4. Managers and Supervisors will be directly responsible for ensuring that the programme is implemented.

The discrimination policy (Ex 155) sets out policies in relation to discrimination, sexual harassment and the accountabilities for dealing with those

matters. The broad purpose of the policy is defined as:

To provide an environment in which employees can work without distress or interference caused by any kind of discrimination.

The remainder of the policy seems substantially directed to sexual harassment type issues.

At the time of the making of the agreement the relevant award rates were \$367.90 for Level 5 and \$373.80 for Level 4 (a difference of \$5.90 or 1.6 percent) (Ex 149 para 7.1).

As part of the agreement process the then existing rates were also adjusted to incorporate a loading and to buy out the rostered day off. Starting rates for the percentage increases under the agreement were \$388.46 and \$392.61 respectively for levels 5 and 4, a difference of \$4.15 or 1.1 percent.

Subsequent percentage increases broadly maintained these differences so that the difference at the time of the fourth percentage wage increase under the agreement will be \$4.67 (Ex 149 para 7.3).

Negotiations are proceeding between the parties to the enterprise agreement to reclassify some of the work under the award. In September 1997 Heinz Greenseas and the relevant union, the Australian Workers Union, agreed that the palletiser/depalletiser and loader/unloader operations should be reclassified as Level 3. These employees, all female employees, were

reclassified from their previous Level 5 classification. These changes were not reflected in the award. No other such changes have been made under the agreement at this time.

There are discussions and negotiations proceeding concerning a new classification structure for the award, and in consequence, for the agreement. Ms Cook identified that the proposed classification structure divided the trimmers into an A and B class with the distinction being based on speed of work. It was suggested by Mr Horner in evidence that the "normal" butchering classification and the highest level trimmer classification will be somewhere around the same rate of pay under the proposal. However, when the draft competency structure was produced to the Inquiry, it was clear that even at the highest level, the trimmer, level 2, would be classified at a lower level than the base butchering classification (Ex 156). The new classification structure proposed a classification structure in which the trimmer Level 1 would be in the lowest level, Level 1A; the trimmer Level 2 would be the next highest level, Level 1B, and the butchering operators are the next two highest levels 2A and 2B. The highest levels are 3A and 3B.

For reasons that I will discuss in the following section, and my findings in this area, this proposed new classification level does not appear to me to be entirely appropriate. In particular, it does not appear that the relative positions of trimmers and butchers and the issue of occupational and gender segmentation have been fully and adequately addressed.

In addition to this consideration, I note that other than the 1997 Enterprise Agreement the only reclassification process has concerned five employees who were previously classified at the Level 5 "all others" level. The position of trimmers has not been expressly addressed by the parties. I note in this regard that there are 67 persons falling within the "all others" classification, most of whom are trimmers.

In due course I will make some general findings as to the award, the agreement and the proposed agreement and the circumstances applying at Heinz Greenseas. However I make these preliminary observations at this point in order to deal with another matter. It appears to me that the union should bear some responsibility for some of the difficulties I identify in relation to these awards and agreements.

As was pointed out at the outset of this case, the Commission's role in this Inquiry is not to engage in any fault finding but to look at case studies as exemplars of any problem that might be addressed under the Terms of Reference. However, in this case one must pause to reflect what role the union may have played in the difficulties associated with the awards and the agreement, given its approach to this Inquiry. Mr Harper, who is the regional organiser of the Greater NSW branch of the Australian Workers Union, and who is the organiser for the union's members at Heinz Greenseas as from the end of September 1997, submitted a statement of evidence dated 9 September 1998 in the proceedings but did not attend to give evidence in relation to that statement during the Commission's hearing in Eden. Counsel assisting, with the

concurrence of the Labor Council of NSW and with my approval, decided in the circumstances not to tender the statement of evidence. I note further that there was no official of the union present during the time of the inspections or of the taking of the evidence, a period of 2 days.

WORKPLACE OPERATIONS

I shall consider the operations of the workplace broadly in terms of the order of process or production. In doing so I will assess the historical and present day employment arrangements and classification levels, together with the introduction of the Bluestar system. The evidence referred to in this section is from the statement of Mr Horner, Exhibit 149, paragraphs 4.9 to 5.9 unless otherwise specified.

Unloading, fish-meal plant and freezer operations

The fish received at Heinz Greenseas come from the local tuna catch and by deliveries from a deep sea fleet. Even in poor years for local supply there would be no more than three deep sea fleet deliveries in a given year.

The fish received from deep sea deliveries are frozen in the holds. Crates are lowered into the hold and the fish are there loaded manually into each crate. Once the crates are filled they are winched out of the hold onto the wharf. Externally sourced fish are not of a uniform size in any given delivery and

are sorted during the unloading process.

The work of unloading vessels is undertaken by casual employees who are engaged only at the point of delivery. They are only engaged for deliveries from deep sea operations, each of which normally takes four days to unload and requires approximately forty employees. These casual employees are classified as “vessel unloaders” in the award at level 4.

The fish received from the external sources are carried in the crates to the fish receivals area where the fish are unloaded into a conveyor and sorted by employees.

Once reloaded into crates by size, fish unloaded from external deliveries are treated in the same way as locally caught fish.

Normally the fish are caught by local trawlers. The fish, usually fresh, are unloaded from nets into crates placed on the wharf. The trawler crew undertake this operation.

The normal process by which fish are transported from the wharf area is by the use of forklifts. The fish are conveyed after the recording of fish type and size.

Crates of frozen fish are taken from the freezers as required by production and brought to zero degrees Celsius in brine tanks at the fish

receivals area. This work was observed during the inspections. Forklift operators have a level 2 classification in the award.

The Commission observed at the outset of its inspections the fish-meal plant. This is an area where the by-products of the canning operations are taken. The by-products are dumped into a bin and then processed by breaking down the products. There are approximately six employees engaged in the fish-meal plant. They attract a level 2 classification and work on a two-shift basis. These employees are also required to operate forklifts.

The Commission also inspected the company's substantial freezer units. The persons who work in the freezer units use forklifts and are also engaged in the fish receival operations.

BUTCHERING

Operations and Changes in Systems

Crates of fish are removed from the freezing section to the beginning of the production line by forklift. The crates are manually loaded onto the line.

The first section of the butchering line requires an employee to position a fish on the line so that it meets the first power knife at the correct angle so that the cut removes the head of the fish. Gutting is carried out at this

stage as well.

Under the Bluestar operation, an employee then rotates the headless fish so that a second power knife cuts off the tail. Headed and tailed, the fish then passes to four employees who, using knives, manually cut off gill fins and gut the fish.

Prior to the Bluestar, operation the tail was not removed and the whole fish was steam cooked and passed from the butchering/pre-cooking section with the skin remaining on the fish. The fish was then passed to the trimmers.

Under the Bluestar operation, the next stage involves the fish being placed vertically onto a saddle which takes the fish into two aligned power knives which cut close to either side of the spine which then drops out. At this point there are now two fillets of fish and the gut and spine are sidetracked into boxes which are taken away. At the next stage under the Bluestar operation the fillets proceed to a skinning machine. They receive a V-cut which removes the skin as well as 80-85% of the red meat.

Again under the Bluestar operation, the fish then emerges to enable removal, by hand, of the bulk of the red meat. The meat is removed and the fillet is placed onto the line and moves into cookers. The fillet is placed on each side of the conveyor with a space in the centre because, after cooking, the fillets are separated into two streams for trimming.

Gender of Employees in the Butchering Section

Prior to the Bluestar operation, and after Mr Horner's commencement at Greenseas, female employees had not worked in the butchering section. Mr Horner gave as a reason for that situation, the nature of the cooking operation and the whole fish being presented to trimmers. Employees who previously worked in the butchering section started at midnight or 1.00 am in order to prepare a stockpile of fish for the trimmer operators who worked during the day. Mr Horner expressed the view that the time of working did not seem to suit most of the females. He also said that "that sort of shift was not comfortable with most females".

In contrast, prior to the Bluestar operation, Ms Beattie stated that she had not been given an opportunity to work in butchery. The positions were not advertised and she did not think it possible for her to do so. Mr Horner said there had been some female operators in the butchering plant at an earlier time but there had been difficulties with manual handling injuries. Mr Horner considered that the lifting of trays and the placement of trays in the cooker made the previous butchering task manually difficult. However, it appears that part of the problem was a lack of rotation of jobs.

With the introduction of the Bluestar operation the process was continuous. As a result of the introduction of the Bluestar system there appears to have been a reduction in injuries, principally because the operation removed

the need to deal with whole fish and replaced this with the handling of fillets. Three women rotate from the trimming line onto the butchering section. Two women are now engaged wholly in the butchering section as permanent employees.

CLASSIFICATION LEVEL IN BUTCHERY OPERATION

All employees engaged in the butchering section under the Bluestar operation are classified at level 4. That was also their previous designation.

Level 4 contains the classifications of butchering, cleaning tray/factory equipment and vessel unloaders. Annexure A to Mr Homer's statement shows that there are sixteen employees engaged at level 4, of whom fourteen are male and two are female.

CHANGES IN NUMBER OF EMPLOYEES IN BUTCHERY SECTION

According to Mr Homer, the Bluestar operation did not reduce the number of employees in the butchering section. Indeed, there are trimming employees who are engaged in the butchering section at the final stages of that operation.

TRIMMING OPERATIONS

Operations and Changes in Systems

Under the Bluestar operation the cooked fillets come into two lines of trimmers, approximately 30 standing in two rows of 15. These employees remove the remnant collar bones, any overlooked bones and scrape out remnant red meat, 15-20% of the original amount.

The trimmers use a spatula so as to leave only white meat when the trimmed fillet is placed on an off-take conveyor, and packed at the end into boxes, which are stacked on to trolleys to be taken to the beginning of the canning operation. It is, in essence, the "final trim" operation before the fish is packed into cans.

Prior to the Bluestar operation, the trimmer would receive a whole fish without the head and gut. The fish had been cooked. The trimmer would remove the skin from the fish, break the fish into two and remove the centre backbone of the fish. The trimmer would then remove the red meat with a spatula.

Alterations to Duties and Effect on Skills of Trimmers

The principal changes in the trimming operation brought about by the Bluestar operation are that:

1. The trimmer no longer works on the whole cooked fish, but rather cooked fillets;
2. the trimmer no longer removes the skin of the fish;
3. the trimmer no longer removes all of the bones from the fish, but rather the remnants of bones after earlier processing ;
4. the trimmer does not remove all of the red meat from inside the fish but the residual 15-20%; and
5. there was a very substantial increase in the rate of output in trimming and consequent changes in fish handling techniques under these intensified work arrangements.

Ms Cook has performed some limited trimming duties after Bluestar was introduced, not having been engaged for a full day, and considered there was no longer much variation in the job. However, Ms Cook's evidence is that the trimming classification has been and remains the "core classification" in the factory. A significant component of this status was the production rates for trimmers (Ex 152 para 5). However, she considered that the trimmer now did fewer things such as skinning the fish, removing the back bone etc.

Mr Horner considers trimming is easier under the Bluestar system.

His explanation for this statement is that certain tasks have been removed ie. skinning the fish. He agreed that 'manual dexterity' was a key feature of the duties of trimmers, and this is why women are better at the task, although more men can now carry out the task under Bluestar.

Ms Beattie did not give evidence on this topic as she did not work in the new trimming section, other than "5 minutes now and then". However, she did say that men did not work in trimming because it was seen as a "women's job" and because they were unable to maintain the pace of the work, although in her view this was because they did not apply themselves.

Ms McDonald worked for Heinz Greenseas for 12 years but left twice to have children. She joined the butchering section after the introduction of Bluestar, but prior to that time worked in trimming. She retired from the butchering section and returned to trimming. Hence she worked in trimming under the new and old systems. However, she considers the new trimming harder because of the rate of work, which averages 107 to 126 fillets per hour. She considered the actual skills before and after the system remained the same.

INTENSIFICATION OF RATE OF WORK

A significant change brought about the Bluestar operation for trimmers was that the trim rate was substantially increased. Mr Horner estimated the rate of increase as being threefold. Prior to Bluestar Ms Cook states that the trim rate had increased, under demand pressures, from 16 to 20

fish per hour. Employee production was measured and non performing employees lost their jobs during down sizing. However, under Bluestar the trim rate increased to 116 fillets per hour (Ex 152 para 6).

GENDER OF EMPLOYEES IN TRIMMING OPERATIONS

Prior to the introduction of the Bluestar system men were engaged in the trimming section. Under the current system, a small number of men, who are engaged as general hands, are engaged on the trimming operation. It is estimated that on occasions there have been as many as four or five of these employees.

Annexure A to Mr Horner's statement shows that there are 42 trimmer positions, all of which are filled by female employees, including a leading hand. Two of these positions are shown as taking maternity leave.

Changes in Number of Employees in Training Operations

Bluestar significantly altered the size of the trimming workforce. Trimming was a highly labour intensive employing approximately 110 trimmers, as compared with the present 42 trimmers. Indeed, in total there were 210 employed in processing, a number which has now been reduced to 140.

GENERAL HAND AND CLEANING OPERATIONS

There are 21 level 5 employees who perform general factory hand duties. Typically these duties comprise loading, unloading and moving boxes

and trays and weighing boxes and trays. This work is described as unskilled labour and involves checking bins. There are also four cleaners involved in cleaning plant, equipment and floors. These employees are paid at level 4.

GENDER SEGMENTATION

It was submitted for the Labor Council of NSW that the workforce of Heinz Greenseas was highly segregated due to structural and cultural barriers (Ex 455 para 257). In contrast, the Employers' Federation/Chamber submitted that there was a traditional "locational" segregation which had classification consequences but these did not fall uniquely on women.

Having regard to the foregoing analysis as to the historical and current day workplace arrangements and operations, I consider that there is a gender segmentation in the Heinz Greenseas workforce which has not been entirely, or even substantially, eliminated by the new workplace arrangements under the Bluestar system. This segregation has been most pronounced in the areas, which have been focussed upon in this Inquiry, namely in trimming and butchering work.

In addition to the evidence that I have earlier identified, in coming to this conclusion, I have also had regard to some other passages of the evidence. For example, in cross examination Mr Horner gave the following evidence:

Q: With occupational health and safety in 1998, it would be fair

- to say rotation of jobs is one way of preventing injury?
- A: Definitely we have been proactive since 1982 and as I say it is something we have all learnt and grown with - it is part of the process to rotate. Part of the Bluestar process was to give people more opportunity to rotate.
- Q: It is fair to say the workforce of the factory at the moment is very gender segmented. There are areas which are predominantly male and areas which are predominantly female?
- A: If you talk about the retorts, I know Ms Cook bought that up, yes. If you talk about trimmers, yes, there are forty people involved in the trimming process and that would be a fact.
- Q: In your statement or attached to your statement, there is a graph in relation to that which indicates how many females and males are employed?
- A: That is correct.
- Q: In looking at an annexure A it would be fair to say that males predominantly work in the cooking retort area, award level 1 classification, level 2 classification and level 4 classification; women predominantly work in the level 3 and the level 5 classifications?
- A: Yes, that is correct.

Mr Horner does say that the company has an objective for improving the level of training to permit entry to the higher level of the butchery operations, irrespective of gender. However, this has not been manifested by the involvement of women in this section, even after the Bluestar operation was introduced. There are only two permanent female employees in this section and three casual female employees rotating in the area.

Significantly, there is one section of the butchering operation which is still largely impervious to entry by female workers. This section is located at the head, or top, of the butchering operation. Mr Horner described the employees at the head of the butchering line, involved in sawing and cutting operations, as "long term" employees - a core group which had been engaged in

those operations for a number of years under the old process. Whilst there is some limited rotation of these male employees into other sections of the butchering operation this is limited and a number of those employees simply are maintained permanently at that section of the operation. Ms Cook said that she had never worked in the heading and tailing area and was not aware of other female employees having worked in that area or having been asked to work in that area. Ms Beattie in fact worked in one small section of the operation, namely the tailing area, but the belt was faulty and she suffered a whiplash injury. However, she would be interested in working in the heading and gutting areas subject to "male attitudes".

The experience of Ms Beattie was further detailed in her evidence. She expressed a clear willingness to work in all sections of the butchery area and is one of the few female employees to obtain permanent work in that area. She describes the difficulties encountered in females obtaining work in butchery operations in the following extracts from the transcript:

- Q: In your view is it difficult to integrate into --
A: I'll qualify that. I may consider it if I didn't upset the balance in the butchery - if I wasn't perceived to be taking someone's job away because we would have to work as a team. If a vacancy came up, yes I would consider it.

This was a reference to returning to working in the head section of the butchering area. Her evidence continues concerning the prospect of rotation and integration:

- Q: If the positions fully rotated in the butcher, that is between

each of the different areas on the line - would you consider it in those terms?

A: Yes, most definitely.

Q: Was the butchery area a difficult area to integrate into for a woman?

A: Yes

Q: Could you elaborate on that question?

A: Just male attitudes, that's all, and I survived them so - and I think I fit in quite well now. It's nothing you can define. It's an attitude or a gesture or jokes, but anyway. But we work well as a team now.

Q: You work well as a team and you and your other colleague --

A: Sally? ...

Q: Are confined to specific areas?

A: Yes.

Q: Would you agree that there is a hierarchy of male and female jobs within the factory? In other words some jobs specifically female and other jobs specifically male - or perceived to be?

A: Yes, perceived to be, yes. Definitely perceived, yes.

In my view, whilst the segmentation of the butchering operations as a male dominated area has been subjected to some change, it is not sufficient to warrant a conclusion that there does not remain clear gender segmentation.

IS THERE UNDERVALUATION OF FEMALE WORK AS A RESULT OF SEGREGATION

It is argued the Labor Council and NPEC that the segmentation of the workforce has resulted in an undervaluation of women's work. It is said that there is a concentration of women workers in areas of highest work intensity with lowest pay (Ex 455 para 257). The Employers' Federation/Chamber submit that there is no case made out of gender based inequity of pay and there is no case made out of misvaluation of the work of different classifications (Ex 446 p 67).

These broad propositions raised a number of different questions which are better addressed separately. I shall deal with each issue raised by the parties in turn.

DESKILLING AND INTENSIFICATION OF WORK

The Labor Council of NSW submits that there has been deskilling of female dominated areas of work but increased intensification of work with no wage increases to compensate (Ex 455 para 258). The Employers' Federation/Chamber appears to broadly agree with this proposition and argues that post Bluestar trimming activities are lighter, less complicated with a faster cycle time. It is also put that the post Bluestar trimming requires fewer skills (Ex 446 p 64).

I have already discussed at some length the changes made in the trimming operation as a result of the introduction of the Bluestar operation. Broadly speaking, there was a reduction in the number of functions performed by the trimmer in moving from working with the beheaded, whole cooked fish to cooked fillets. However, in consequence of the introduction of this system there was a very substantial increase in the volume of the work performed by trimmers.

I have some difficulties with the proposition that there has necessarily occurred deskilling of the work of trimmers resulting from

technological changes. With some reservation, given the views of the parties, I note some reasons why this may be so.

Firstly, it is apparent that the trim rate, or the intensity of the work, was, and more so now, is a critical component of the work of trimmers. The trim rate is a key performance indicator for the business of Heinz Greenseas. Mr Horner considers that in the competitive market which faces Heinz Greenseas that the trimming rate is an important consideration. It is significant to the productivity levels of the company and "is the last hurdle" for Heinz. As I will discuss in one moment in comparing the work of trimmers and butchers, it appears to me that the work intensification is given a prominence by the company in its production and business objectives, but is not afforded the same recognition in terms of the assessment of the work of trimmers. Indeed the definitions of a level 5 employee in the award seem to give no particular recognition to the significance in those duties of the performance of the work at a high rate. Hence, intensification of work, if skills are adjusted to permit same, may result in the maintenance of similar skill levels for trimmers.

Secondly, as I have earlier discussed the only person who gave evidence who has actually performed the duties of a trimmer before and after the changes in technology assessed the actual skills as remaining effectively the same, although she assessed the work was now much harder because of the intensity of the performance of the work.

Thirdly, I have some concern that there is an insufficient

recognition of the skill of dexterity which is shown by trimmers. There may not be sufficient weighting given to this skill. Trimmers were previously exclusively women, essentially because men could either not perform the task or at least not perform the task well. The reason for this was not that the men could not perform the task *per se* but they could not perform the task in the manner and at the rate at which it was to be performed. An example of this evidence is given clearly by Mr Horner at page 1020/1021 of the evidence as follows:

Q: Again would a similar picture apply to the trimming area prior to Bluestar?

A: We had men working as trimmers prior to Bluestar, but if we go back to where they were having to clean a whole fish and remove red meat and remove bones, we found the dexterity of most of the men that were employable in the cannery were not as effective as the women. It is like sewing, women are so much better at it.

Mr Horner went on to say that the introduction of some men into this area indicates that it is now an easier task. However, he admitted that manual dexterity is a key feature of trimming work. Moreover, there is only a very limited number of men that work in trimming and then on a purely rotational basis. There are as many as four or five general hands rotated to trimming duties and three men who rotate from the butchering tables to the trimming section. There is no evidence to suggest that those men perform at the production levels of the women and a reasonable inference to be drawn from the evidence is that, particularly having regard to their rotation, they do not.

In the result, I conclude that the skills and responsibilities of trimmers have been altered after the introduction of the Bluestar system but

have not necessarily decreased overall. I am partly reinforced in this view by the parties' approach to the restructuring of the agreement by providing two levels of trimmers, the second specifically compensating trimmers for working at a higher intensity level. Both before and after the introduction of the Bluestar system, there has been an insufficient recognition of either the intensity of work of trimmers *per se* or of the changes in the intensity of work by trimmers. Further, there has been insufficient recognition of the skills and dexterity exercised by trimmers, particularly when performed at an intensified work rate.

COMPARISON TRIMMING AND BUTCHERING CLASSIFICATIONS

Workers engaged in trimming have been paid less, both in ordinary time and overtime earnings, than workers engaged in butchering operations for the whole of the history of industrial regulation up to, and including, the present proposed alterations to the enterprise agreement. The trimming operations have been, and remain, female dominated. The butchering operations have been, and remain, male dominated.

Another important question for this Inquiry is whether the work of trimmers has been undervalued when compared with that of butchers. Not a great deal of attention was paid in the submissions of the parties to this question, although the Employers' Federation/Chamber submitted that the butchering remains heavier work than trimming, and the Labor Council put a submission to the effect that the exclusion from butchering operations deprived employees of an opportunity for permanent work.

The Employers' Federation/Chamber submits that the butchering remains heavier than trimming, although it concedes that this would seem to be mainly associated with the earlier part of the butchering operation and perhaps the "all other" duties (Ex 446 p 64). It also submits that the processing of raw fish by butchers is more difficult than dealing with cooked fish, handled by trimmers. Under the old system the butchers worked with raw meat prior to the whole fish being cooked, and then presented a cooked fish to the trimmer.

Mr Horner contended that there are still some jobs in the butchering section that not everyone could do and hence the butchering had higher skills. When asked to compare the pre Bluestar trimming function with the pre Bluestar butchering function he indicated that he considered the old butchering function to require more skills because the butcher had to understand how to handle raw fish and how to have it in the best condition for the trimmers. He contended that it was more difficult to handle wet raw fish than cooked fish.

Giving due weight to the distinction drawn between cooked and raw fish handling, I have some reservations in concluding that trimmers have been or at least are less skilled than employees in the butchery operation. This is particularly the case in terms of the operations after the introduction of the Bluestar system. Firstly, in the current operation the actual difficulty of handling a raw fish as described by Mr Horner really only relates to the head of the butchering operation. This must follow, because after the filleting and V cut, the fillets of fish are presented in a very similar manner, albeit raw, to the butchers

as is the cooked fish presented to trimmers. Indeed, Mr Horner recognised that the work performed by persons in the butchering operations immediately before the cooker, post the Bluestar system, was easier than the work of trimmers. He distinguished this situation by saying that the person at the end of the butchering operations would be rotated into other parts of the butchering operation.

However, as earlier discussed, whilst these persons might be rotated into the mechanical operations of fish filleting and the V cutting machine, they are generally not rotated into the head section of the butchering operation where the whole fish is handled. Thus, the work of persons engaged in at least one section of the butchery operation is equal to the skills of, or less than, the skills of trimming work, yet these employees are paid more, level 4 rather than 5.

What ever might have been the substance of a distinction based on the 'heaviness' of the work in the past it simply does not apply to a substantial part of, and indeed most of, the butchery operation after 1996. This is clear from the inspections and the evidence.

Secondly, the reference to the work of butchers being heavier seems to contain its own bias. The evidence relied upon by the Employers' Federation/Chamber firstly referred to the evidence of Ms McDonald where she described her reasons for leaving the butchering section.

One of those reasons given by Ms McDonald was the work was "hard work". She does not say that the work was harder than trimming, although it may be inferred that a return to trimming work would indicate that she felt

better able to manage the work in that section. However, the other two reasons given were, firstly, the actions of a male employee in the butchering operations, during which time the male employee essentially harassed Ms McDonald, and, secondly, it was too early for her children. When asked what the principal reason for leaving the butchering section was she identified the actions of the male employee. This is hardly surprising given the actions described by her. I consider this significantly diminishes the impact of any evidence which is said to bear upon the relative difficulties of butchering and trimming activities.

Furthermore, Exhibit 247, which compares injury rates in butchering and trimming sections, is relied upon. It is difficult to draw conclusions from this document. It shows that there were a higher percentage of the total number of injuries, in trimming, rather than in butchering, in the two periods identified, both post Bluestar. It next shows that the incident percentage rate was higher in the trimming section in the first period and the butchering section in the second period. In both periods the total Injuries/Incidents was higher for trimmers than for butchers. In contrast, what is clear from all evidence is the substantial increase in the intensification of the work rate of trimmers.

The position is not as clear for the pre Bluestar situation. The butchering employees were required to work on a whole raw fish and head and gut the fish. However, this conclusion must be balanced against the work of trimmers. Allowing for the easier handling with cooked fish, the trimming employees had to carry out a series of complex and difficult functions in which dexterity was a primary requirement, even if lifting of weight and handling was

not, although no evidence was given to compare the weight of a whole fish with a beheaded, cooked fish. They had to skin and bone the fish as well as removing the meat. My concern is that there appears to be an insufficiency of consideration given to these factors, and the potential for an inappropriate balancing or weighting.

The undervaluation of trimmers' work, both in terms of changes in their work per se over time and by comparison to that of butchers, at least under current arrangements, is a classic example of the work of theorists, later discussed, which contend that a dichotomy exists between the assessment and weighting of male skills e.g. heavy work, when compared with female skills e.g. dexterity, repetitive, high speed work and 'softer' handling skills.

TRIMMERS AND GENERAL HANDS

This is an area that did not attract a great deal of attention by the parties. However, as I earlier noted, general hands perform the work of an unskilled labourer. They are involved in wheeling bins and carting by-products. Yet the work has not been historically separated from the work of trimmers in the award. The present round of negotiations seems to contemplate recognising general hand and trimmer work at different classification levels.

General hands and trimmers have received the same rates of pay and classification, notwithstanding the fact that the general hand position has been recognised as a lesser skilled position by the company. Mr Horner gave

evidence as to this point as follows:

Q: You are saying that it is equivalent work between the general hand and the trimmer at that stage. I am only taking a work history position pre Bluestar?

A: I think the trimmer had to understand a bit more about the anatomy of fish and they were trained in that way so that they could achieve that yield. A general hand really is someone who did not need as much training as a trimmer.

Even this assessment does not give full weight to the manual dexterity skills of the trimmers and the intensity of the work of those persons which stand in stark contrast to that of the general hands.

The work of general hands is another male dominated position. It must be said from the foregoing analysis that the work of trimmers is undervalued when compared with that position.

TRIMMERS AND VESSEL UNLOADERS

No submissions were put as to 'vessel unloaders'. No doubt this was due to the paucity of evidence concerning this group and their limited engagement at Heinz Greenseas. Similar issues arise in the comparison of this classification and trimmers, but there is insufficient consideration of the matter to warrant conclusions being drawn.

OPERATION OF THE AWARD AND THE AGREEMENT

The history of the award demonstrates that the trimmer has been treated at all relevant times as part of an "all others" classification. It has been

so grouped, even after structural efficiency and competency based assessments, with unskilled labour such as persons unloading vessels and general hands.

In the pre Bluestar operation that classification of trimmers is undervalued under the award in one and possibly two ways. Firstly, the trimmer was given the same classification and rate as a general hand, when it is clear that the skills and responsibilities of general hands were less than those of trimmers. Secondly, it is reasonably clear that the duties of the trimmer were more closely aligned to those of the fish sorter and/or cleaner and/or scaling and/or sawing and/or cutletting classifications, which later become the butchering operation at level 4. This is so even if the relative skills and responsibilities of trimmers and butchers pre Bluestar are to some extent different.

The most obvious example of this misclassification is the first structural efficiency award which classifies trimmers at a lower classification level, even though precisely the same definition, albeit wrongly, was applied to the butchering classification. However, and more importantly, there does not seem to have been sufficient attention given to assessing why the handling skills, dexterity or intensity of the work of the trimmers should be treated as of lesser value than butchers' work.

The Bluestar programme warranted a wholesale review of the classifications of butchery and trimming. This did not occur. As I have noted, there is no warrant for the award classifications maintaining the historical

distinction between the butchery operations and trimming operations, because at least part of the butchery operations have lesser skills and are not as productive in the overall operations as trimmers. There is, therefore, a clear present day undervaluation of trimmers under the award. This is not to say that the rates should be identical between trimmers and butchers. This is a further and separate question which arises from the broader assessment of undervaluation, which will be considered in later sections of this report.

The competency review process under the 1997 agreement resulted in some piecemeal changes for a small section of the workforce but no reassessment for trimmers, notwithstanding the very substantial changes in the nature of their work which occurred after the Bluestar programme.

Part of the undervaluation in the award clearly emerges from the equal pay processes. The rates of pay for the "all others" female rate was simply equated with the then existing "all others" male rate. No doubt this was due to the sameness of titles of those respective classifications, but closer analysis would have demonstrated that the duties were substantially different. One classification concerned 'general hands' and the other 'trimmers'. However, this factor does not and can not wholly explain undervaluation.

Other reasons why undervaluation might arise in the award are not as clear from the history presented to the Commission in this Inquiry. One source does seem to be the consent arrangements between the parties in which there may have not been an adequate recognition of the work of trimmers.

It would appear that generally the undervaluation of female work found in this case does not emerge from the operation of principles of wage fixation or from award making *per se*, particularly in relation to the work value principle. This is because the Commission has not generally undertaken such assessments for this award.

The same conclusion may not be entirely correct for the structural efficiency adjustments where some independent assessments were required and apparently not carried out. However, the records do not make clear the processes involved. It appears that consent of the parties was the predominant consideration.

The award made in 1997 paid no regard to the changes brought about by the Bluestar programme. The Enterprise Arrangements principle would have required, at least, an indirect consideration of these matters as it required the Commission to consider the industrial merits of the arrangement and whether the arrangement was consistent with the 'continuing implementation at an enterprise level of structural efficiency consideration'. However, in the absence of the parties bringing forward relevant factors upon which to test those matters, particularly in relation to the effects of gender segmentation, it is unlikely that any close examination of such matters would have occurred. Obviously, no such examination did occur in relation to the changes brought about by the Bluestar system.

There is, therefore, a clear indication of the need for a requirement or a principle to focus attention upon 'pay equity' or 'gender inequality/undervaluation' as distinct from, and in addition to, requirements as to compliance with the *Anti Discrimination Act 1977*, during award making and agreement making processes. In other words, it would not seem enough to permit, without some further direction or guidance, ordinary wage fixing processes to govern wage adjustments and classification setting. I find that the existing wage fixing mechanisms or principles are deficient to this extent. Moreover, the equal pay adjustment mechanisms were deficient, and led to an undervaluation of the trimmers' work.

The latest proposal for the enterprise agreement in my view goes some way to improving this situation. However, there is a real question as to whether a trimmer, particularly at the highest classified level for a trimmer, should, in the light of my observations, be wholly classified at a lower level than butchering operations. Moreover, there is a need to carefully and comprehensively assess the value of a trimmer, particularly having regard to their high levels of productivity and the intensity of their work. The work relates, after all, to a key performance indicator for Heinz Greenseas.

NATURE OF EMPLOYMENT, APPOINTMENTS AND PROMOTION

It was argued for the Labor Council that the availability of overtime was considerably lower in the trimming section than in male dominated sections of the plant (Ex 455 para 256). The Crown parties argued that the practice of

allocating overtime for cleaning to employees in the butchering section gave rise to a substantial gender bias in earnings. This is put by reference to Exhibit 287.

It was submitted by the Crown that Mr Horner had testified that the employees in the butchery section could elect to put their names on the cleaning roster, but this evidence was contradicted by one of the few female employees in the butchery section who gave evidence. She said that only male employees in the butchery section were given that option.

The Employers' Federation/Chamber argued that there were two types of overtime (Ex 446 p 64). There is, firstly, rostered overtime consisting of overtime to do cleaning, a couple of hours per day for two employees and secondly, overtime in the canning area. The second type of overtime is said to be factory or section wide and is generally worked on a weekend. The Employers' Federation/Chamber submitted that the evidence suggested different locational access to the week-end overtime but this did not benefit men above women, since canning attracted greater amounts of overtime than butchering. As to the cleaning roster, the Employers' Federation/Chamber admitted that butchers earned higher overtime earnings than trimmers. However, it is put that the evidence shows non systematic ordinary time earning differences between the groups and shows the differences attributable to other earnings possibly favouring trimmers. It has not identified what these other earnings are. It is said that it is unclear how the letter, said by it to be by counsel assisting but in fact written by the Crown Solicitors Office (Ex 387), is to be understood. Finally it is submitted that women find overtime before and after ordinary hours problematic.

The letter in Exhibit 387 requests certain details as to earnings. The reply received from Mr Horner is also contained in exhibit 387. I do not accept the proposition by the Employers' Federation/Chamber that the effect of this document is unclear. It puts beyond doubt that there is substantially greater overtime earnings by selected butchery and cleaning employees than by trimmers. As earlier discussed, the ordinary time earnings are also less for trimmers than for butchers and cleaners so that the total earnings for trimmers are significantly less on average than butchers and cleaners. Nor am I convinced that the grant of some amount of overtime to canning employees, who are normally female employees, in any way dispenses with this proposition. The issue which is raised by the evidence is the availability of access to rostered overtime for cleaning.

Mr Horner's evidence in relation to access to overtime was as follows:

- i. A small group is drawn from the butchering section for overtime;
- ii. the reason for this is that the butchering section finishes earlier than the trimming section;
- iii. the overtime is shared by the butchering section. This is done by persons electing to put their names on to a list for overtime;

- iv. additionally the overtime is available each day of the week;
- v. other male “all others” employees involved in the trimming process also access overtime but “traditionally most of the females wish to go home for their family commitments”;
- vi. Mr Horner claimed that women had been previously approached, though not recently, to do overtime and the response was very poor.

In contrast Ms Beattie indicated that she had been given a very limited opportunity to work overtime on a Saturday and on Friday afternoon. She works in the butchery section but had not been given the opportunity to express an interest in doing the overtime, by including her name on the cleaning list.

The position regarding overtime on weekends is unclear. However, female trimmers are not provided equal access to overtime for cleaning within the workplace. It has been assumed that this is a result of an election by women. This is true, but only partially so. Otherwise, the deprivation seems to be a direct result of gender segmentation. The result is that the remuneration of the affected women has been reduced and there is an undervaluation of the work of the affected women accordingly.

NATURE OF ENGAGEMENT, APPOINTMENTS AND PROMOTIONS

The Labor Council of NSW contended that gender segmentation

had an impact, not only in terms of current income, but also in terms of potential income and employment status. The butchering section offered opportunities for permanent work which were not readily available in the trimming section. It was also argued that the culture in the butchery section tended to exclude the employment acceptance of women (Ex 455 para 253). The Employers' Federation/Chamber contended that trimmers did not experience bias in promotional opportunity. They contended that there was no evidence that trimmers who were good at their work were precluded from promotional opportunity. It also contended that there was no evidence that trimmers were denied the opportunity of promotion to butchering because outsiders were bought in. These submissions seem to be in part a response to the evidence of Ms Cook.

There is certainly a higher proportion of casual employees in level 5 positions than in level 4 positions. Annexure A to Mr Horner's statement shows that 25 out of 67 employees in class 5 positions are casuals and that there are no casual employees in levels 2, 3 and 4.

Prior to the Bluestar system, all trimming employees were casuals and butchering operations employees were permanent employees. Thus, when the new system was introduced and opportunities were provided to apply for positions in butchery operations, some employees perceived this as a means to obtaining permanent positions. The situation after the introduction of the Bluestar system is different. Whilst all butchering operations employees remain permanent and now include 2 female employees, there are now a number of

permanent trimmer positions.

The reasons why a distinction was maintained under the previous system in terms of the status of employment between butchering and trimming operations is not clear from the evidence. However, the areas were clearly designated as male and female areas, as I have previously indicated, and it may be that the predominantly female occupation was treated differently or afforded a lower status.

However, the issue raised by the parties appears to me to really concern the situation applying after the introduction of Bluestar. The issue is whether equal employment opportunities are provided in both areas. I have some reservation as to whether this is a matter which strictly falls within the Terms of Reference but as it is raised by the parties in the proceedings I will briefly indicate my conclusions.

I consider that there remains some impediments to female employees obtaining positions in the butchering operations but that there has been an improvement in that position after the introduction of the new technology. My reasons are threefold.

Firstly, there is the head section, or top section, of the butchering operations which clearly remains an essentially a male province.

Secondly, there is still relatively little rotation of trimmers into the

butchering operations and thus far a relatively small incidence of female employment in those operations. One of the reasons for this is no doubt, as the Labor Council points out, cultural.

Thirdly, there is some evidence that high performing trimmers were passed over in promotional opportunities because of the value attached by the company to a high trim rate. The evidence on this was divided. Ms Cook gave evidence that instead of upskilling a trimmer the company would bring casual male employees into the butchering operation. Moreover, where permanent positions are available they have not been filled and a rotation has been undertaken. Ms Beattie confirmed this view in her evidence as did Ms Cook. Mr Horner puts the contrary view and argues that the better trimmers are ordinarily offered such vacant positions. He also argues that advertisements in butchering are made internally. In support of this view by Mr Horner, the Employers' Federation/Chamber points to evidence, although does not make a contention as such, which demonstrates that Ms Cook and Ms Beattie were both good trimmers and were nonetheless promoted to the positions in the butchering section. They also point to the position of Ms McDonald returning from the butchering section to the trimming operation, because, it is argued by the Employers' Federation/Chamber, the butchering work was too hard. I have earlier dealt with this contention.

Mr Horner's contention that opportunities are offered in the butchering section, including to the better trimmers, is supported by the placements of Ms Cook and Ms Beattie. However, the relatively few placements

in those positions over a long period of time, together with the processes of exclusion that I have earlier discussed, including those applying to Ms McDonald, would suggest that there remains some forces operating to prevent full and open opportunity for female trimmers moving into the butchering section.

BONUS SYSTEM

The Labor Council argues that the failure to introduce a bonus system, due to opposition from male dominated sections of the plant, represents a failure to properly compensate trimmers to the high intensity work.

Mr Horner's answer to this is that once the Bluestar system had been introduced the company had no intention of having bonuses in the future. Part of this occurred because of the difficulty in measurement after that time. It seems to me that the ultimate reason for not introducing the bonus system was the failure to re-evaluate the work of the trimmers after the introduction of the new technology. If there is a failure, then it relates to the lack of reappraisal of classifications, and not a failure to introduce a bonus system. The direction of the latest negotiations seem to broadly address this problem.

GENERAL SUBMISSIONS

I shall now briefly turn to the parties' final submissions before identifying my conclusions. I note that the oral submissions do sometimes repeat the written submissions and will not require to that extent separate or

additional findings than I have already reached.

In her oral submissions, Ms *Gregory* for the Labor Council, argued that the operations at Heinz Seafood historically were an example of discrimination, due to the clear delineation of what was women's work and what was men's work at the factory. She considered this was part of indirect discrimination.

She contended that seafood processing, for example, was an example of the insufficient weighting attached to female skills and of inappropriately high weighting attached to male skills. In particular, it was argued that that high weighting attached to the heaviness of the male work as opposed to the work of a repetitive nature carried out by the female employees. There was also a tendency to value heavier work at a greater weight than other work which is performed at a higher intensity. This is said to be an undervaluation of softer type skills particularly where the skills involve repetitive movements.

It was further argued that horizontal segregation provides a negative impact on women's earnings when the women employed are unskilled. There is undervaluation in these circumstances in the case of seafood processing. It was argued that the work of the women at Heinz Greenseas in the processing line, prior to the introduction of Bluestar, was work that had different levels of skills involved. After the Bluestar system, the intensity of work changed but the nature of the work was different, or perhaps different in terms of

skills. This was all put to demonstrate that occupational segregation may have a direct effect on the valuation of work.

The Labor Council in its written submission also relied upon the evidence of Ms Walpole at transcript 1601.25. In that extract she argued that workplace culture had the effect of denying equal pay because it meant women could not get into jobs that paid better. This derived from cultural problems at work. It was argued that the traditional role of the Commission does not fully encompass or deal with this problem but this could easily become part of the traditional mechanism to do so.

Mr *Benson* on behalf of the Crown argued that the seafood processing area showed a clear occupational segregation between the male dominated butchering section and the trimming section. He argued that there was a slight difference in rates between these classifications which did not appear to be justified, having regard to the work involved in the operation. The most significant matter, however, was the deprivation of overtime. He considered that the significance of the segregation was really most importantly felt in the allocation of overtime which gave rise to substantial "gender bias in earnings".

The Crown parties sought a finding that:

1. There was a marginal undervaluation of female, trimmers, base award rates;

2. The exclusion of females from the overtime cleaning roster gave rise to a gender based earnings disparity.

I have dealt with the written submissions by the Employers' Federation/Chamber (Ex 446) during the course of my report as to this area. Those written submissions sought that conclusions be made that there is no case made out as to there being any gender based inequity of pay. It was also argued that no case had been made out of 'misvaluation' of the work of different classifications and that there was not gender segregation at the workplace but locational segregation which had classification consequences. The ACM adopted the written submissions of the Employers' Federation/Chamber (Ex 441 para 62).

There was a submission put by Mr *Nettheim* for the Chamber that there might have been some confusion about the evidence led in relation to seafood that might not have provided a sufficient basis for the testing of the evidence. However, when questioned Mr *Nettheim* agreed that each party was able to test insofar as the party wished to any evidence which had been given and that the parties were then able to draw conclusions based upon that evidence.

With respect to overtime Mr *Nettheim* submitted that the evidence suggests that women find overtime before and after ordinary hours problematic and there were a number of references in the transcript to support this. He also

submitted that there is no issue as to overaward payments as there have been no history of overaward payments on the site. He also submitted that there was no evidence to show that there was a bias in relation to promotional activity. He submits that there is no case of undervaluation or misvaluation. However, if the Commission does find undervaluation, and having regard to Term 2, the Commission should say that the existing test mechanisms are adequate. No contrary conclusion could be reached on the evidence.

NPEC in its written submission argued that there was a highly sex segregated workforce and that, despite technological changes eliminating much of the requirement of strength for heavy lifting, occupational segregation was maintained by management practices in work organisation and recruitment, and by custom and practice in the workplace. Similar reasons were given for undervaluation as were given by the Labor Council. It was contended recommendations should be made to facilitate equal opportunity strategies for the workplace to remove structural and cultural barriers to pay equity. It was also a contention that there should be occupational health and safety improvements at work, designed to allow women to access all areas of work and to reduce injuries associated with trimming. There should be appropriate valuation of work to address work intensification of trimmers.

CONCLUSIONS AND FINDINGS

1. There is a gender segmentation of the workforce at Heinz Greenseas.

Historically, there has been a clear delineation between work for men and

work for women at this workplace. The introduction of new technology and the entering into arrangements between the parties designed to improve career opportunities, flexibility of workplace operations and skill enhancement has thus far has not entirely, or even substantially, eliminated gender segmentation.

2. It is not possible to identify exhaustively the reasons for this gender segmentation but some factors are reasonably clear. There are cultural or social barriers existing which are basically perpetuated by the attitude of male workers in the relevant work areas. These barriers have not been broken down by management or union involvement, notwithstanding agreements between them indicating the need for a different approach, and for remedial steps to be taken, and notwithstanding the company's policies as to affirmative action, discrimination and sexual harassment, designed to prevent segmentation.
3. Whatever the previous, but limited, justification for segmenting work, as being heavier or lighter, technological change has certainly removed any basis for barriers of this type remaining. Those barriers should, by a conscious and deliberate policy have been removed. Continuation of barriers which continue gender segmentation include insufficient rotation of work, and workplace practices which discourage the movement of women on to these jobs. They also include the actual system of promotion or appointment at the workplace.

4. It was argued for the Labor Council of NSW that there was indirect discrimination. Presumably this means indirect discrimination for the purposes of the *Anti Discrimination Act 1977 (NSW)*. I have not been specifically addressed by the Labor Council as to whether the provisions of that Act have been breached nor do I consider it appropriate for me to make findings of that kind in this case for the purposes of this Inquiry. I expressly decline to make findings in relation to indirect discrimination in the present case.

5. The skills and responsibilities of trimmers were altered after the introduction of the Bluestar system but have not necessarily decreased overall. Both before and after the introduction of the Bluestar system, there has been an insufficient recognition of either the intensity of work of trimmers *per se* or of the changes in the intensity of work by trimmers. Further, there has been insufficient recognition given to the skills of dexterity in fish handling exercised by trimmers, particularly when performed at an intensified work rate.

6. Workers engaged in trimming have been paid less, both in ordinary time and overtime earnings, than workers engaged in butchering operations for the whole of the history of industrial regulation up to, and including, the present proposed alterations to the enterprise agreement. The trimming operations have been and remain female dominated. The butchering operations have been and remain male dominated.

7. Giving due weight to the distinction drawn between cooked and raw fish handling, I have some reservations in concluding that the work of trimmers has been or at least is less skilled than employees in the butchery operation. This is particularly the case in the operations of Heinz Greenseas after the introduction of the Bluestar system. In the current operation the actual difficulty of handling a raw fish really only relates to the head or top section of the butchering operation (in which and from which little rotation occurs). This must follow, because after the filleting and V cut operation the fillets of fish presented in a very similar manner, albeit raw, to the cooked fish presented to trimmers. Indeed, the evidence showed that the work performed by persons in the butchering operations immediately before the cooker, post the Bluestar system, was easier than the work of trimmers.
8. What ever might have been the substance of a distinction based on the 'heaviness' of the work in the past it simply does not apply to a substantial part of, and indeed most of, the butchery operation from 1996. This is clear from the inspections and the evidence.
9. The position is not as clear as for the pre Bluestar situation. The butchering employees were required to work on a whole raw fish and head and gut the fish. However, this conclusion must be balanced against the work of trimmers. Allowing for the easier handling with cooked fish, the trimming employees had to carry out a series of complex and difficult functions in which dexterity was a primary requirement, even

if lifting of weight and handling was not, although no evidence was given to compare the weight of a whole fish with a beheaded, cooked fish.

They had to skin and bone the fish as well as removing the meat. My concern is that there appears to be an insufficiency of consideration given to these factors, and the potential for an inappropriate balancing or weighting.

10. The undervaluation of trimmers' work both in terms of changes in their work *per se* over time and by comparison to that of butchers, at least under current arrangements, is a classic example of the contentions of theorists, later discussed, that a dichotomy exists in the valuing of work between the assessment and weighting of male skills e.g. heavy work and female skills e.g. dexterity, repetitive, high speed work and 'softer' handling skills.
11. The work of trimmers as a female dominated occupation has been undervalued compared to the lesser skilled, male dominated general hands.
12. I make no findings or conclusions with respect to vessel unloaders given the insufficiency of consideration given to this matter in the submissions of the parties and on the available evidence.
13. The history of the award demonstrates that the trimmer has been treated at all relevant times as part of an "all others" classification. It has been so

grouped, even after structural efficiency and competency based assessments, with unskilled labour such as persons unloading vessels and general hands.

14. In the pre Bluestar operation, that classification of trimmers' work is undervalued under the award in one and possibly two ways. Firstly, the trimmer was given the same classification and rate as a general hand, when it is clear that the skills and responsibilities of general hands were less than those of trimmers. Secondly, it is reasonably clear that the duties of the trimmer were more closely aligned to those of the fish sorter and/or cleaner and/or scaling and/or sawing and/or cutletting classifications, which later become the butchering operation at level 4. This is so even if the relative skills and responsibilities of trimmers and butchers pre Bluestar are to some extent different.
15. The most obvious example of this misclassification is the first structural efficiency award which classifies trimmers at a lower classification level, even though precisely the same definition, albeit wrongly, was applied to the butchering classification. However, and more importantly, there does not seem to have been sufficient attention given to assessing why the handling skills, dexterity or intensity of the work of the trimmers should be treated as of lesser value than butchers' work.
16. The Bluestar programme warranted a wholesale review of the classifications of butchery and trimming. This did not occur. As I have

noted, there is no warrant for the award classifications maintaining the historical distinction between the butchery operations and trimming operations, because at least part of the butchery operations have lesser skills and are not as productive in the overall operations as trimmers. There is, therefore, a clear present day undervaluation of trimmers under the award. This is not to say that the rates should be identical between trimmers and butchers. This is a further and separate question which arises from the broader assessment of undervaluation, which will be considered in later sections of this report.

17. The competency review process under the 1997 agreement resulted in some piecemeal changes for a small section of the workforce but no reassessment for trimmers, notwithstanding the very substantial changes in the nature of their work which occurred after the Bluestar programme.
18. Part of the undervaluation in the award clearly emerges from the equal pay processes. The rates of pay for the "all others" female rate was simply equated with the then existing "all others" male rate. No doubt this was due to the sameness of titles of those respective classifications, but closer analysis would have demonstrated that the duties were substantially different. One classification concerned 'general hands' and the other 'trimmers'. However, this factor does not and can not wholly explain undervaluation.
19. Other reasons why undervaluation might arise in award are not as clear

from the history presented to the Commission in this Inquiry. One source does seem to be the consent arrangements between the parties in which there may have not been an adequate recognition of the work of trimmers.

20. It would appear that generally the undervaluation of female work found in this case does not emerge from the operation of principles of wage fixation or for award making *per se*, particularly in relation to the work value principle. This is because the Commission has not generally undertaken such assessments for this award.
21. The same conclusion may not be entirely correct for the structural efficiency adjustments where some independent assessments were required and apparently were not carried out. However, the records do not make clear the processes involved. It appears that consent of the parties was the predominant consideration.
22. The award made in 1997 paid no regard to the changes brought about by the Bluestar programme. The Enterprise Arrangements principle would have required, at least, an indirect consideration of these matters as it required the Commission to consider the industrial merits of the arrangement and whether the arrangement was consistent with the 'continuing implementation at an enterprise level of structural efficiency considerations'. However, in the absence of the parties bringing forward relevant factors upon which to test those matters, particularly in relation to the effects of gender segmentation, it is unlikely that any close examination

of such matters would have occurred. Obviously, no such examination did occur in relation to the changes brought about by the Bluestar system.

23. There is, therefore, a clear indication of the need for a requirement or principle to focus attention upon 'pay equity' or 'gender inequality/undervaluation' as distinct from, and in addition to, requirements as to compliance with the *Anti-Discrimination Act 1977*, during award making and agreement making processes. In other words, it would not seem enough to permit, without some further direction or guidance, ordinary wage fixing processes to govern wage adjustments and classification setting. I find that the existing wage fixing mechanisms or principles are deficient to this extent. Moreover, the equal pay adjustment mechanisms were deficient, and led to an undervaluation of the trimmers' work.

24. The latest proposal for the enterprise agreement in my view goes some way to improving this situation. However, there is a real question as to whether a trimmer, particularly at the highest classified level for a trimmer, should in the light of my observations be wholly classified, as proposed, at a lower level than butchering operations. Moreover, there is a need to carefully and comprehensively assess the value of the trimmers' work, particularly having regard to their high levels of productivity and the intensity of their work. The work relates, after all, to a key performance indicator for Heinz Greenseas.

25. There are two types of overtime worked at Heinz Greenseas. Namely, rostered overtime, for cleaning and secondly, in the canning area, the latter overtime being section or factory wide overtime on weekends. The position regarding overtime on weekends is unclear. However, female trimmers are not provided equal access to overtime for cleaning within the workplace. It has been assumed that this is a result of an election by women. This is true, but only partially so. Otherwise, the deprivation seems to be a direct result of gender segmentation. The result is that the remuneration of the affected women has been reduced and there is an undervaluation of the work of the affected women accordingly.
26. Prior to the Bluestar system all trimming employees were casuals and butchering operations employees were permanent employees. Thus, when the new system was introduced and opportunities were provided to apply for positions in butchery operations, some employees perceived this as a means to obtaining permanent positions. The situation after the introduction of the Bluestar system is different. Whilst all butchering operations employees remain permanent and now include 2 females, there are now a number of permanent trimmer positions.
27. However, the issue raised by the parties appears to me to really concern the situation applying after the introduction of Bluestar. The issue is whether equal employment opportunities are provided in both areas. I have some reservation as to whether this is a matter which strictly falls within the Terms of Reference but as it is raised by the parties in the

proceedings I will briefly indicate my conclusions.

28. I consider that there remains some impediments to female employees obtaining positions in the butchering operations but that there has been an improvement in that position after the introduction of the new technology. My reasons are threefold. Firstly, there is the head section, or top section, of the butchering operations which clearly remains an essentially a male province. Secondly, there is still relatively little rotation of trimmers into the butchering operations and thus far a relatively small incidence of female employment in those operations. One of the reasons for this is no doubt as the Labor Council points out cultural. Thirdly, there was some, divided, evidence that high performing trimmers were passed over in promotional opportunities because of the value attached by the company to a high trim rate.
29. The absence of a bonus system does not, of itself disadvantage women workers. However, in the absence of a bonus system, a classification system fully compensating trimmers for the intensity of their work is required.
