IN THE COMMONWEALTH CONCILIATION AND ARBITRATION COMMISSION

In the matter of the *Conciliation and Arbitration Act* 1904-1972

and of

the *Public Service Arbitration Act* 1920-1972

and of

NATIONAL WAGE AND EQUAL PAY CASES 1972

and of

THE FOOTWEAR MANUFACTURING INDUSTRY AWARD, 1963

(C No. 291 of 1959)
(C No. 585 of 1972)

and of

THE CLERKS (DOMESTIC AIRLINES) AWARD, 1971

(C Nos 1096 and 2468 of 1971)
(C No. 1998 of 1972)

and of

THE CLERKS (OVERSEAS AIRLINES) AWARD, 1970

(C No. 435 of 1963)
(C No. 1999 of 1972)

and of

THE AGRICULTURAL IMPLEMENT MAKING AWARD, 1936

(Nos 24 and 39 of 1935; 8 of 1936; 11 of 1949; 138 of 1951)
(C No. 2106 of 1972)

and of

ADMINISTRATIVE AND CLERICAL OFFICERS' ASSOCIATION, COMMONWEALTH PUBLIC SERVICE

Claimant

v.

THE POSTMASTER-GENERAL and others

Respondents

(C No. 2202 of 1972)

and of

THE SALARIED STAFF (QANTAS AIRWAYS LIMITED) AWARD, 1970

(C No. 1708 of 1970)
(C No. 2207 of 1972)

and of

COMMONWEALTH TELEPHONE AND PHONOGRAM OFFICERS ASSOCIATION

Claimant

v.

THE POSTMASTER-GENERAL AND THE PUBLIC SERVICE BOARD

Respondents

(C No. 2274 of 1972)

Variation of awards and determinations—Rates of pay—Minimum wage for adult male and adult female employees—Claim for equal pay for adult and junior female—Significance of 'family' elements in wages—Consideration of international and interstate thinking on equal pay—Determination and implementation of new principle pertaining to the relationship between rates of wages for females and males—Equal pay for work of equal value—Conciliation and Arbitration Act 1904-1972 *ss.*31 (1) (b), (d), 36, 44A—*Public Service Arbitration Act* 1920-1972 *s.*15A (1)—*Decision issued.*

1972. MELBOURNE, Oct. 12, 24–27, 31; Nov. 1–3, 8, 14–17, 21, 22, 28, 29; Dec. 13, 15.

Moore *J.* Act'g Pres.; Robinson, Coldham *J. J.* Arb. Taylor; Commr Brack.

On 14 and 20 July, 30 August and 10 October 1972 applications were filed on behalf of The Australian Boot Trade Employees Federation (C No. 585 of 1972), the Federated Clerks Union of Australia (C Nos 1998 and 1999 of 1972), The Sheet Metal Working Agricultural Implement and Stove Making Industrial Union of Australia and others (C No. 2106 of 1972) and the Australasian Transport Officers Federation (C No. 2207 of 1972) for orders varying the abovementioned awards.

On 18 July and 13 September 1972 applications were lodged on behalf of the Commonwealth Telephone and Phonogram Officers Association (C No. 2274 of 1972) and the Administrative and Clerical Officers Association, Commonwealth Public Service (C No. 2202 of 1972) for orders varying determinations Nos 13 of 1930 and 104 of 1966.

Application C No. 585 of 1972 came on for hearing before the Commonwealth Conciliation and Arbitration Commission (Deputy President Chambers) in Melbourne on 8 September 1972 and, as the question arose whether the matter was one in relation to which section 31 (1) (d) of the *Conciliation and Arbitration Act* 1904-1972 applies, the Commission as so constituted, pursuant to section 31 (3) of the said Act, referred the question to the Acting President, who formed the opinion that that matter, and later C Nos 1998 and 1999 of 1972, were such matters.

Matters C Nos 2202 and 2274 of 1972 were listed before Public Service Arbitrator Taylor on 22 September and 19 October 1972, respectively. In each matter, an application being made that they were of such importance that they should, in the public interest, be dealt with by the Commission constituted as provided by section 15A (1) of the *Public Service Arbitration Act* 1904-1972, namely by presidential members of the Commission nominated by the President to the number of at least two and the Arbitrator, the Arbitrator consulted with the Acting President. The Acting President directed that the matters should be so dealt with.

Matters C Nos 585, 1998, 1999, 2106, 2202 and 2207 of 1972 were listed before the Commission (Moore *J.*, Acting President, Robinson and Coldham *JJ.*, Deputy Presidents, Public Service Arbitrator Taylor and Commissioner Brack) in Melbourne on 12 October 1972, on which day pursuant to section 44A (2) of

the *Conciliation and Arbitration Act* 1904-1972 the Acting President, being of the opinion that a question is common to two or more of the said matters and that he considered that it was desirable to do so for the purpose of facilitating the hearing and determination of those matters, directed that the said matters would be heard by the Commission as so constituted. On 24 October 1972 the hearing of C No. 2274 of 1972 was joined to the other matters and the hearing proceeded accordingly.

R. Willis and *R. A. Jolly* with *T. Sullivan* for the Federated Clerks Union of Australia and; with *J. Heffernan* for The Amalgamated Engineering Union and others; and with *M. E. Heagney* and *L. Lamprati* for The Federated Ironworkers Association of Australia; and with *T. L. Addison* for the Australasian Society of Engineers; and with *G. E. Hayes* for The Australian Boot Trade Employees Federation.

W. Richardson and *R. D. Williams* for the Australasian Transport Officers Federation.

P. Munro and *L. Ayers* for the Administrative and Clerical Officers' Association, Commonwealth Public Service.

P. Munro and *J. Cousins* for the Commonwealth Telephone and Phonogram Officers Association.

B. J. Maddern, of counsel, for The Victorian Chamber of Manufactures and others.

J. D. Keary for the Australian National Airlines Commission (T.A.A.).

A. Marshall for East-West Airlines Limited and with *J. Hyman* for the Societe Internationale de Telecommunications Aeronautiques.

S. W. Moon for Qantas Airways Limited and others.

P. A. E. McCormick and *T. W. Orange* for the Public Service Board and with *B. R. Lowe* for the Postmaster-General.

R. J. Worsley for Ansett Airlines of Australia and others.

J. A. Keely, Q.C., K. D. Marks, of counsel, and later *M. Gaudron,* of counsel for the Attorney-General of the Commonwealth of Australia (intervening).

J. L. Berry for Her Majesty the Queen in the right of the State of Tasmania (intervening).

R. P. Dalton and *I. Douglas,* of counsel, for Her Majesty the Queen in the right of the State of Victoria and others (intervening).

J. Sanders for the Australian Council of Salaried and Professional Associations (intervening).

P. Munro for the Council of Commonwealth Public Service Organisations (intervening).

H. D. Bear and *P. Barnes* for The Association of Professional Engineers, Australia (intervening).

W. F. Cox and *W. L. Milford* for The Professional Officers' Association Commonwealth Public Service (intervening).

E. J. Nicholls and *J. R. Andrews* for the Australian Public Service Federation (intervening).

J. H. Wootten, Q.C., and *B. E. Hill,* of counsel, for The Angliss Group and others (intervening).

I. E. Douglas, of counsel, for Australian and New Zealand Banking Group Limited and others (intervening).

G. Brown for the National Council of Women (intervening).

J. Curlewis for the Union of Australian Women (intervening).

S. Shaw for the Women's Liberation Movement (intervening).

On 15 December 1972 the following decision was issued by the Commission:

There are before us five matters under the *Conciliation and Arbitration Act* and two matters under the *Public Service Arbitration Act.* Details of the various claims which were heard together are appended to this decision. The cases were treated by everyone who appeared before us as test cases and we propose so to treat them.

As is usual, the Commonwealth Government put submissions to us. Some nine days after we had reserved our decision the Industrial Registrar received a request from the Commonwealth Crown Solicitor that we re-list the matters 'for the purpose of hearing an application by counsel for the Attorney-General on behalf of the Commonwealth of Australia'. Between the date of reservation and the date of that request there had been a general election and a change of Commonwealth Government. The application by counsel for the Attorney-General was heard on 13 December and we granted her leave to make further submissions. For understanding and historical accuracy, where we refer to Commonwealth submissions in these reasons, we will use the expressions 'first' and 'second' submissions to distinguish between the two.

In the special circumstances we think we should reiterate what the Commission has often said before, that it reaches its decisions on the substance of the submissions put to it, rather than upon the nature of the party or intervener putting those submissions.

The various claims raise four broad issues:

1. whether there should now be a general increase in wages;
2. whether there should be an increase in the male minimum wage;
3. whether the male minimum wage should be applied to females;
4. whether any new principles should be formulated about equal pay for females.

National Wage

However one looks at the various submissions put on behalf of the unions that the general level of award wages should again be increased on a national basis, the essential character of the applicants' cases was the inadequacy of the $2.00 increase awarded in May last. In addition white collar unions complained that it was a flat rate and not a percentage increase.

The Commission has since 1967 assumed that there would be a national wage case decision each year and if we were to accede to the unions' present request there would be two this year. We are aware that there was no general increase flowing from a national wage case last year but that fact cannot of itself justify the granting of two national wage increases this year. Some exceptional or unexpected circumstance would be required to warrant alteration of the 1972 national wage decision during the period of its operation. No such exceptional or unexpected circumstance has been shown. Indeed in broad terms the case presented by the unions bore a close resemblance to other national wage cases except that some arguments were developed in much less detail than in the past. We are therefore not persuaded to increase wages generally again this year.

We have come to the conclusion that all those matters in which national wage increases are sought should be adjourned until 13 March 1973. Because of this decision we do not propose to discuss any of the material put to us about the economic situation or the submissions put, in particular by Mr Munro and Mr Dalton, as to the proper way of distributing national growth in awards generally.

Minimum Wage

The Commission has in past decisions expressed difficulty about giving minimum wage special treatment on the material presented in those cases and in this case we have found the difficulty no less. There was no material of substance put in these proceedings. However, because we propose to adjourn the national wage matters until 13 March 1973 we will also adjourn to that date so much of the matters as claim an increase in the male minimum wage.

With regard to the claim that adult females be paid the same minimum wage as adult males, all we can say is that ever since the minimum wage has been the subject of debate it has been presented by the unions and considered by the Commission as including a family component. The material used by the unions in their various claims over the years for special increases to the minimum wage has principally been directed to family problems and the oral evidence, both expert and of employees themselves, has been similarly directed. However the unions now argue as a simple matter of equity that females should receive the same minimum wage as males. We reject that argument because the male minimum wage in our awards takes account of the family considerations we have mentioned. The fact that the unions consider the amount of the minimum wage to be too low does not affect the concept behind the wage. Because of the essential characteristic of the male minimum wage we decline to apply it to females and we dismiss that part of the unions' claims.

Equal Pay

A good deal of time was taken up before us in argument between the unions and the employers as to whether or not there is, apart from minimum wage, a needs concept in the wages to be found in our awards. Contrary to what they had argued in the 1969 equal pay case, the unions put to us that a close historical analysis disclosed that the Harvester judgment of 1907 contained no concept of needs and in the result everything built on that decision must have no element of needs. This was denied by the employers. If we were concerned in this case with a historical exercise about the exact meaning of the Harvester judgment and whether or not, over the years, that judgment had been misinterpreted by many, including Mr Justice Higgins himself, the debate may have been rewarding. For us, however, what was said in the 1969 equal pay decision was valid then and is valid now. The relevant passage is:

> 'The most we are able to say is that there is still a relic of the concept of the family wage in most of the present total wages. It is an amount which has been arrived at for varying reasons and in varying ways, but we consider it no longer has the significance, conceptual or economic, which it once had and is no real bar to a consideration of equal pay for equal work.'[1]

We feel no bar to considering the unions' application on its merits whatever the true history of the alleged needs concept may be.

We start from the 1969 decision.

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(1) 127 C.A.R. 1142 at p. 1153

According to the parties, approximately 18 per cent of females in the work force have received equal pay as a result of that decision although we were told by the Commonwealth in its first submission that the Department of Labour and National Service suggested 'an estimate cannot be made with any degree of accuracy'.

The broad issue we have to decide is whether in the present social and industrial climate it is fair and reasonable that the 1969 principles should remain unaltered. This involves us in making an assessment of what, if anything, has happened in the area of equal pay since 1969 which would make it just and proper for us to alter those principles.

Before embarking on this examination we refer to the document upon which the union claim was fundamentally based, namely Convention No. 100 of the International Labour Organization dealing with equal remuneration for work of equal value. This Convention, which was before the Commission in 1969, has still not been ratified by Australia although it has been ratified by a number of other countries. In 1969 the Commission did not give great weight to the Convention although it said that the Convention (together with other ILO documents) 'must be taken to represent international thinking on the question of equal pay for equal work'. We again do not rely on it heavily although it may be the genesis of other things on which we do rely.

We think that broad changes of significance have occurred since 1969. These changes are reflected in the attitudes of Governments in Australia and in developments in the United Kingdom, New Zealand and elsewhere.

In 1969 the Commission said of State Governments that:

> 'Four States, namely, New South Wales, South Australia, Western Australia and Tasmania, have passed virtually identical legislation on equal pay, although the Tasmanian legislation is confined to the State Public Service. This fact in our view is a matter of significance for us for two reasons. The first is that the existence of this legislation demonstrates by implication that there is a belief in this community that the concept of equal pay for equal work is a socially proper one. The second is that if we did not move to bring our awards into line with State legislation we would in those States at least be adopting a different approach to this question from that applied by the laws of those States. We do not think we should merely rubber-stamp the principles of State legislation, but if after having examined them we consider them to be fair and reasonable in the circumstances, we receive considerable support from their existence.'[1]

Since 1969 the Western Australian and South Australian legislation has been amended and in this case the Tasmanian Government appeared before us to support the unions claim. The first conclusion which was drawn in 1969 is still relevant in so far as three States have reflected liberalised attitudes, either by legislation or submission. The second conclusion could not now be drawn even if we did nothing about the 1969 principles because in two States legislative changes have occurred. Neither the first nor the second submission of the Commonwealth Government opposed the concept of equal pay for work of equal value, indeed the second submission positively supported it. The submissions did differ however as to method of implementation.

In the United Kingdom an Equal Pay Act was passed in 1970, the purpose of which was to eliminate discrimination between men and women in regard to pay and other terms and conditions of employment. This refers amongst other things to work which might be assessed to be of equal value under a job evaluation system. Although job evaluation as understood in the United Kingdom may not be the same as work value investigations made by arbitrators in

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(1) *Ibid* at p. 1153

Australia, we have in this country built up over the years a system of work evaluation not inconsistent with job evaluation as envisaged in the United Kingdom Act. Accordingly the reference to job evaluation in the United Kingdom Act can fairly be translated to the work value reviews of the Australian scene.

The New Zealand Bill, which was presented to the New Zealand parliament in 1972 after a Commission of Inquiry, provides in principle for equal pay. Equal pay is defined in the Bill as 'a rate of remuneration for work in which rate there is no element of differentiation between male employees and female employees based on the sex of the employees'. We do not think it assists us to discuss details of that Bill which is directed at the New Zealand situation and does not use the procedures we propose to adopt. It does however provide evidence for us of a marked change in New Zealand towards equal pay for females.

We do not propose to discuss the changes which have occurred in other countries to which reference was made. They are however additional evidence of a world wide trend towards equal pay for females.

All these changes require us to reconsider the 1969 principles and to look at them in the light of present circumstances. We have given consideration to merely amending those principles but we consider that it is better for us to state positively a new principle. In our view the concept of 'equal pay for equal work' is too narrow in today's world and we think the time has come to enlarge the concept to 'equal pay for work of equal value'. This means that award rates for all work should be considered without regard to the sex of the employee.

It was suggested that we should examine in detail the various claims before us and as a result of that examination lay down principles which would have general application. We consider that work value reviews by this full bench would be unwieldy and that a better result will be obtained if we lay down a general principle and leave its implementation to individual members of the Commission.

The employers apprehended that if we granted equal pay for work of equal value, males would seek to restore their pre-existing wage relativities with females. They quoted articles from the United Kingdom and New Zealand which had been written about the possibility of this occurring but could produce no evidence that males had taken such action after the implementation of the 1969 decision. In any event we wish to make it clear that we would not regard the granting of equal pay, as a result of this decision, as a valid argument that males should have their pre-existing wage relativities restored.

We have considered the economic consequences of this decision. The employers estimated that the cost of granting the claims would amount to some $645m per annum and although the Commonwealth in its first submission did not quantify an amount it said 'the ultimate costs could be very considerable'. The employers may have overstated the situation by not making sufficient allowance for part-time female workers. We recognise, however, that the increase in the total wages bill as a result of our decision will be substantial but its effect will be minimised by the method of implementation which we have adopted. In our view the community is prepared to accept the concept of equal pay for females and should therefore be prepared to accept the economic consequences of this decision.

The period of implementation we adopt must also take into consideration the social and industrial implications of our decision both on a national basis and in relation to specific groups. The two principal overseas developments relied on by the unions, namely the United Kingdom equal pay legislation and the New Zealand

Bill, provide for a phasing in period of at least five years. The Commonwealth in its first submission, while appealing for flexibility in particular cases, suggested equal annual increments in a programme of 'not less than three years'. The second Commonwealth submission asked for implementation 'as quickly as possible over such period of time as the Commission considers practicable'. The Tasmanian Government supported a phasing in over a period of years. The Women's Liberation Movement contended for a maximum period of three years. We believe phasing in is just and necessary and can be achieved over a maximum period of 2½years.

We determine a new principle which pertains to the relationship between rates of wages for females and rates of wages for males.

The New Principle

1. The principle of 'equal pay for work of equal value' will be applied to all awards of the Commission. By 'equal pay for work of equal value' we mean the fixation of award wage rates by a consideration of the work performed irrespective of the sex of the worker. The principle will apply to both adults and juniors. Because the male minimum wage takes account of family considerations it will not apply to females.

2. Adoption of the new principle requires that female rates be determined by work value comparisons without regard to the sex of the employees concerned. Differentiations between male rates in awards of the Commission have traditionally been founded on work value investigations of various occupational groups or classifications. The gap between the level of male and female rates in awards generally is greater than the gap, if any, in the comparative value of work performed by the two sexes because rates for female classifications in the same award have generally been fixed without a comparative evaluation of the work performed by males and females.

3. The new principle may be applied by agreement or arbitration. The eventual outcome should be a single rate for an occupational group or classification which rate is payable to the employee performing the work whether the employee be male or female. Existing geographical differences between rates will not be affected by this decision.

4. Implementation of the new principle by arbitration will call for the exercise of the broad judgment which has characterised work value inquiries. Different criteria will continue to apply from case to case and may vary from one class of work to another. However, work value inquiries which are concerned with comparisons of work and fixation of award rates irrespective of the sex of employees may encounter unfamiliar issues. In so far as those issues have been raised we will comment on them. Other issues which may arise will be resolved in the context of the particular work value inquiry with which the arbitration is concerned.

5. We now deal with issues which have arisen from the material and argument placed before us and which call for comment or decision.

(a) The automatic application of any formula which seeks to by-pass a consideration of the work performed is, in our view, inappropriate to the implementation of the principle we have adopted. However, pre-existing award relativities may be a relevant factor in appropriate cases.

(b) Work value comparisons should, where possible, be made between female and male classifications within the award under consideration. But where such comparisons are unavailable or inconclusive, as may be the case where the work is performed exclusively by females, it may be necessary to take into account comparisons of work value between female classifications within the award and/or comparisons of work value between female classifications in different awards. In some cases comparisons with male classifications in other awards may be necessary.

(c) The value of the work refers to worth in terms of award wage or salary fixation, not worth to the employer.

(d) Although a similarity in name may indicate a similarity of work, it may be found on closer examination that the same name has been given to different work. In particular this situation may arise with generic classifications. A similar situation may arise with respect to junior employees. Whether in such circumstances it is appropriate to establish new classifications or categories will be a matter for the arbitrator.

(e) In consonance with normal work value practice it will be for the arbitrator to determine whether differences in the work performed are sufficiently significant to warrant a differentiation in rate and if so what differentiation is appropriate. It will also be for the arbitrator to determine whether restrictions on the performance of work by females under a particular award warrant any differentiation in rate based on the relative value of the work. We should however indicate that claims for differentiation based on labour turnover or absenteeism should be rejected.

(f) The new principle will have no application to the minimum wage for adult males which is determined on factors unrelated to the nature of the work performed.

6. Both the social and economic consequences of our decision will be considerable and implementation will take some time. It is our intention that rates in all awards of this Commission and all determinations under the Public Service Arbitration Act should have been fixed in accordance with this decision by 30 June 1975. Under normal circumstances, implementation should take place by three equal instalments so that one-third of any increase is payable no later than 31 December 1973, half of the remainder by 30 September 1974 and the balance by 30 June 1975. This programme is intended as a norm and we recognise that special circumstances may exist which require special treatment.

7. Nothing we have said is intended to rescind the 1969 principles applicable to equal pay for equal work which will continue to apply in appropriate cases. We have taken this step because an injustice might be created in cases based on equal pay for equal work where females could become entitled immediately to male rates under those principles.

Orders

We adjourn until 13 March 1973 matter C No. 2106 except that part claiming that adult females be paid the same minimum wage as adult males which claim we dismiss.

We adjourn matters C Nos 2202 and 2207 until 13 March 1973.

Matters C Nos 585, 1998 and 1999 will now be returned to their respective panels to be dealt with in accordance with the new principle we have enunciated.

Matter C No. 2274 will be referred back to the Public Service Arbitrator to be heard and determined in accordance with the new principle.

APPENDIX

C No. 2106 *of* 1972

Agricultural Implement Making Award, 1936

Application by a number of Metal Trade Unions to increase adult rates in clause 3 of Part I of this award by $12.10 per week; to prescribe a minimum wage for adults (males and females) of $65.00 per week and to include a provision for automatic quarterly adjustment of the minimum wage.

C No. 585 *of* 1972

The Footwear Manufacturing Industry Award, 1963

Application by The Australian Boot Trade Employees Federation to vary this award in a number of ways which would have the effect of giving equal pay to females.

C No. 1998 *of* 1972

Clerks (Domestic Airlines) Award, 1971

Application by the Federated Clerks Union of Australia to vary this award in a number of ways to give equal pay to females.

C No. 1999 *of* 1972

Clerks (Overseas Airlines) Award, 1970

Application by the Federated Clerks Union of Australia to vary this award in a number of ways to give equal pay to females.

C No. 2207 *of* 1972

Salaried Staff (Qantas Airways Limited) Award, 1970

Application by the Australasian Transport Officers Federation to increase by both a percentage and a flat amount adult male rates and to increase adult female rates by the same amount.

C No. 2202 *of* 1972

Administrative and Clerical Officers' Association, Commonwealth Public Service

Determination No. 104 *of* 1966

Reference pursuant to the *Public Service Arbitration Act* of an application by the Administrative and Clerical Officers' Association, Commonwealth Public Service to vary this determination by increasing all rates of pay therein by 5.7 per cent.

C No. 2274 *of* 1972

Commonwealth Telephone and Phonogram Officers' Association

Determination No. 30 *of* 1930

Reference pursuant to the *Public Service Arbitration Act* of an application by the Commonwealth Telephone and Phonogram Officers' Association to vary this determination as to rates of pay for telephonists and related classifications.