In the matter of the *Commonwealth Conciliation and Arbitration Act* 1904-1949

and

In the matter of applications by organizations of employees for awards and for variation of awards made and agreements certified under the said Act by increasing the basic wage for adult males and females thereby prescribed.

BASIC WAGE INQUIRY 1949-1950.

Variation of awards and agreements—Basic wage for adult males and females — Review of principles upon which basic wage is computed—Consideration of principles to be applied in fixation of basic wage for adult females—Representation of parties—Right of counsel to appear—Application for interim increase—Interpretation of "minimum rate," "in an industry" and "the basic wage"—Relevance of evidence concerning financial position of individual witnesses—Application for order dismissing certain disputes—Failure of employees to comply with terms of award by their refusal to work reasonable overtime as directed—Obligation upon organizations to submit industrial disputes to appropriate authority—Order dismissing certain disputes made—Jurisdiction—Capacity of national economy to sustain higher standard of living—Inflationary effect of re-distribution of national dividend—Commonwealth Conciliation and Arbitration Act 1904-1949 *ss.* 2, 3, 4, 5, 13, 25 (*b*), (*d*), 26, 32, 34, 39 (*c*), 40 (*d*), 46, 49, 114—*Judgments delivered.*

Notifications of disputes (Nos. 11 and 24 of 1949) concerning employees in the Metal Trades Industry were given pursuant to section 14 of the *Commonwealth Conciliation and Arbitration Act* 1904-1948 by the Amalgamated Engineering Union and others and the Federated Ironworkers Association of Australia, respectively. Particulars of these disputes are included in part I of schedule "B" hereto.

The disputes, *inter alia,* sought an increase in the contemporaneous basic wage prescribed for the Metal Trades industry.

On 17th February, 1949, the Attorney-General of the Commonwealth of Australia, pursuant to section 26 (1) of the said Act, announced his intervention in the public interest.

The disputes were listed before the Court (Kelly, Foster and Kirby JJ.), in Melbourne, on 22nd February, 1949.

H. J. Souter for the Amalgamated Engineering Union.

L. J. McPhillips for the Federated Ironworkers Association of Australia.

S. Wookey for the Boilermakers Society of Australia.

A. McNolty for the Sheet Metal Working Agricultural Implement and Stovemaking Industrial Union of Australia.

Nos. A1467 and A1590.

D. A. Maclennan for the Blacksmiths Society of Australasia.

S. C. G. Wright, A. P. Aird and *L. H. Williams,* of counsel, for employers generally.

J. L. Moore for the Commonwealth Jam Preserving and Condiment Manufacturers Association.

R. S. Tatchell for the Victorian Automobile Chamber of Commerce.

S. Lewis, K.C., and *G. Gowans, K.C.,* for His Majesty the King in the Right of the Commonwealth of Australia.

R. R. Chamberlain, K.C., for His Majesty the King in the Right of the State of South Australia and the South Australian Railways Commissioner.

H. A. Winneke, of counsel, for His Majesty the King in the Right of the State of Victoria.

J. A. P. Gerrard for the State Electricity Commission of Victoria.

S. Smith for Associated Dominions Assurance Society Pty. Ltd. and another.

1949.
Melbourne, Feb. 22; March 7; April 6; Adelaide, April 27.

Kelly, Foster and Kirby JJ.

Melbourne, May 17-20, 26; June 1, 6-9, 14-16, 20-23; Aug. 1, 2, 15, 29, 31; Sept. 1, 2, 12-15, 19-23, 26-28; Oct. 3-6, 17-20, 24-27; Nov. 7-10, 14; Dec. 12-14, 20.
1950.
Feb. 14-17, 20, 21, 27, 28; March 1, 2, 14-16, 20-23, 27-30; April 3-5, 12-14, 17-20; Adelaide, April 24, 26-28; Sydney, May 4, 5, 8-12; Melbourne, June 13-15, 19-22; July 12, 24-27, 31; August 1, 3, 7, 8-10, 21, 22; Oct. 12.

Kelly C.J., Foster and Dunphy JJ.

Oct. 24, 31.
Nov. 23.

Foster, Kirby and Dunphy JJ.

On 7th March, 1949, the following judgments were delivered by the Court with respect to the appearance of counsel at the hearing of the said matters:—

Kelly J.:

No good purpose would be served by postponing our judgment in this matter further.

I desire to express, first of all, my view. It is in entire agreement with the submission made by learned counsel for the Attorney-General of the Commonwealth, with, perhaps, this modification: that where he refers to a discretion to allow representation by counsel of a person or organization who gains admittance to be heard, I have some doubt as to whether that discretion exists. But I would exercise such a discretion, in view of the representation by Counsel of the Attorney-General, in favour of any such person or organization who gains liberty to be heard being allowed to be heard by Counsel.

So far as the rest of the argument is concerned, I would maintain the ruling already given.

There is one other aspect that has been considered and I would express my view about it thus: "once a party, always a party." Section 46 of the *Commonwealth Conciliation and Arbitration Act* as I read it, does exclude representation by counsel unless consent be obtained from the other party.

They cannot avail themselves of sub-section (3) of section 26 for the purpose of representation by counsel. Indeed, in my opinion, sub-section (3) of section 26 is utterly inappropriate to the case of parties whose audience is not and cannot be dependent upon permission to be heard.

Foster J.:

The history of section 46 of the *Commonwealth Conciliation and Arbitration Act* is as follows:—

In the Act of 1904 is was provided:—

> "On the hearing or determination of any industrial dispute an organization may be represented by a member or officer of any organization, and any party not being an organization may be represented by an employee of that party; but no party shall (except by consent of all the parties or by leave of the President) be represented by counsel or solicitor."

The Court was at this time presided over by a President and had no judicial power.

The Act of 1910 amended this section so that it now read:—

> "On the hearing or determination of any industrial dispute an organization may be represented by a member or officer of any organization, and any party not being an organization may be represented by an employee of that party; but no party shall (except by consent of all the parties) be represented by counsel or solicitor or paid agent."

The section was further amended by the Act of 1928; the amendment was as follows:—

> "On the hearing or determination of any industrial dispute an organization may be represented by a member or officer of any organization, and any party not being an organization may be represented by an employee of that party; but no party shall (except by leave of the Court or by consent of all the parties) be represented by counsel or paid agent."

Act No. 43 of 1930 carried the matter a step further and made necessary the consent of the parties and the leave of the Court; it was as follows:—

> "On the hearing or determination of any industrial dispute an organization may be represented by a member or officer of any organization, and any party not being an organization may be represented by an employee of that party; but no party shall (except by leave of the Court and consent of all the parties) be represented by counsel or paid agent."

By Act No. 22 of 1926 the Court was endowed with judicial power and became a Court of Record.

In 1930 in *Australian Railways Union v. Victorian Railways Commissioners* [1] the Full Arbitration Court held that the parties had not the right to be represented by counsel. The Court has a discretion to permit such representation except in cases of the hearing or determination of an industrial dispute and that an application for a variation of an award was not the hearing and determination of an industrial dispute, and in 1936 Dethridge C.J. in *Federated Liquor, etc. v. Alfred Lawrence and Co.* [2] held that section 27 did not, even on objection by a party, forbid the appearance of counsel in a matter involving the question whether an industrial dispute existed.

See also *Blakeley v. City Mutual Life Assurance Society Ltd.*, 1935 [3].

With these decisions before it the legislature in the latest amendment provided—

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(1) 29 C.A.R., p. 487. (2) 36 C.A.R., p. 656. (3) 35 C.A.R., p. 679.

"Section 46. (1) In any proceedings before the Court or a Conciliation Commissioner—

(a) an organization may be represented by a member or officer of that organization; and

(b) a party (not being an organization) may be represented by—

(i) an employee of that party; or

(ii) a member or officer of an organization of which that party is a member.

(2) No party shall, in any proceedings before the Court, be represented by counsel, solicitor or paid agent, except by leave of the Court and with consent of all the parties. In any proceedings before a Conciliation Commissioner, no party shall be represented by counsel, solicitor or paid agent.

(3) This section shall not apply to judicial proceedings before the Court."

By section 17 of the *Concilation and Arbitration Act* 1904-1947 the Court was made a Superior Court of Record.

The history of this section justifies the view that the intention of the legislature has been to bring the parties to industrial disputes together as far as possible without the intervention of any intermediaries and so to exclude counsel, solicitors and paid agents, and a closer examination of the various amendments indicates that as weaknesses were disclosed they were covered by amending legislation until in the latest amendment no party shall in any proceedings before the Court be represented by counsel, solicitor or paid agent except by leave of the Court and with the consent of all the parties, and in any proceedings before a Conciliation Commissioner even the leave of the Court and the consent of all parties would not suffice.

Judicial proceedings are, however, exempted from the operation of the section.

The section now seems as wide and explicit as possible—"any proceeding" "leave of the Court" and the "consent of *all* the parties." It is however not free from difficulties in its literal interpretation while its practical application occasions upon any view of its meaning grave anomalies and incongruities and perhaps even injustice as the following discussion will show:—

The first sub-section makes positive provision for the representation of the parties who may be organizations, persons, corporations, unincorporated entities, States and Commonwealth, which was obviously necessary. The second sub-section provides for the exclusion of counsel, etc., and makes it necessary for the parties seeking such representation to do two things—

(a) obtain leave of the Court;

(b) obtain consent of all the parties.

So that it would seem, even if all parties consented, the Court still has a discretion to grant or refuse leave to counsel, etc., to represent a party or to grant such leave on terms.

Foster J.]

Up to the present as far as I know it has been the practice to assume consent to the appearance of counsel of all parties in the absence of a specific objection by any one of them. Silence gave consent so to speak. This it seems to me is to reverse the burden the section imposes and places a positive duty upon parties to object if they want to and not a duty on the applicant to obtain the necessary consents. The section says "with the consent of all parties" and not "unless any party objects" as it might be expected to do if the true position was that in the absence of objection consents were implied. Obviously it is an impossibility in practice in all cases to obtain "the consent of all parties." Why it should have been presumed that silence implied consent is hard to understand when it is obvious that in fact no such presumption could be warranted, but it was a matter of practical expediency and has, as I have said, been long acted upon.

There is no definition of "party" or "parties" in the Act nor in the *Acts Interpretation Act* 1901-1932 except that "person" and "party" shall include a body politic or corporate as well as an individual. I feel little real assistance can be got from an examination of the Statutes or the cases in the ordinary Civil or Criminal Courts because the nature of this Court with its legislative functions and the character of its proceedings, the absence of litigation in the usual sense, the character of its procedures and the nature of its orders, decisions, determinations, all point to a special connotation for the word "party" peculiar to this jurisdiction.

In the Civil and Criminal Courts the parties are clearly indicated by the litigation and are easily identified and no difficulty would arise in those jurisdictions in applying this section. This Court on the other hand is engaged in settling by conciliation and arbitration interstate industrial disputes and matters strictly incidental thereto. There may be no process served and filed, the Court or its officers may take cognizance of a dispute of its own motion, and the dispute may only be threatened or impending, the parties to the dispute are not necessarily all parties to proceedings. In addition, persons, organizations, corporations, State and Commonwealth may, by the operation of section 26 be admitted to participate in proceedings either because they are interested directly or indirectly in the proceedings or their outcome, or may in these or subsequent proceedings be affected by the decision and in some cases by the mere operation of a State law.

By the said section 26 the Attorney-General, without any action by the Court and independently of it, is empowered to intervene on behalf of the Commonwealth in the public interest in any matter before the Court, and the practice has been to assume the Attorney-General had all the rights and duties of an ordinary party in the proceedings whether he was so in fact or in law or not; so that in proceedings before the Court parties may be—

(1) the parties to the dispute then before the Court;

(2) the parties named as applicants and respondents in the process filed and served; and

(3) the Attorney-General of the Commonwealth intervening; and

(4) persons etc., who are permitted by the court to be heard;

and these latter participatants or some of them may be or become parties in the first or second sense above.

As to classes 1 and 2 above there is no doubt in my view that they may only be represented by counsel etc. with the leave of the Court and with the consent of all the parties defined in the 1st and 2nd meanings above; the difficulty occurs with the other participants.

If the Attorney-General for the Commonwealth is a party within the meaning of the section, then unless he is exempted by section 26 he, like other parties, is affected by the provisions of section 46 relating to representation, and this would apply to "persons permitted to be heard" if they too are parties within the section.

That these participants under the meanings 3 and 4 above have many if not all of the characteristics of parties, is clear. They take full part in the proceedings; they may call and examine witnesses; may address the Court; they may resist claims made and may make claims; they may be affected by the settlement of the dispute and by the decision of the Court; they may be required to pay costs.

I have indicated that there are some practical difficulties in applying this section; they are, *inter alia*—

1. If "parties" are limited to classes 1 and 2 above then interveners under section 26 as I may call them, with only trifling interest, may have counsel, but parties with great and vital interest must be refused in the absence of the necessary consents.

2. A party may decline to appear as a "party" and seek leave tc intervene in order to have the assistance of counsel.

3. If interveners have counsel it would defeat the clear intention of the Act by rendering abortive an objection by any party to counsel — for counsel for an intervener would be at large in proceedings such as come before this Court under section 25.

4. Where the Commonwealth is a party to the dispute and to the proceedings as in this case, he may seek, as in fact he does, to appear in another capacity under section 26 and not as a party. How is the Court to draw any line between the two capacities?

5. If the Attorney-General appearing under section 26 is not a "party" he may appear by counsel, but States who are parties may not appear by their Attorney-General or by counsel though they may appear by counsel as interveners if interveners be not parties.

Foster J.]

6. By section 46 (1) an organization may be represented by a member or officer and other parties by an employee, but section 2 provides no party shall be represented by counsel, etc. — if the member or officer or employee is a counsel or solicitor which part of this section is to prevail? The case of South Australia in these proceedings is in point for Mr. Chambers is of counsel and is an employee of a party and a person affected by the existing award.

7. Is a State as a party prohibited from using its Attorney-General because he is a counsel or solicitor, but permitted to use him if it is only an intervener?

8. On the other hand if interveners are "parties" they then may refuse consent and so deprive all parties of counsel and this though their interest is very slight.

It would surely be a little anomalous if interveners with the slightest interest should have counsel while parties with the greatest and most vital concern should be deprived and that the Court's leave to have counsel must be sought by "parties" but not by interveners.

If my view of the legislature's intention as expressed in section 46 is right, the only way to achieve it would be in the absence of consents to deny counsel to all "parties" and participants including the Commonwealth Attorney-General intervening under section 26. The parties would then be before the Court with only that representation expressly enacted, nor should it be lost sight of that the Commonwealth Attorney-General intervening under section 26 may be, as he in fact has been in the past, a partisan advocating a particular determination of the dispute; but the problem is, has the Statute by its special provisions in section 26 excluded the Commonwealth Attorney-General from the category of "party" under section 46. When he intervenes the Attorney-General does so on behalf of the Commonwealth and in the public interest, and the purpose of the intervention is two-fold — to assist the Court and to enable persons to seek permission to intervene in the proceedings; in this capacity it may be said he does not represent the Commonwealth as a party within any possible meaning of section 46 (2). If this be the proper interpretation of section 26 then of course the result is that the Attorney-General may be represented by counsel. With some doubt I feel that the Attorney-General's participation under section 26 is unique and escapes the prohibition of section 46.

Reference should be made briefly to section 49 of the *Judiciary Act* 1903-1946. It provides—

"Barristers and Solicitors.

49. (1) Any person entitled to practise as a barrister or solicitor or both in any State shall have the like right to practise in any federal Court or in any Court of a Territory under the control of the Commonwealth.

(2) Provided that before so doing he shall produce to the Principal Registrar evidence showing that he is so entitled and in what capacity, and

the Principal Registrar shall thereupon enter his name in a Register of Practitioners to be kept at the Principal Registry.

(3) A copy of the Register shall be kept at every District Registry.

(4) The High Court may direct the name of any person to be struck off the Register upon proof that he has been guilty of conduct which renders him unfit to be allowed to continue to practise as a barrister or solicitor.

(5) Upon proof that any person has been deprived by the Supreme Court of the State, by virtue of his right to practise wherein he was registered, of the right to practise in that State as a barrister or solicitor, the Principal Registrar shall strike the name of that person off the Register of Practitioners of the High Court."

In my view this section does not override or modify the provisions of section 46 which of course is explicit and later in date.

The position therefore as I see it is:—

1. The Attorney-General intervening is in a special case under section 26 and may be represented by counsel.
2. No other participant in the absence of leave and consents may be so represented.

   As my brothers do not share my view that persons permitted to be heard under section 26 are within section 46 then—
3. No person or organization should in absence of consents be permitted to appear by counsel if he is in fact a party in the sense that he is a party to the dispute or to the process — he must appear then as such a party.

My view would exclude all counsel except Commonwealth Attorney-General under section 26; it would exclude counsel for the Commonwealth as a party as well as for the States as parties. To hold otherwise seems to me to defeat the section and to raise almost insurmountable difficulties in the proceedings.

In the matters left to the Court under section 25 counsel would be of great assistance and would tend to shorten rather than delay proceedings as all my predecessors on this bench have said at one time or another. The issues which this Court must determine are so great and important that nothing short of the best assistance should be allowed to suffice. It is therefore, in my view, regrettable that the applicant's objection has deprived the Court of that assistance.

Kirby J.:

In my view, the right conferred upon the Attorney-General of the Commonwealth by sub-section (1) of section 26 does not make him a party within the meaning of sub-section (2) of section 46.

Also, in my view, any persons or organizations who are granted liberty to be heard by the Court pursuant to subsection (3) of section 26 do not become parties within the meaning of sub-section (2) of section 46.

It follows that, in each case, the right, of the Attorney-General on the one hand and on the other of persons who are granted by the

Kirby J.]

Court liberty to be heard, to be represented by counsel is not cut down and therefore still exists.

In my opinion, it is very doubtful whether the Court has any discretion in the matter. I prefer not to devote any consideration as to how I would exercise my discretion if I were of the opinion that the Court did have discretion to allow persons who have been granted liberty to be heard under sub-section (3) of section 26 to be heard by counsel or not.

I do not think there is any need to add anything to what my brother Kelly and I have already said except that the Act speaks for itself, and if any illogicalities flow from it, I feel, as one of the majority deciding the matter this way, that I should say I am not to blame; the Act speaks for itself.

The Court.]

The disputes were again listed before the Court (Kelly, Foster and Kirby JJ.), in Melbourne, on 6th April, 1949, when, pursuant to section 26 (3) of the said Act, applications for leave to intervene in the proceedings were made by the Australian Council of Trade Unions, several organizations of employees, employers and others.

On the same day the matters were adjourned sine die.

On 11th March, 1949, and subsequent dates applications were filed on behalf of the organizations of employees mentioned in the first column of part 1 of schedule "A" hereto for orders varying the awards or agreements mentioned in the third column of the said schedule.

Disputes numbered 11 and 24 of 1949 and the applications for variations mentioned in part 1 of schedule "A" hereto together with so much of the disputes mentioned in part 2 of schedule "B" hereto as concern basic wage were listed before the Court (Kelly, Foster and Dunphy JJ.), in Melbourne, on 17th May, 1949.

W. P. Evans and *T. C. Winter* for the applicant Unions generally and the Australian Council of Trade Unions (intervening).

W. Baker for the Federated Ironworkers Association of Australia, the Federated Ship Painters and Dockers Union of Australia, the Seamen's Union of Australia and the Blacksmiths Society of Australasia.

H. J. Souter for the Amalgamated Engineering Union.

T. N. P. Dougherty for the Australian Workers Union.

S. C. G. Wright, A. P. Aird and *L. H. Williams,* of counsel for non-party employers generally (intervening).

K. H. Boykett, L. L. Carter and *K. D. Marks* for employer parties generally.

S. Lewis, K.C. and *G. Gowans,* K.C., for His Majesty the King in the Right of the Commonwealth of Australia.

R. M. Eggleston, K.C., and *K. H.* Gifford, of counsel, for His Majesty the King in the Right of the States of Victoria and Western Australia (intervening).

L. D. Hunkin, of counsel, for His Majesty the King in the Right of the State of South Australia and the South Australian Railways Commissioner.

J. L. Moore and *K. H. Grant* for the Commonwealth Jam Preserving and Condiment Manufacturers Association.

B. G. Dawson for respondents members of the Australian Primary Producers Union (intervening).

E. G. Roberts for respondents members of the Victorian Dairy Farmers' Association (intervening).

J. W. McCormack for the Commissioner for Railways, New South Wales, the Victorian Railways Commissioners, the Queensland Railways Commissioner and the Commissioner for Road Transport and Tramways, New South Wales.

T. V. Barnes for the Transport Commission, Tasmania.

J. Harrison for the Metropolitan Gas Co. and others.

On the same day the following ruling in connexion with an application made on behalf of employers generally that the matters be postponed, was given by the Court:—

We have given very grave consideration to the present situation and we have come to this conclusion: that the general case, which we foreshadowed to be a general one, should proceed. However, we do want to make it clear that in proceeding we do not bind ourselves to continue with the case any longer than is necessary for the organizations applicants for arbitration in this matter to give attention to the necessity for putting their houses in order.

Enough has been said this morning from the Bench and in response to what has been said from the Bench to indicate that we presiding in this Court feel ourselves to be under an obligation to see that the arbitration is conducted in a proper atmosphere and with proper regard to the necessity for freedom on the part of both sides to submit the issues for our decision. We think that much could be done along the lines suggested to Mr. Winter: that support for the system, which it has been put to us has been always given by the main association of registered organizations, the Australian Council of Trades Unions, can be emphasised and can be brought to the attention of its constituent members with a view to ascertaining from them and having expressed by them their confidence in the system being the proper means of settling these disputes.

We do not desire, I think, to say more than that: we are conscious of the difficulties of organizations in connection with recalcitrant sections of their membership, but we do want to know that the associations, and organizations stand for arbitration by this Court on this basic wage issue — as well as on other issues, of course, but principally

The Court.]

on this basic wage issue — and that they do regard these sections as rebellious and as making themselves susceptible to such disciplinary action as might be directed against them. Further what we want to know is that the organizations federally registered who are at all times before us are going to commit the future of these issues to this Court without any recourse to or any encouragement or support of or connivance with any form of direct action.

In order to do that some little time might be necessary. We do not want a mere formal expression of intention or policy. We want something which is more than formal and we want a statement or expression of the attitude of these Unions to be made only after the present situation has been brought to their notice.

We propose at the present time to proceed with the matter, in view of the fact that time will be saved thereby, but without prejudice to any future action on our part if the situation is not clarified and brought to a satisfactory conclusion.

On 19*th May,* 1949, *the following further ruling, concerning the limitation of evidence during the hearing of an application for an interim increase, was given by the Court*:—

Treating this as an application that the Unions should be allowed to proceed with an application for an interim increase in the basic wage, as they call it, we feel disposed to say that if the present application is to be granted; namely, that there will be an interim basic wage case heard, it would have to be confined to a discussion of two matters — the alleged inappropriateness of the C Series index numbers at present used for the purpose of adjustment, and the question as to the capacity of industry to pay. In other words, the principles upon which the basic wage was last fixed should not be, on such an application, investigated; so that in discussing the application which has been made for a hearing, you will be asked to confine yourself, and those who may oppose it will be asked to confine themselves, to those two aspects. That is, as to whether an application limited to those grounds should be heard.

In the event of the applicant introducing any other ground, we will rule that it will be irrelevant for the purpose, so that you can confine your attention, for the purpose of answering this present application, to a discussion of those two points — whether an inquiry should be held into the appropriateness of the C Series index as a measure for the near future of the basic wage amount; secondly, whether, upon the accepted principle that the Court should give attention to the capacity of industry to pay, an adjustment of the present amount should be made.

On 19*th May,* 1949, *application was made on behalf of the applicant Unions generally for an interim increase in the basic wage.*

On 20*th May,* 1949 *the following judgments were delivered by the Court with respect to the said application*:—

Kelly J.:

The settlement of the disputes and the determination of the applications before the Court involve an extensive review of the principles upon which the basic wage is computed and the consideration of what principles should be applied to the fixation of the minimum rate of remuneration for adult females in an industry.

Press reports of the proceedings to date (I referred to this subject) may have suggested that the Court has resolved to exclude certain matters or submissions from the consideration of what the basic wage should be. This is not so. The Court has been asked to hear a preliminary case involving only a partial consideration of the so called principles.

The question it has now to decide is not what should be done in settlement of the disputes, but whether, before proceeding to the task of reaching such a settlement, it should make an interim pronouncement upon the basis of accepting the existing principles, though the eventual claims of the applicants aim at an "alteration" of them.

The basic wage operating in the awards and in respect of the industries to which the disputes and applications relate is an amount — adjustable in accordance with a formula adopted by the Court — which has been assessed with reference to a number and a combination of considerations. An application to alter the basic wage or the principles upon which it is computed, or a dispute arising out of any claim for such an alteration, must necessarily call for a review of such considerations, and of the weight and force which each and all of them should bear in the assessment of any altered basic wage. It is, in my view, impossible to alter the basic wage upon the ground that one or more of such considerations should be either abrogated or modified or displaced by some other consideration or considerations without reviewing the other considerations included in the combination.

The present application, now limited to an application to review the effect of the adjustment formula prescribed by the Court, and the weight and effect of the capacity of industry to meet a higher wage level, cannot, in my opinion, be granted, unless the weight, effect, validity and complete adequacy of the other considerations be accepted.

In the present disputes and applications it is clear that the weight, effect, validity and adequacy of the other considerations taken into account in the assessment of the present basic wage are to be impugned. Moreover, it is clear that the disputes and applications envisaged the consideration of claims aimed at the adoption for the purposes of basic wage assessment of certain other considerations or so-called "principles."

In these circumstances I am very definitely of the opinion that for the purposes of settling the disputes, and of determining the applications now before the Court, it would be undesirable, impracticable

and against the public interest, and that it may be prejudicial to the interest of the wage earners themselves, to entertain an application for what has been called an interim basic wage increase based upon a review of the periodical adjustment clause and of the capacity-of-industry-to-pay considerations, without a simultaneous review of the other considerations which have hitherto been taken into account.

The Court has already ruled that it would not be prepared to alter the basic wage temporarily upon any other ground than the inappropriateness of the adjustment formula and an adjustment in accordance with the capacity-to-pay principles. However, to entertain the present application would envisage an inconclusive result, in my view undesirable, impracticable and possibly prejudicial to the class of employees to whom the basic wage might be found subsequently to be appropriately payable.

I am, therefore, of the opinion that the application should be dismissed, since the claims of the applicants have not been amended so as to abandon such of them as seek a review of other considerations or principles, or the adoption of new considerations or principles in connection with the basic wage assessment or the assessment of the minimum rate of remuneration for adult female employees in an industry. No such abandonment of the claims having been proposed, the Court should refuse, I think, the present application for a so-called interim increase or alteration of the basic wage.

It should be pointed out that the Court is prepared to proceed with the hearing of the claims for the purpose of settling the disputes and of determining the applications now before it. Neither the business or convenience of the Court nor the provisions of the legislation can be held accountable for any delay that may be occasioned because of any unpreparedness on the part of the claimants or the applicants or any of them to proceed at once to substantiate their claims or applications. There was no ground for any assumption that the claimants or applicants would not be expected to be ready to proceed with their contentions and to substantiate them with what evidence they might choose to bring before the Court in support of the claims they have made, which are at the basis of the present dispute and an integral part of the subject matter of the present applications.

I would therefore dismiss the application.

Foster J.:

The Australian Council of Trade Unions has asked the Court to defer the consideration of the claims that have been made by all the Unions for which it appears, for some indefinite period. It is put that it would take "about a year" to prepare and present such a case.

In the meantime it asks the Court to ignore those claims and to proceed with one which has not been made.

The Court has known for many months from the documents filed that it was to be asked to undertake a complete investigation, not only of the amount of the basic wage, but of all the principles upon which it had in the past been based. In addition it has been asked to fix a new rate for females.

When the Court assembled with the expectation of undertaking that task, and after not inconsiderable preparation upon the part of its members for it, I was astounded and dismayed to learn that the Unions were not at all prepared to go on with their case, but invited the Court to consider only the question of increasing the present interim rate, and to base it upon the single consideration of the capacity of industry to pay such increase.

It should be obvious that such a course would be completely unsatisfactory, may prevent the Court ultimately dealing with the main claims of the Unions, would prejudice if not destroy the claim for the adult rate, to say nothing of the injustice it would impose on employers who desire to rely on many other considerations in answer to the claim for basic wage increase. In addition it would impinge on existing legislation and on Government policy relating to social services and endowment which it is clear should engage the careful consideration of the Court.

In my view it is not in the interest of the community nor of the parties, and especially of the Unions, to take the course suggested. The Unions should be urged to prepare their case and present it at the earliest moment. So far as the Court is concerned there has been no delay and there will be none, for the Court is anxious to help in every way it can, and suggests that the parties consult with it in conference to devise means of expedition — of which experience has shown many methods. The final decision will, unfortunately, by reason of the Unions' failure, be delayed, but that cannot now be helped.

While the Court will do what it can to expedite the hearing, it must however be clearly understood that it will insist on the fullest and most complete investigation and examination of all relevant data and considerations.

I agree that the Court should decline to accede to the application.

Dunphy J.:

I agree with the decision and adopt the reasons for judgment of my brother Judges, and have only this to add.

As the application for a hearing of an interim basic wage proceeded it became obvious that at the very most the Court could only make a grant within restricted and severely defined limits. When the full implication of such a grant is appreciated it is very doubtful whether any real benefit to workers could result, and it is extremely likely that irreparable damage to the main case would be done. We

Dunphy J.]

have got beyond the stage where there is any valid basis for the belief that a mere increase (substantial or otherwise) in the basic wage by itself affords real relief and benefit to those struggling against the rising cost of living.

A generation of experience indicates that the time is ripe for a complete review of standards and principles, and for the elimination of any suggestion of tinkering with the matter. The Court is ready, willing and anxious to conduct a nation-wide review of the basic wage structure. As I believe that the fears of delay are groundless, that the parties can make themselves better equipped than ever before to bring all relevant evidence to the notice of the Court, and that the Court itself is prepared to grant priority to this all-important matter and to actively assist in the expedition and simplification of the proceedings, I say that this decision represents a challenge to the Labour movement. It is a challenge to take up and actively prosecute on behalf of the Australian wage-earning community the most important case ever presented in this or any other Australian Court, and to attempt to secure a rational, modern and scientific scheme of wage justice in what is no longer a new province of law and order.

The Court.]

On 15th, 16th and 21st June, 1949, *applications* (*Nos.* 417, 418, 419, 437 *and* 441 *of* 1949) *were filed on behalf of the organizations of employees appearing in the first column of part 2 of schedule "A" hereto for orders varying the awards and agreement mentioned in the third column of part 2 of the said schedule.*

Notification of a dispute (No. 453 of 1949) concerning employees engaged in the Metal Trades Grades of the Railway Industry was given pursuant to section 14 of the said Act by the Amalgamated Engineering Union and others. Particulars of this dispute are included in part 3 of schedule "B" hereto.

On 1st and 15th August, 1949, the Court directed that the applications and dispute so mentioned should be heard concurrently with applications and disputes already before the Court and part heard.

On 2nd August, 1949, the Court intimated that it would not proceed with the hearing of certain matters in dispute until it was satisfied that the claims at present before it were entertainable under section 25 (d) of the *Commonwealth Conciliation and Arbitration Act* 1904-1949.

This question was listed before the Court (Kelly C. J., Foster and Dunphy JJ.), in Melbourne, on 29th, 30th and 31st August, and 1st and 2nd September, 1949.

T. W. Smith, K.C. and *D. Corson,* of counsel, for the applicant Unions generally and the Australian Council of Trade Unions.

S. C. G. Wright, A. P. Aird and *L. H. Williams,* of counsel, for employers generally.

S. Lewis, K.C. and *G. Gowans,* K.C., for His Majesty the King in the Right of the Commonwealth of Australia.

R. M. Eggleston, K.C., for His Majesty the King in the Right of the States of Victoria and Western Australia.

On 23rd September, 1949, the following judgments were delivered by the Court:—

Kelly C. J.:

The argument presented to the Court has, so far as my point of view is concerned, had this significance and point. It has been aimed at suggesting that the opinion expressed by me in the *Metal Trades case* [1] is not tenable. The suggestion has been put partly upon a submission similar to that which I rejected in the case referred to and partly — and this from the employers' side — on the ground that in the light of a dictum of the High Court in *R. v. Galvin ex parte the Metal Trades Employers Association and others* [2] my construction of the phrase "in an industry" where it occurs in sub-section (d) of section 25 is too restrictive.

In my view the definition of industry in any particular case will depend upon the scope or field of the dispute or controversy involved. I think that the decision in *Galvin's case* is consistent with this view and that my own opinion expressed in the *Metal Trades case* is likewise consistent.

I am in other words not convinced that my construction is wrong and I would, therefore, maintain it. The practical consequence is that in ascertaining what rate of remuneration comprehended by a dispute or application lies within the jurisdiction of the Court under section 25 (and beyond that of the Conciliation Commissioner by virtue of section 13) the Court (or the Commissioner) has regard to the group of occupations in respect of which the dispute has arisen or in respect of which the application for variation has been made — that group comprising the industry for the purposes of the prevention or settlement of the dispute or the determination of the application. The minimum rate of remuneration for adult females in that "industry" is, in my opinion, the rate which the Court (but not a Commissioner) may under section 25 determine or alter.

Foster J.:

For the purposes of the settlement of the disputes now before the Court relating to the minimum rate for adult females, we are asked to interpret section 25 (d) which says—

"25. The Court may, for the purpose of preventing or settling an industrial dispute, make an order or award—

(1) 60 C.A.R. (2) 1949 A.L.R., p. 1056.

Foster J.]

(a) . .

(b) . .

(c) . .

(d) determining or altering the minimum rate of remuneration for adult females in an industry."

I see no reason, except the opinion expressed by my brother Kelly C.J. in the *Metal Trades case* (1) on 29th July, 1948, and again reiterated in his present judgment, to change the view I have elsewhere expressed — the view pressed for in these proceedings by Mr. Smith K.C. and Mr. Lewis K.C.

The two points about which differences of opinion arise are "minimum rate" and "in an industry." It has been suggested that there is nothing in the context of section 25 to displace the application of section 4 of the Act which defines industry as follows:—

" 'Industry' includes—

(a) any business, trade, manufacture, undertaking, or calling of employers;

(b) any calling, service, employment, handicraft, or industrial occupation or avocation of employees; and

(c) a branch of an industry and a group of industries."

Obviously "industry" in section 25 (d) cannot in any one context or set of circumstances have all the meanings above as well as any others the word may legitimately have (for these are not excluded by the definition clause). A choice must therefore be made, and for reasons which I have elsewhere stated, I find it imperative to adopt the widest meaning available, and as to "minimum rate" I repeat it means the least amount, not many least amounts — the section does not say "minimum rates" but "rate."

My view makes a workable system of the Act and no other one does, and I do not attribute to Parliament or the draftsman the absurdity that having fully stated the objectives of the Act in section 2, Parliament and the draftsman are to be deemed to have frustrated those objectives by the form in which section 25 is expressed.

The result is, in my view, that the Court should hear evidence for the purpose of settling these disputes and to that end of ascertaining the least amount it will permit an adult female to work for a given period in any industry, and that amount will ordinarily be fixed for the adult female as such, unaffected by any other considera-

(1) 60 C.A.R.

tions whatever. If it later appears that in any particular dispute there are females who do not fit that description, a Conciliation Commissioner must estimate and award the additional figure he finds to be justified because of those special considerations.

This view obviously includes the view of Kelly C.J. in the *Metal Trades case,* but my brother goes further and in some cases now before us, this Court, on his view, and not the Conciliation Commissioner, must undertake the investigation of all special considerations relevant to the industry the subject of the dispute, ascertain the type or group of women workers to which the least of these considerations apply and then fix for that type or group an amount which will include my least amount in the determination of his minimum rate.

Dunphy J.:

In this matter the Court is asked to place its interpretation upon the provisions of sub-section (d) of section 25 of the *Commonwealth Conciliation and Arbitration Act* and we are presented with a choice of one out of four different constructions which have been canvassed by advocates on behalf of four separate interests. It is admitted that not one of the four constructions can be obtained from the express words of the paragraph under review. Words have to be added or subtracted to come under one of the four possible results.

The paragraph in question confers on the Court jurisdiction "to determine or alter the minimum rate of remuneration for adult females in an industry" and the answer to the question depends substantially on the meaning of the phrase "in an industry." This phrase is to be found in paragraph (a) of the same section; it also occurs in paragraphs (a) and (d) of section 13, which section prescribes the limitation of jurisdiction of Conciliation Commissioners and an inclusive definition of "industry" is to be found in section 4. The only portion of this inclusive definition which, in my opinion, can have any relevance to the question now before the Court, reads:—

> "Industry includes—(b) any calling, service, employment, handicraft or industrial occupation or avocation of employees;"

and in my view this meaning should be applied to the word "industry" where it is to be found in section 25 (d).

In the first place, there is nothing in the Statute which indicates that the statutory meaning of "industry" aforesaid should not be so applied. Its application does not result in anything absurd and the result of such application is not repugnant to the general intent and purpose of the legislation.

The main administrative scheme of the Act is to provide for a Court of Arbitration with a prescribed and limited jurisdiction with respect to the prevention or settlement of industrial disputes and for subsidiary tribunals comprised of Conciliation Commissioners with general jurisdiction with respect to the prevention or settlement of

industrial disputes, such general jurisdiction limited by the joint effect of sections 13 and 25.

These sections have to be read together to discover where the special jurisdiction of the Court begins and ends and into which particular fields the Conciliation Commissioners are prohibited from entering.

By virtue of paragraph (d) of section 13 the Conciliation Commissioners are prohibited from determining or altering the minimum rate of remuneration for adult females in an industry and the Court, under sub-section (d) of section 25 is given exclusive jurisdiction to determine or alter the minimum rate of remuneration for adult females in an industry. If any other interpretation is adopted save the one I consider appropriate, Conciliation Commissioners would not be prohibited absolutely from determining or altering minimum rates of remuneration for adult females in an industry and the Court would not have exclusive power to make such a determination or alteration. Any other interpretation would result in two tribunals having the right of adjudication. There could be conflict and uncertainty could result.

From one of the concepts presented in argument it would be found that the Court would fix a minimum rate for adult females in an industry which would be, in fact, a base or foundational rate in that industry in the broad sense of the term, that is, the sense not specifically referred to in the definition of "industry" in section 4. Then the Commissioners would have jurisdiction, by use of the specific definition of industry contained in section 4, to fix minimum rates for each calling, service, employment, handicraft or industrial occupation or avocation.

In this instance the Court would not have exclusive jurisdiction to determine or alter minimum rates in an industry and such exclusive jurisdiction would extend only to industry in one sense of the term. By the same token, the Conciliation Commissioners would not be prohibited absolutely from determining or altering the prohibition extending only to one of the several meanings of "industry."

Against this division and conflict acceptance of the paragraph (b) of the definition in section 4 results in no conflict or uncertainty whatever. The Court is the only tribunal empowered to determine or alter the minimum rate for females in an industry whether the unspecified meaning of "industry" is applied or the specific statutory meaning of the term is adopted.

I cannot accept the proposition that the legislature intended the word "industry" in sub-section (d) of section 13 to have a meaning different from the word "industry" in sub-section (d) of section 25, particularly when it is observed that the two paragraphs aforesaid are absolutely identical with respect to all the words which precede the word "industry."

Furthermore, there is no indication in section 13 or section 25, or for that matter in any other part of the Act, of an intention on the part of Parliament to limit the specific definition of "industry" contained in section 4 insofar as the word "industry" is used in section 13 (d) or section 25 (d) is concerned and accordingly I consider that the Court and only the Court has power to determine and alter the minimum rate of remuneration for any calling, service, employment, handicraft or industrial occupation or avocation.

The Court.]

Notification of a dispute (No. 743 of 1949) concerning employees covered by the Builders Labourers (Mixed Industries) award [1] was given pursuant to section 14 of the Commonwealth Conciliation and Arbitration Act 1904-1949 by the Australian Builders Labourers Federation.

On 18th October, 1949, the Court directed that this dispute be heard concurrently with the applications and disputes hereinbefore mentioned already before the Court and part heard. Particulars of this dispute are included in part 3 of schedule "B" hereto.

The hearing of the matters continued until 14th November, 1949, when on that day the following statement was made by the Court:—

At the basis of the problem of settling the disputes before the Court concerning the basic wage for adult male and female workers are, as has been made manifest during these proceedings, questions relative to the amount and just and proper distribution of the national income and to the capacity of the economy to support such a distribution.

Since these matters have been raised for consideration in another field, since in other words, they lie at the basis of an issue raised at the coming elections for the Federal Parliament by the references made to the possible supplementation of the basic wage by changes in the amount and incidence of child endowment, the Court (which must not be taken to express any criticism of these references) has decided that it is its duty to proceed no further with the present case while the issue remains the subject of election controversy.

The case will therefore be adjourned to a date to be fixed.

The hearing of the said matters was continued before the Court (Kelly C.J., Foster and Dunphy JJ.), in Melbourne, on 12th December, 1949.

On 20th March, 1950, the following ruling, refusing an application made on behalf of the applicant Unions generally for leave to apply for an interim increase, was given by the Court:—

The oath which by virtue of the Arbitration Act is binding upon the members of this Court requires them, amongst other things, to faithfully and impartially perform the duties of their office.

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[1] 62 C.A.R., p. 654.

The Court.]

In this case the respondents are contending that no increase in the present basic wage should be granted and that up to this point no respondent has had an opportunity of either opening his case or presenting any evidence upon it.

To make an award, whether interim or final, which increases the basic wage, without giving the respondents opportunity to be heard, is not by any stretch of imagination to be described as an impartial fulfilment of our duty.

The claimants urge the Court to make an interim increase in the basic wage because, as Mr. Evans expressed it, "an economic gale is blowing in the face of the workers."

It must be emphatically stated that this Court under the present legislation has power only to deal with the basic wage for adult males and females. All other wages and benefits to workers are in other hands.

This Court in 1937 [1] fixed the basic wage and added to it a prosperity loading. That standard, then regarded as adequate, has been maintained from that date until today by the use of the adjustment figures known as the "C" series. That adjustment method has, we believe, been substantially successful in maintaining the standard set up by the Court 13 years ago.

In December 1946 [2] the Court raised that standard by 7s. and again the "C" Series figures maintained that increase, so that it is true to say that so far as the basic wage is concerned the present position of the workers is better than it was after the 1937 judgment.

It has also been suggested that by reason of the recent steep rise in prices the periodic adjustment of wages causes wages to lag by some months behind prices. This is true but the 7s. increase granted in 1946 has more than taken care of this lag and in that respect has a similar operation to that of the Powers 3s. to which Mr. Evans referred.

It seems to us therefore that so far as the basic wage is concerned, both our oath of office and the present stage of the case prevents any interim increase.

On 5th April, 1950, *the following further rulings, concerning the relevance of evidence pertaining to the financial position of individual witnesses, were given by the Court*:—

Kelly C.J.:

The case put to the Court on behalf of the Unions comprehends an increase of the basic wage for adult males and the fixing of the basic wage for adult females in the disputes brought before the Court at amounts to be assessed with reference to the potentialities of the

(1) 37 C.A.R., p. 583. (2) 57 C.A.R., p. 603.

Australian economy. It is also claimed that the Court should measure these basic wages with the intention that the share, as it is put, in the national income of the Australian economy of wage and salary earners should be increased from its present proportion of the whole to a higher proportion. It is claimed that this increase should be effected, at all events partly, by high or higher basic wage levels. It is pointed out that such an increase may be contemplated as being possible, and even just, at the expense of the proportionate shares of the national income at present achieved by export incomes and by incomes derived from investment. Such being the case, inquiry into the profitability of investment in companies, private or public, or investment by individual investors in business undertakings cannot be held to be irrelevant until a decision has been made as to what considerations ought to be taken into account in assessing basic wage levels.

On this point the opinion of each of the Judges may rest upon different considerations. In the result, any consideration submitted by either the applicants or the respondents or the interveners may be regarded as relevant or not relevant by each of the members of the bench. Its relevance to the mind of any member of the Court must be allowed to guide him to his ultimate decision.

In my opinion, it is too early, too early before the whole of the evidence and arguments submitted has been presented, to say with certainty what considerations raised in the course of the case will be rejected by all the members of the Court. I do not think that the opinion of a majority of the Judges — if this were now available — upon the relevancy of any particular consideration should at this stage be imposed upon the other Judge who may now or in the ultimate result disagree with that opinion.

I am of opinion that the question of profitability of investment is a relevant matter upon the issues raised by the applicant Unions. I do not say that it will influence me as a consideration or principle of basic wage fixation or alteration under section 25. I am also of opinion that what I have said applies not only to profitability of investment in general — the level of return for all capital or shareholders' funds invested in the country's industries — but also to the profits and financial situation of any particular industry presented to the Court for consideration. No valid distinction can, I think, be drawn in principle between the relevancy of figures, tables and statistics indicating the general trend or level of profitability or the dividend rates of relatively large groups of companies, such as the Court has already received in evidence, on the one hand, and that of the profits and dividend rates of individual enterprises.

It is in my view not sufficient for an employer to say: "I am not raising the question of incapacity, but I say that whatever impost the Court may in its wisdom put upon industry will be passed into the price structure — either generally or so far as my own production is concerned." It is true that the Court has no power to fix or control

prices, no power to say that any increased basic wage shall be paid out of profits. But it is very definitely a matter for grave consideration as to whether any increase will be effective, and, if so, to what extent it may be expected to be so, to increase the real purchasing power of the income or part of the income of the adult male or adult female referred to in section 25 of the Act. Whilst it is true that the Court cannot with certitude assess the amount of the supposed increase which may be met out of profits on the one hand and increased prices on the other, the Court must, I think, do its best to assess the probabilities. It is not, I say, sufficient for employers to say: "We contemplate meeting an increase by passing it on," not even: "We shall be *forced* to pass on in increased prices any increase of the basic wage level." Employees through their Unions, applicants in the case, are entitled to challenge the assertion of such a contemplation or necessity. There can be no doubt that the question whether an increased basic wage level may or will lead to an inflation of prices, wholly or partly frustrating any attempt to raise real standards, is a question very relevant to the determination of the present applications

In my opinion the Court cannot, so long as this question is open and so long as consideration of the issues and claims made by the Unions in support of their applications may be a basis for the eventual decision of any member of the bench, reject inquiries into the capacity of employers, even individual employers, to meet out of profits any increase which may be prescribed, as being irrelevant.

In these circumstances and after further and more careful consideration of my previously, though perhaps inadequately, expressed views on the matter I would hold that the line of inquiry proposed by Mr. Winter should be permitted.

This leaves the witness concerned, and future witnesses to whom similar inquiries may be addressed, free to take objection to answering such inquiries in terms of section 114. Their objection will mean that they will not be required to answer such inquiries except in pursuance of a direction of the Court.

For my part I would refrain from making any such direction. I think the witness or party concerned may be fairly left to make his own decision as to whether he will disclose the information sought. It is his responsibility. The result may, I know, be that the objection taken to disclosure may be a subject of comment. It may be that so far as a particular objector is concerned, the Court may be left with no ground for a finding that the industry or enterprise with which he is associated will be unable to meet a new basic wage level of payment to his employees without recourse to a price increase for his products. The appropriateness and force of such a comment will depend upon the extent to which, if at all, any member of the Court regards the assertion of the Unions that an increased basic wage prescription can be met without price inflation and out of profits, even if proved, or allowed to go by default, as being to the point in the ultimate judgment.

Foster J.:

For my part, I concur in what the Chief Judge has just stated. I, like him, regard the question asked by Mr. Winter of Mr. Weight as admissible and the evidence relevant. I concur also that Mr. Weight should not, in the circumstances, be asked to disclose or make answer to the question asked. In other words, the Court should exercise its discretion in that way.

Like the Chief Judge, I personally reserve for my own consideration what, if any, weight is to be attached to the evidence of that witness and such other witnesses as legitimately refuse or decline or are unwilling to make answers to what the Court regards as relevant questions.

The only other point I would like to refer to is to meet the position that Mr. Wright raised as a result of certain admissions he intimated to the Court he was prepared to make. All I want to say about that is that, first of all, I have personally great difficulty in appreciating what the admissions amounted to. I thought there was some difficulty upon that score. Next I should like to point out that as far as I could understand the admissions could only bind those persons for whom Mr. Wright appears. They could not, therefore, affect either those for whom he does not appear or those employers throughout Australia who are not represented before the Court at all but whose businesses might quite well be affected by the judgment the Court might arrive at upon this matter. I would like to say, therefore, for my own part, that though the admissions may be helpful in shortening the case they do not relieve the Court from its obligation to satisfy its mind by evidence which it could apply against all persons likely to be affected.

I concur in the result that has been indicated by the Chief Judge.

Dunphy J.:

I agree with the ruling as announced by His Honor the Chief Judge.

The Court.]

On 18th April, 1950, the following further ruling, concerning the appearance of counsel to debate certain questions for employers generally, was given by the Court:—

Kelly C.J.:

In my view counsel should be permitted to appear in these proceedings because of the circumstances which have been shown. Section 46 cannot be applied to the question in one way and not in another.

Foster J.:

I agree that the state of affairs has now been reached in the proceedings before the Court which would make it improper and

Foster J.]

unfair to allow an objection to counsel on one side while permitting it on the other side. It must be assumed, I think, that the objecting Union in this case consented to the appearance of Mr. Phillips, otherwise he could not have appeared under section 46.

If Mr. Phillips is appearing with the consent of the Union, it would be grossly unfair to uphold an objection by them that counsel on the other side should not also appear. In regard to Mr. Souter's point that the proceedings are not the same proceedings but were judicial proceedings, I think I have already indicated in my view they were part of the arbitral machinery for settlement of the dispute in regard to the basic wage. That was a part of a dispute in which the Australian Council of Trade Unions through Mr. Phillips was assisting the Court, so that having consented to the appearance of Mr. Phillips, they cannot now be heard to object to the appearance of counsel on the other side. For these present circumstances, I think Section 46 no longer applies.

Dunphy J.:

I agree. I think counsel should be permitted to appear.

The Court.]

On 5th April, 1950, *summonses were filed on behalf of the Metal Trades Employers Association for an order dismissing disputes numbered* 11 *and* 24 *of* 1949 *insofar as the basic wage is concerned in such disputes.*

These applications came on for hearing before the Court (Kelly C.J., Foster and Dunphy JJ.), in Melbourne, on 17th and 18th April, 1950, in Adelaide, on 26th, 27th and 28th April, and in Sydney, on 4th May, 1950.

S. C. G. Wright, A. P. Aird and *L. H. Williams,* of counsel, for the Metal Trades Employers Association insofar as the Australasian Society of Engineers, the Boilermakers Society of Australia, the Blacksmiths Society of Australasia and the Federated Moulders (Metals) Union of Australia are concerned.

K. H. Boykett for the Metal Trades Employers Association insofar as the Amalgamated Engineering Union, the Federated Ironworkers Association of Australia and the Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia are concerned.

H. J. Souter for the Amalgamated Engineering Union.

F. Connors and *A. B. Thompson* for the Australasian Society of Engineers.

A. McNolty and *J. Ford* for the Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia.

M. Montgomery and *W. A. Baker* for the Federated Ironworkers Association of Australia.

S. Wookey and *A. Buckley* for the Boilermakers Society of Australia.

D. A. MacLennan for the Blacksmiths Society of Australasia.

W. J. Hargreaves for the Federated Moulders (Metals) Union of Australia.

On 9th May, 1950, the following judgments were delivered and the order hereinafter appearing was made by the Court:—

Kelly C.J.:

This is a summons directed at the instance of The Metal Trades Employers' Association, a registered organization of employers, to seven registered organizations of employees and seeking an order dismissing two disputes which are in process of being dealt with by the Court. The organizations of employees concerned are the Amalgamated Engineering Union, the Australasian Society of Engineers, the Blacksmiths' Society of Australasia, the Boilermakers' Society of Australia, the Federated Moulders' (Metals) Union of Australia, the Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia and the Federated Ironworkers' Association of Australia. The first six of these organizations are claimants in dispute No. 11 of 1949; the last-named is the claimant in dispute No. 24 of 1949. Both disputes concern the basic wage to be prescribed by award for members of the claimant organizations and both are the subject-matter of proceedings now before the Court. The Metal Trades Employers' Association is a respondent party in each of the disputes.

The grounds upon which the order dismissing the disputes, that is to say: discontinuing the arbitration proceedings of the Court in relation to them, is being sought are set out in the affidavit of Ronald Gordon Fry, an industrial advocate employed by the applicant association. They may be shortly stated as follows:—

(i) that, when a demand by employees, members of the Amalgamated Engineering Union, the Australasian Society of Engineers, the Boilermakers' Society of Australia, the Federated Ironworkers' Association of Australia and the Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia, for an increase by 15s. per week of the wages of all such employees was rejected by certain employers, a ban upon the working of any overtime work was imposed against such employers.

(This ban was imposed on 13th January, 1950, that is to say: while the organizations to which the employees concerned belonged were pursuing the claims comprehended by the disputes referred to before the Court. It has been established that the ban continues to operate today. The employers concerned are Australian Glass Manufacturers Co. Pty. Ltd., A.C.I. Engineering Pty. Ltd., A.C.I. Metal Stamping and Spinning Pty. Ltd., A.C.I. Plastics Pty. Ltd., Australian Window Glass Pty. Ltd., and Crown Crystal

Glass Pty. Ltd. These companies are all members of the applicant association and, as such, parties to the current basic wage proceedings before the Court. It has been proved that the working of overtime has been a usual and regular feature of employment in these establishments. It is also a fact that the employees are required by a clause inserted by the Court in the award applicable to them, at the time of the reduction of their standard working-week to forty hours from forty-four, to work a reasonable amount of overtime as required by their employers. This provision has thus been flouted, and is being flouted, by the employees in furtherance of their effort to obtain by direct action the increase (above described) of their wages rates. The matter was notified to the Deputy Industrial Registrar in Sydney pursuant, it is said, to section 14 of the *Commonwealth Conciliation and Arbitration Act* 1904-1949, and came before a Conciliation Commissioner on 2nd February, 1950. He took the view that it was a matter concerning the basic wage and reported it to the Court.)

(ii) that, when an employer (also a member of the applicant association), Malleable Castings Ltd., rejected a claim by its employees, members of the Federated Moulders' (Metals) Union of Australia and of the Federated Ironworkers' Association of Australia for an increase by 20s. per week of the wages of all such employees, a ban against the working of overtime was imposed upon that company.

(This ban was imposed on 23rd February, 1950. Before its actual operation, a notification of the intention to impose it was referred to a Conciliation Commissioner who in this case, as in the one already mentioned, regarded it as a matter concerning the basic wage and referred it to the Court. Up to the date of the swearing of Mr. Fry's affidavit this ban was still in operation, but subsequently, as a result of action taken by the Federated Moulders' (Metals) Union of Australia, the members of that organization were directed to remove the ban and to accept overtime work. After a short delay they did so and no action is consequently called for against that organization).

(iii) that, when another member of the applicant association, Hytest Axe and Tool Pty. Ltd. rejected a demand by its employees, members of the Blacksmiths' Society of Australasia, for an increase by 15s. (subsequently reduced to 5s.) per week of their wages, the employees concerned imposed an overtime ban upon that company.

(This ban continues in operation).

Paragraph 7 of Mr. Fry's affidavit reads: "The Association, as a party to the abovementioned disputes, claims that the Court should refrain from hearing such disputes or such parts thereof as are within the Court's jurisdiction and should dismiss them upon the grounds—

(a) that by imposing the aforesaid bans and/or supporting them, the aforesaid unions have repudiated the system of arbitra-

tion established by the said Act and have elected to prosecute their claims by direct action;

(b) that by their prosecution of the claims hereinbefore referred to, the said unions have abandoned their claims regarding the basic wage (now being heard by the Court);

(c) that, in the light of the circumstances hereinbefore recited, further proceedings regarding the aforesaid disputes are not necessary or desirable in the public interest."

The power of dismissal invoked is thus identified as being that which is conferred by section 40 (d) of the Act. Its exercise in favour of the application depends, therefore, upon whether, in the circumstances established by the evidence before the Court, further proceedings in relation to the basic wage disputes created by the organizations of employees concerned and now in process of being dealt with by the Court are "not necessary or desirable in the public interest."

It cannot be regarded as being in the public interest that one party to an industrial dispute should be required to answer a claim before an arbitration authority when the other party, the party pursuing that claim, is flouting an arbitration award of the same authority and is, moreover, seeking to enforce that claim or some other industrial claim by the pressure of direct action whose consequences bear heavily upon the rights and the freedom of the first party. The Act itself is specific on this point. It decrees, by section 39 (c) that—"In the hearing . . . of an industrial dispute . . . the Court . . . shall act according to equity, good conscience and the substantial merits of the case . . ." It cannot be in accordance with equity that a party to a dispute who has rights under an award, and therefore under the Act itself, which are being denied by the other party, should be forced to submit to arbitration proceedings in respect of claims made by the first party on the same or cognate matters. It would be quite inequitable and unconscionable for the Court to hold such a party to the arbitration of a dispute when the other party is not abiding by the award of a previous arbitration, particularly, it may be said, when that previous arbitration was made by an authority operating under the same legislation. I hold that action which is clearly inequitable and unconscionable must always be against the public interest.

The only question left for determination, for I hold that the employees here concerned have themselves forfeited by their action (above described) any right *they* may have to the benefit of the current arbitration, is whether the organizations to which they belong have repudiated their action; or, failing to do so, have rendered themselves liable to a similar forfeiture.

There is an obligation, always existing upon organizations registered under the Act, to adhere to the system of submitting their claims in respect of industrial matters to the arbitration authorities esablished by the legislation and to accept the awards made by those

authorities. Organizations must recognise this obligation as the *quid pro quo* for the benefits they derive from registration. The obligation involves a duty to require the individual members of the registered body, whether organized in branches, districts or states, and wherever employed, to pursue their claims through the arbitration system set up by the Act and to abide by the awards made under the Act. This obligation is not fulfilled by the mere passage of resolutions directing members to comply. The responsibilities of an organization in this connexion do not cease even with threats of expulsion or discipline. It cannot be heard to plead that it has directed or requested compliance and can do no more. The responsibility lies upon it, if its rules be inadequate, to arm itself with rules that will enable it to maintain complete control of and against recalcitrant members. It is its business to defend its existence as a registered organization, with a right to participation in the benefits conferred by the Act, from the subversive indiscipline of members who themselves ignore or repudiate the obligations of their membership.

For these propositions there is ample authority in the judgments of the Court. In the unanimous judgment delivered in the *Amalgamated Engineering Union De-registration case* of 1947 [1] it was said:—

> "It is not necessary to refer here with any particularity to all the advantages, legal and practical, that an Association derives from registration under the provisions of the *Commonwealth Conciliation and Arbitration Act*. It receives, amongst other things, a measure of monopoly in the right to organize employees of the occupations which its constitution covers. It also has the advantage of being able to protect the interests of its members by action for the enforcement of their award rights. In return, however, for those advantages, it has corresponding obligations. And pre-eminent amongst these is the obligation to act in consonance with the purpose and policy of the legislation under which the organization chose to be registered and from which it derives its authority. That purpose and policy is very clearly stated in section 2 of the Act."

In the *Building Workers Industrial Union of Australia De-registration case* [2], when the facts showed a repudiation by a section of the union of an award, I said:—

> "Whether the repudiation be by direction of an executive committee or by members of the organization encouraged, upheld, or even not discouraged, by an executive committee, the ultimate position is the same. The organization must be held answerable for actions it either initiates or condones." [3]

And the same principle must, of course, apply in cases which do not go to the length of involving the registration of the organization.

In the *Federated Engine Drivers and Firemen's De-registration case* (1949) [4] I said:—

> "In the case now before the Court the executive body of an organization, charged under its rules with the right and the duty of assuming and exercising control of a dispute in which a section of the organization is involved, decided and directed that members in that section who had repudiated an award, and who had struck as a mark of protest against it, should return to work under its provisions. The decision and direction have been flouted.
>
> Now it cannot be held sufficient that the executive body has directed such

(1) 60 C.A.R. (2) 61 C.A.R., p. 128. (3) Ibid at p. 136. (4) 64 C.A.R., p. 288.

members to abandon their strike. Those responsible to act for the organization must be prepared to go farther. They must, on behalf of the organization, apply whatever disciplinary sanctions are available to it under its rules either to enforce its direction (as expressed by them) or to divest itself of the membership of its recalcitrant members. Failure to do this, from whatever motives, whether from fear of the loss of a branch or a sub-branch (which may be supporting the strike) or from fear even of complete dissolution, must be held to be tantamount to a condonation. Such a failure amounts to this: that the organization is unwilling to face up to the responsibilities incurred by its registration under the Act."(1)

In his judgment in the same case Dunphy J. said:—

"A number of attempts by a variety of methods have been employed in an endeavour to persuade the engine drivers to return to work. In particular the Federal Council, by its own resolution, decided to take control of the dispute and directed its members to resume work on Monday, 9th May, 1949. This direction was contemptuously rejected by the strikers. As late as 27th May, 1949, the General Secretary of the respondent organization was directed by this Court to take further action designed to induce his few members to see reason, and such direction was coupled with the very plain intimation that the failure of the respondent organization to persuade its members to observe a constitutional approach to industrial matters would place the registration of the respondent organization in jeopardy. Even this stimulus has proved ineffective and the Court is now advised that the engine drivers concerned are still on strike; they refuse to obey the direction from the governing body of their organization, which organization is either powerless or unwilling to do anything further in the matter.

It may not be proven absolutely and conclusively that the New South Wales Branch of the respondent organization is sponsoring, aiding or abetting the direct action taken by its members at the Clyde Engineering Works but sufficient *prima facie* evidence has been adduced to point to the necessary inference. As far as I am concerned the respondent organization could only hope to convince me of non-participation if it were prepared to put members of its New South Wales Branch into the witness box to swear on oath that they are not in any way directly or indirectly supporting this industrial insubordination. This technique has not been adopted, and mere statements from the floor of the Court are quite inadequate. In any case, even if the New South Wales Branch is acting as suggested above, the fact remains that the Federal Council of the respondent organization is the supreme governing body of the respondent organization and admittedly has power to discipline its 27 members, and also the State Branch if necessary. Whether such disciplinary power would or would not be effective to end the strike under consideration is not the question which the Court has to decide. It has been represented to us in open Court that any disciplinary action by the Federal Council might result in secession by the New South Wales Branch. There is no absolute certainty that such a result would accrue, but again this is not a point which the Court has to take into account. If it did take any such point into consideration it is possible that the reaction would be against the respondent organization for reasons which I will give in a few moments.

The crux of the whole situation now presented to the Court is the inability or the unwillingness of the governing body of the respondent organization to take action within its constitutional power to enforce an observance of discipline by its rank and file membership. Organizations obtain registration under the *Commonwealth Conciliation and Arbitration Act* upon their own original motion; they seek and gain recognition as a registered body by their own decision and their own action. The rules of such an organization are in the first instance their own creation. It is true such rules are subject to scrutiny by the Registrar but in the main such rules are formulated, drafted and presented to the Registrar for his approval by the organization itself.

(1) 64 C.A.R., at pp. 289-290.

> Under these circumstances the governing body of any organization which obtains registration under the Act must be prepared to govern in accordance with the spirit and the intention of its rules and the spirit and intention of the Act under which such rules are registered.
>
> The action of the New South Wales members of the respondent organization constitutes rebellion against a valid decision of the governing body of the organization. It represents a challenge to the authority of the governing body, a challenge which unfortunately the governing body is incapable of handling or unwilling to take up.
>
> One of the primary and fundamental reasons for the banding together of workers into an organization is the necessity for government. It is in the interests of the organization as a whole that its executive should be obeyed and should be prepared to and be capable of enforcing its decisions. Executive must be prepared to govern, and if not so prepared they must resign or go out of office. I need not stress the fact that acceptance by a governing body of defiance and insubordination would not only destroy the authority of the respondent organization but would re-act against the whole fabric of registration of organizations under the Act which this Court is called upon to administer. Responsibility as well as benefit is a necessary incident to registration and if a governing body of an organization is not prepared to accept responsibility it cannot expect to maintain benefit.
>
> Under these circumstances it is so completely logical for the Court to say that such an inept and powerless organization should go out of existence that there is no other answer."[1]

The foregoing statements are equally applicable to considerations of union responsibility in such cases as the present one; and that they are so has, by way of warning, been made very clear to the representatives of organizations involved in these proceedings during the hearing of the present summons. The respondent unions have thus been called upon to dissociate themselves from actions of their members which are manifestly incompatible with adherence to the system of arbitration in the field of industrial claims. The dissociation necessary must be unequivocal, complete and effective—effective not only from the point of view of the organizations themselves but from the point of view also of those, such as the employers concerned, whose interests are prejudiced or affected by the recalcitrant and subversive action under consideration.

In the case now before the Court, the unions concerned, though submitting no evidence in support of their protestations, have said, through their respective advocates, that they do not hold by the action of members who have refused, in the face of award obligations, to work any overtime. Upon this and this alone the Court has been asked to say that they have dissociated themselves from the conduct of these members. But the sincerity and the effectiveness of their protestations must be judged in the light of their behaviour before the Court and during the proceedings. To what lengths have they been prepared to go to satisfy the Court of their sincerity and determination? There can be no question that they have been accorded ample time and opportunity to demonstrate their sincerity and to prove their dissociation.

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[1] 64 C.A.R., at pp. 295-297.

Knowledge of the imposition of the bans must be held, on the sworn evidence, to date back at least three months. For it was on 2nd February, 1950, that the Conciliation Commissioner, after hearing the representatives of the Unions and of the employers, referred the subject matter of the bans to the Court. The Court, anxious that the Federal executives should be fully and directly apprised of the trouble, required the employers concerned to make a specific application by summons, supported by affidavit, calling upon the organizations to show cause why the hearing of their basic wage claims should not, in the circumstances of the direct action resorted to by their members, be discontinued. The summons, directed accordingly to the organizations, was taken out on 5th April and came before the Court in Melbourne on 18th April. The organizations were all represented and, after the facts deposed to in the affidavit of Mr. Fry had been corroborated in detail by witnesses called by the applicant, the organizations sought an adjournment, in order that they might take steps to bring about a lifting of the bans.

In view of the fact that the representatives of the unions in the basic wage case had for a long time been well aware of the alleged existence of the bans (for the matter of their existence and continuance had on several occasions been brought to the notice of the Court), it was with some hesitation that this request for an adjournment was granted. Completion of the hearing of the summons was accordingly postponed until 26th April. When, however, it was resumed, the bans involving all the unions except the Federated Moulders' (Metals) Union of Australia were reported to be still operating. It was then said that a telegram had been received to the effect that representatives of the Metal Trades Federation, which is a body representative of all the metal trades unions, had met delegates of the respective organizations concerned but that these delegates had opposed the lifting of the bans. The telegram, so the Court was told from the bar-table, stated that the attitude of the delegates was "strongly influenced by action of management in giving wage increases to moulders and their assistant in the form of a spurious bonus." This suggestion was immediately challenged and evidence was called establishing that all that had happened was that one of the companies concerned had continued and completed negotiations, commenced before the issue of the summons, with its moulders and ironworkers for a review of a bonus system already in operation at its establishment for some time past. It was made quite clear—and the evidence was not controverted—that the suggestion of a spurious bonus was itself a sham. In fact the suggestion was dropped, for no evidence was either then or subsequently called to support it.

The Union representatives then sought a further adjournment, saying that, since directions given for the lifting of bans had been disobeyed, it was now desirable that officials be allowed to make a more direct contact with the men who had disobeyed them. Although not unduly impressed by this request, I joined in the decision of the Court to grant it and a further adjournment was accordingly allowed. At the instance of the unions the adjournment was made

to Sydney in order that evidence of the unions' action in the matter might be more readily available.

On 4th May (in Sydney) the case was again listed. It was then again reported that the bans had not been lifted. Evidence was given, moreover, of the imposition of similar bans by members of the unions at other establishments, namely Poole and Steel Ltd., Cockatoo Docks Co. Pty. Ltd. and Engineering, Nicol Bros. Pty. Ltd. and A. E. Goodwin Ltd. Ancillary bans upon the employment of new labour were also reported. And no evidence was offered in denial of these reports nor of any steps taken to prevent this extension of direct action. On the contrary, the unions now took up the attitude that the claims of the men for "all-round increases" and their determination to enforce these claims by direct action was attributable to, and presumably justified by, a delay in the hearing of a log of claims by Conciliation Commissioners to whom the metal trades industry had been assigned. Although no proof was given of this allegation of "delay" some discussion of its implications took place before the Court. If there was delay—and supposing that it might be regarded as some ground for dissatisfaction—no evidence of it, or of the reasons for it, was, I repeat, forthcoming. Nevertheless, it was suggested in the course of discussion that the Conciliation Commissioners responsible had no right to postpone the hearing of wages claims, drafted as relating to the "marginal" ingredient of wage rates, pending the hearing of contemporaneous claims brought before the Court for alteration of the "basic wage" ingredient of the same wages. The suggestion is, of course, without justification. Such a postponement might properly be regarded as incumbent upon any Conciliation Commissioner who appreciates the problems of wage fixation created by the amending Act of 1947. For my part, I desire to say quite definitely that it is my view that, when claims are made for increased wages, comprehending increases in both the "basic wage" and the "marginal" ingredients of wages rates, then until the basic wage part of the claims has been determined, it is very proper that the claims as to the other part of the rates to be awarded—the "marginal" part—should be postponed. I do not refer to claims for the mere adjustment of anomalies. I refer to claims for a general review, as is sought in the current metal trades log, of the "marginal" rates to be prescribed for all the occupations comprised in the industry of the dispute. For to me it is plain that with the division of the jurisdiction to deal with wages claims, effected by the amending Act of 1947, no other course is satisfactory or even practical.

The economic capacity of industry to sustain a basic wage level is, upon past authority, clearly relevant to the assessment the Court must make of that level. It has been made, as Conciliation Commissioners may be presumed, I think, to know, a relevant consideration in the basic wage claims now before the Court. And, since the economic capacity of industry to meet a new (as the unions seek, a higher) basic wage level cannot be determined by the Court without consideration of the cost of "marginal" payments (also a charge upon economic capacity), the authorities responsible for fixing "marginal" rates, *i.e.*, the Conciliation Commissioners should refrain, pending the

determination of the basic wage, from rendering the assessment of the cost of "marginal" payments impossible by continuing to entertain applications for their alteration. At all events a decision by a Conciliation Commissioner to postpone a review of the "marginal" structure of an award is both wise and helpful to the fulfilment of the task of the Court.

It has been said that, apart from directing their members to remove the bans imposed, the Unions concerned have no practical alternative; or rather that they can do nothing further. It is admitted that rules enable them to punish, even with expulsion, members who refuse to comply with their directions. But, it is said, proceedings against members for such refusal are impracticable. They would involve issuing charges, summonses or notices against the individual recalcitrants, hearings and delay. This may be so. But there is no reason why a resolution to enforce in this direction the will of the union upon its disobedient members should not have been taken. Apparently there is no intention to enforce the directions said to have been issued. The situation is left at this: that we are asked to do nothing on this summons lest other members, at present complying with their award obligations, might be offended into imitating their fellows in defiance of their Unions. This is completely unsatisfactory. It is in the circumstances quite impossible to adjudge the unions' behaviour to be consistent with a sincere purpose to dissociate themselves from the subversive actions of their members in this case.

On the contrary they have demonstrated that they are unwilling to take the strong stand which, as I have pointed out, acceptance of the arbitration system requires. I cannot in the circumstances avoid the conclusion that unions which are unwilling to require from their members acceptance of the application of the arbitration system established by the Act cannot be heard, in equity and good conscience, while that state of affairs exists, to claim the benefit of an arbitration, binding by law upon employers, in respect of other industrial demands related to those which their members are seeking to enforce by a wilful rejection of an award of the very Court to which they bring their claims. I think the application should be granted; the Court should refrain from further hearing the disputes referred to in the summons.

The Court has been very patient in dealing with this matter, as indeed has been acknowledged by the representatives of the respondent organizations. There is no ground for believing that any good purpose may be served by postponing the operation of the order to be made on the summons.

The application relates only to disputes Nos. 11 and 24 of 1949. But since it is necessary that the order now made should not be an ineffective one, the Court should exercise its power conferred by section 40 (d)—a power exercisable by virtue of section 34 "of its . . . own motion"—to refrain likewise from further hearing all of the matters now before the Court in the present basic wage proceedings which are the subject of any applications made by the respondent

Kelly C.J.]

unions or of disputes created at their instance. The order should not apply, however, to applications brought or disputes created by the Federated Moulders' (Metals) Union of Australia.

In my opinion the duty of the Court is clear. It should not be influenced by any fear of the consequences of setting its face against action which is incompatible with the continuance of the arbitration system as conceived and established by the legislation. It is entitled to expect that the consequences of the performance of its duty will be controlled by the great majority of people whose will must be presumed to be expressed in the Act and who look to the Court to require adherence to the system of settlement of industrial disputes for which it has provided. Adherence to that system requires not only the submission of industrial claims made by organizations on behalf of their members to the arbitration authorities set up but also—and it should not be necessary to add this—acceptance of the decisions of the arbitrators constituted under the law upon all matters so submitted.

Foster J.:

The decision I am called upon to make in this application gives me grave concern. Whichever way it be decided, the consequences may be of serious industrial concern.

The Metal Trades Employers Association, an organization of employers registered under the Act and having some 2,000 members in New South Wales and Queensland, asks the Court to strike out the claim for an increased basic wage made by—

The Amalgamated Engineering Union
The Australasian Society of Engineers
The Blacksmiths Society of Australasia
The Boilermakers Society of Australia
The Federated Moulders (Metals) Union of Australia
The Federated Ironworkers Association of Australia
The Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia

that is to say, the whole of the Metal Trade Unions numbering we are told upwards of 250,000 members throughout Australia.

The applicants for whom Mr. S. C. G. Wright appears do not include all respondents to the log and the claims of the abovenamed unions, and though some of these others were represented in the basic wage proceedings they take no part in these proceedings. The number of employers who will be affected by this decision through-out Australia and not represented before us must exceed 10,000.

The decision as I see it is one of those political (in the widest and proper sense) judgments which the Court is from time to time called upon to make. It is not a matter of the application of any well-known or ascertainable legal principles to a set of determinable facts.

It has been proved that at a number of enterprises (listed below) all in New South Wales, there has been imposed what is described as an "overtime ban," that is to say some men have, in defiance of the Court's existing award, refused to work any reasonable overtime or for that matter any overtime at all, and in some cases have added an organized resistance to the employment by these firms of any new employees. The purpose of these bans is to gain an increase in pay—whether of the basic wage or of marginal rates seems to me completely unimportant. Mr. Wright based his case upon the argument that since the Court and Conciliation Commissioners are engaged on the hearing of these wage claims it is inequitable, unconscionable, immoral, that they should pursue similar claims against certain employers outside the Arbitration system and by use only of their industrial strength.

The "bans" have been imposed for many months and the Court's attention had been drawn to the matter by Mr. Boykett for certain New South Wales employers, and finally on 5th April, 1950, these present proceedings were undertaken supported by the affidavit of Mr. Fry and the evidence of witnesses which leave no doubt as to the existence of the "bans" and their industrial purpose.

I do not find that the unions deny this evidence but make various explanations and excuses. The "bans" continue up to the present time except as to the Moulders who have withdrawn the embargo at the only place they had imposed it. No present difficulty therefore arises in their case.

As to the Australasian Society of Engineers: Mr. Connors their Federal Secretary has detailed the action taken by his Executives to meet the situation but so far without achieving the lifting of the "ban." Whether the seeds thus sown and watered by a sincere intention will blossom into peace it is perhaps too early to judge; the prospects seemed favourable. At all events I am satisfied that the Union is sincere and desires to observe the award and should not suffer the penalty asked for by the employers in this case.

As to Boilermakers; Sheet Metal Workers; Amalgamated Engineering Union; Blacksmiths Society and Federated Ironworkers Union, some joint action to induce the men to abandon their present attitude has been taken but without, I feel, any real earnestness.

The total number of men actually defying the Court and their Unions is not large—some few hundreds—though the loss of production and of consequent profits seems to be quite considerable.

All the representatives of these Unions assure the Court that as organizations they stand for arbitration, do not want to lose their basic wage case nor their status in the Court, but offer some explanations as to why the recommendations aforesaid have not been accepted by the members now in default.

It was, however, explained to the Court that as long ago as 1947 the Amalgamated Engineering Union and other Metal Trade Unions

had prepared a log of claims and served it upon many thousands of respondents and in January 1949 filed it in the Court. For one reason or another or perhaps many others it has not yet been dealt with and no matter in dispute by virtue of that log is yet finalized. What the explanation of this delay is has not been sufficiently pursued to permit of any judgment by me. Whatever the explanation, who can doubt that in these times of rising prices, of newspaper discussion, of the hardship of housewives, etc., etc., that the patience of the rank and file workers and their wives (particularly of their wives) is a little strained and that agitators find fertile soil for suggestions of direct action which makes the task of control by union executives increasingly difficult. The more so because no one apparently can be assured as to when the disputes will be finalized. The basic wage case itself is obviously still some distance from finality, nor must a realist overlook the existing industrial conditions and the state of the economy.

It should be pointed out that the merits of the issues involved in these "bans" have not been debated before us. I pass no judgment. It is sufficient that these men are in defiance of the Court's award.

In this state of facts we are asked to dismiss from the basic wage case the claim of all these Unions and their members and this after the unions have devoted themselves and their officers for more than a year to the hearing of this wage case, to say nothing of the expense they have incurred not only before this Court but also before the High Court in elucidating legal as well as industrial problems.

To grant the Metal Trades Employers present application will adversely affect hundreds of thousands of skilled men (I have no doubt properly described as good Australian citizens) completely innocent of any wrong doing and without real responsibility in the matter (to expect rank and file action against the recalcitrant members in these cases is quite out of the question) while the procedure for the imposition of penalties upon them by the Executives, governed as it is by the common law, by the Arbitration Act and by their rules, is dilatory and cumbersome. In addition, it will affect thousands of employers equally without blame and who do not seek any such penalty as is now asked for on behalf of the half dozen employers in New South Wales. It does not save the Court from making a basic wage decision, nor will it settle the long outstanding dispute constituted by the 1947 log.

To refuse Mr. Wright's application might be thought to make it appear that the Court is condoning or even encouraging direct action to enforce claims in matters with which the Court is dealing, or to make it appear that the Court is impotent in these circumstances.

To grant the application will throw these Unions and all their members out of Court and will leave them without remedy within the Arbitration system, for the Conciliation Commissioners have, properly enough, intimated they will not deal with marginal claims until the Court fixes the basic wage. It will in effect compel them

to seek a solution of the industrial problems raised by their log by the use of their economic power, greater now as is of course obvious, than ever. To contemplate what this frustration of more than a year's basic wage litigation might bring needs little imagination.

I have held the view that in the present circumstances of Australian industry it is more important than ever that the Court should continue to exert its fullest influence, should not vacate the field and leave it to the industrial gladiators to fight it out with gloves off. The Court's influence and prestige still is, I firmly believe, an important factor with a large percentage of employees; it is the Australian policy and they are Australian people; in the end they will prevail. It is clear in this case that the Court has already had some considerable influence and should continue to use it in every way possible and perhaps in this case the long view is the wiser one.

To take the latter course and grant the application will not, I am sure, be fraught with the consequences Mr. Wright has urged; the Court has, in its 40 odd years survived many such crises and its prestige has not waned nor could it possibly be urged, after what the Court has already achieved, that it condones or encourages direct action.

On the whole and weighing as best I can all the considerations which my knowledge and experience and the evidence bring to my judgment, I feel that the best interests of the parties, of the community, of the Court, and of the Arbitration system would be served by making the following order—

1. Dismiss the application against the Federated Moulders (Metals) Union of Australia and Australasian Society of Engineers.
2. Grant the application against all other respondents but in favour only of those employers where the "ban" has been shown to exist—that is to say in favour of—

   Australian Glass Manufacturers Co. Pty. Ltd.
   A.C.I. Engineering Pty. Ltd.
   A.C.I. Metal Stamping and Spinning Pty. Ltd.
   A.C.I. Plastics Pty. Ltd.
   Australian Window Glass Pty. Ltd.
   Crown Crystal Glass Pty. Ltd.
   Malleable Castings Ltd.
   Hytest Axe and Tool Pty. Ltd.
   Poole and Steel Ltd.
   Cockatoo Docks and Engineering Co. Pty. Ltd.
   Nicol Bros. Pty. Ltd.
   A. E. Goodwin Ltd.

   whether as individual Companies or as members of the Metal Trades Employers Association.
3. Intimate that the Court will hear applications under the present summons in respect of any employer in whose enterprise "bans" or other form of direct action is shown to exist.

Foster J.]

4. Otherwise adjourn this summons.
5. No order as to costs.

Dunphy J.:

In this matter the Metal Trades Employers Association makes application to the Court upon summons for dismissal from the Basic Wage inquiry of what may be termed the basic wage disputes (Nos. 11 and 24 of 1949) created by the Amalgamated Engineering Union and others and the Federated Ironworkers Association of Australia respectively.

From the affidavit of Ronald Gordon Fry, and verbal testimony adduced, it appears that overtime bans have been imposed on a number of Metal Trades employers in the Sydney area. These bans followed upon rejection by the employers of demands for wage increases and were imposed as a consequence of resolutions passed at mass meetings of workers in the several establishments concerned. The imposition of these bans originated on or about 13th January, 1950, and are still in existence and the employers now ask the Court to refrain from hearing basic wage disputes which the unions, whose members have imposed such bans, are now prosecuting before this Court. It is quite clear that the imposition of these bans is not an action decided upon by the Federal Executive of any of the Unions or by any state branch of any of the Unions, the decision being made at mass meetings of workers locally employed without any outside inspiration. The original identification of the Unions with the bans arose from the fact that their members took this action and that in most instances shop stewards, who are representatives of the Unions, played active parts in the matter.

When the employers application first came before the Court on 18th April, 1950, I indicated quite clearly to the Unions that, in my opinion, they should use every possible persuasion and endeavour to get the bans removed. It seems obvious that no technicalities associated with Union management should be allowed to intrude to prevent a realistic handling of the situation by the Federal Executives of the unions concerned. It was clearly a matter where conciliation should have been availed of in the first instance, and where Unions should have been given time within which to persuade their members to see reason.

The employers application was adjourned until 26th April, 1950, in Adelaide, with a clear indication from the Court that a report should be made as to the success or otherwise of the Union's endeavours. When the adjourned matter came before the Court on 26th April, the bench was advised that the combined Unions had met recently and a further adjournment was asked for to allow negotiations to proceed between the Unions and the representatives of the workers. The matter was again adjourned until 27th April, when an unsatisfactory report was made with respect to all Unions except the Moulders Union, and again further time was given to the Unions,

the matter being adjourned to Sydney for mention on 4th May. On the last mentioned date, the Court was advised that not only had the position not improved, but, in fact, it appeared to have deteriorated. In place of any lifting of the bans, the amount claimed for wage improvement had been increased, the movement had spread to additional employers' works and there was a ban on the employment of new labour. All that the unions could advise the Court was that the Executives had given instructions for the lifting of the bans, but such instructions had been completely ignored by the workers, who were apparently prepared to repudiate their allegiance, to their Union leadership and to defy any suggestion or direction which might happen to be given in the matter.

The Unions, however, were not prepared to give any indication to the Court of intention to take any further proceedings against their recalcitrant members. They simulated powerlessness, but, in my opinion, were unwilling to handle the situation, as I cannot believe that the fact that a handful of defiant unionists was imperilling the rights and possible benefit of many thousands of fellow unionists, was not a sufficiently serious situation for the Unions to take firm and positive action.

There are ample constitutional and express powers available to the Unions to discipline their members in this particular case. There are also great persuasive powers which Unions can and do exercise in their various endeavours to manage and to lead their rank and file. As indicated to me in answer to a question if the decision to impose such bans had been made by the Union in the first place, or if a strike or some other industrial action had been decided upon by the Union itself, defiance by a minority would not have been tolerated.

In spite of these very compelling circumstances, the Unions were not prepared to indicate that there was any move left which they could or would make, and they raised a number of reasons based upon technicalities why no further action was possible or expedient.

The action of the workers in imposing bans upon overtime is clearly an illegality in that the working of reasonable overtime is specifically provided for in the relevant awards, although such specific sanction is probably not necessary. It appears clear from the evidence that whatever overtime has been worked, has been reasonable within the meaning of the award, because no worker has ever been compelled to work overtime. Such overtime has been worked at the decision of each individual worker at the request of the employer and at no time prior or during the proceedings incidental to the imposition of the overtime ban was it ever suggested by anyone that the amount of overtime worked was unreasonable.

The imposition of a ban on the employment of new labour is in my opinion, a more inequitable factor than the overtime ban. There were instances given of tradesmen obtaining employment with

firms affected by the ban who were then persuaded in the words of Mr. Baker, the Ironworkers advocate, "that employment elsewhere would be healthier." This sort of ban becomes an interference with human rights. It interferes with the employer's right to enter into a contract of service with a new employee (who, incidentally, was always a financial unionist, in the cases quoted to the Court) but worse than any interference with the employer's rights, it constitutes an interference with the right of a worker to work where he chooses and for whom he chooses.

Unions are rightly opposed to totalitarianism and to the direction of labour into fields in which such labour does not wish to be employed, and consequently the type of direction which imposes upon the freedom and choice of a worker (and in this case, a financial unionist) to work where he chooses and for whom he chooses is industrially unconscionable. In all these circumstances, it seems to me a pathetic state of affairs that the Unions now before the Court, which are generally recognised as powerful in the industrial field, should permit a minority to imperil the rights of the majority to continue with the prosecution of the basic wage claims contrary to the express direction of the governing body of the unions.

I think the whole community is prepared to concede that Unions have industrial strength and are entitled to such strength, but in this instance there has been, in my opinion, no valid attempt to use power in the right direction.

Power of government of union members is conferred upon the elected executive of a Union by virtue of a Union's registration under the *Commonwealth Conciliation and Arbitration Act.* Federal Unions have no legal right of existence except through that Act, which is itself dependent for its position in the Statute Book by virtue of the express provisions of para 35, sec. 51 of the *Commonwealth Constitution Act.* The common law is of no avail so far as the existence of Federal Unions is concerned. If, therefore, Unions obtain legal existence by virtue of the provisions of an Act of Parliament, they must be prepared to assist to carry out the objects of the Act, and one of the objects of the Commonwealth Arbitration Act is to "promote goodwill in industry and to encourage the continued and amicable operation of orders and awards made in settlement of industrial disputes."

Power of government attaches to itself the responsibility to enforce discipline on those subject to the power. This is so in any state of society. Even if Unions were to take over the whole of industry, they would have to make industry work, and they could not make industry work unless they were prepared to discipline malcontent minorities.

Although the Unions themselves have not initiated the proceedings complained about by the employers, they have failed to exercise their powers of government and to take appropriate and available steps to have their own direction to their members obeyed.

The overtime bans in addition to any other result are detrimentally affecting production at a time when the concensus of opinion favours the view that increased production is essential to provide the community with goods in short supply. The bans adversely affect the right of employers to prosecute their part of the basic wage case in absolute freedom.

I believe, and approve, of the principle often enunciated that parties who come of their own volition under the mantle of the *Commonwealth Conciliation and Arbitration Act* cannot claim the rights and benefits conferred by that Act and simultaneously adopt methods of direct action with respect to industrial matters. The recognition by the Court of a claim by a Union, whilst such Union's members were embarking upon a policy of direct action (whether such direct action involved the original claim or not) would, in my opinion, react against the public interest in that a chaotic state of affairs could arise in all industry if such disorder were to be permitted. Neglect by union executives to enforce a direction to a minority of its own members, such direction being designed to attain industrial peace and the observance of industrial law and awards, involves neglect of the welfare of the majority of the Union membership and is consequently contrary to the spirit and intention of the Act and the registered rules of the Union conferring power of government upon the Union executive. Furthermore, the Court is enjoined by section 39 of the Statute to act according to equity and good conscience. A pre-requisite to the exercise of an equitable jurisdiction has always been that the claimant should have clean hands and should itself do equity. The permission by a claimant union of inequitable conduct by its own members, conduct which not only interferes with the rights of employers but with the rights of financial members of the Union cannot by any stretch of imagination be said to be equitable, nor can the union in such circumstances claim to have clean hands. The Union can only ask the Court to act according to equity if it is prepared itself to do equity, and in the circumstances of this particular case it must be prepared to exhaust all available remedies to remove existing inequity. No indication of necessary intention has been given, although the Court has given ample time for that express purpose.

I consider that the Court has specific and inherent jurisdiction to make the order as asked and that the inaction of unions has forced upon the Court the necessity to act in the public interest taking a disciplinary action in an endeavour to maintain the rights of the parties and individuals affected, or likely to be affected by proceedings in the Court.

In my opinion the employers' application should be granted except that no order should be made against the Moulders' Union.

The Court.]

Order:—

1. This Court pursuant to section 40 (d) of the *Commonwealth Conciliation and Arbitration Act* 1904-1949 doth hereby refrain from further hearing disputes numbered 11 and 24 of 1949 except insofar as the said dispute numbered 11 of 1949 concerns the Federated Moulders (Metals) Union of Australia.

2. Pursuant to section 34 of the said Act this Court doth further on its own motion and pursuant to the said section 40 (d) of the said Act hereby refrain from further hearing dispute numbered 453 of 1949 which is at present before the Court and in which alteration of the basic wage is sought and in which the Amalgamated Engineering Union, the Australasian Society of Engineers, the Sheet Metal Working Agricultural Implement and Stovemaking Industrial Union of Australia, the Federated Ironworkers Association of Australia, the Boilermakers Society of Australia and the Blacksmiths Society of Australasia are applicants or claimants.

On 21st March, 1950, application was made by certain employers for a ruling in regard to the ambit of the subject matters which were to be considered in the resolution of the case.

This matter was listed before the Court (Kelly C.J., Foster and Dunphy JJ.), in Melbourne, on 13th April, 1950.

S. C. G. Wright, of counsel, for employers generally.

P. D. Phillips, K.C. and *D. Corson,* of counsel, for the Australian Council of Trade Unions.

S. Lewis, K.C., and *G. Gowans,* K.C., for His Majesty the King in the Right of the Commonwealth of Australia.

R. M. Eggleston, K.C., and *K. H. Gifford,* of counsel, for His Majesty the King in the Right of the State of Victoria.

On 12th July, 1950, the following judgments were delivered by the Court:—

Kelly C.J.:

It is my opinion that the judgment of this Court in the *Food Preservers case* (1) has been misunderstood. In the *Theatrical Employees case* (2) I endeavoured to express my own understanding of the decision in the *Food Preservers case.* I denied that the basic wage was an abstract concept unrelated to any particular award. I said that, although in the course of the *Food Preservers case* judgment I had referred to the judgments promulgated by the Court in 1934 (3) and 1937 (4) as being "declarations" in the sense that they indicated the "foundational amount" upon which the Court would in future build up its structure of wage differentiation, yet as "declarations" they had no legal effect whatever. "The effective act of the Court," I said, "was in the subsequent incorporation or inclusion in awards or orders of a basic wage amount which was consistent with its 'declaration.' " I went on: "There is no such thing as a basic wage in the abstract. When I have referred to a basic wage as a conceptual amount, I have always meant that it is an amount assessed with reference to a concept, that of a wage which is 'appropriate, adequate and sufficient for the unskilled labourer in industry' . . . " The basic

(1) 45 C.A.R., p. 343. (2) 62 C.A.R., p. 464. (3) 33 C.A.R., p. 144.
(4) 37 C.A.R., p. 583.

wage "is to be discovered in the award. It does not exist at all except in the award. And it is this amount, included in the award, to which section 25 relates . . . . it is a wage, that is to say, a money amount, and not in itself a mere abstraction."

The conceptual measurement of the amount of the basic wage prior to the recent amendment to section 25 was that it was the appropriate wage for a "male adult unskilled labourer to which additions (were) made to remunerate skill or otherwise to differentiate between workers." [1] But where the wage under examination includes an addition made to remunerate skill or otherwise to differentiate between workers that wage was not the basic wage. Shorn of the addition, however, the balance left represented the basic wage. I do not think the *Ozone Theatres case* [2] in the High Court decided anything to the contrary of this proposition and I am of the opinion that the proposition is completely consistent with the decision in the *Food Preservers case* as explained by me in the *Theatrical Employees case.*

If the lowest wage prescribed in an award contained some "addition made to remunerate skill," for example: in an award made for craftsmen, that wage could not be said to be a basic wage because though the lowest wage of the award it was payable not to adult unskilled workers but to workers differentiated from other workers on account of their skill. Nevertheless the basic wage might be discoverable in the award as constituting an element in the lowest wage prescribed. Again, the lowest wage prescribed in an award might have been prescribed for "male adult unskilled workers" employed in the industry or industries to which the award related. But if it contained an "addition to differentiate between" those workers and other workers, in such a case, other male adult unskilled workers, on account, for example, of the propriety of compensating them for some disagreeable or unduly arduous incident of the industry or industries in or at which they were employed (by way of what was called an "industry loading") or for some additional effort required of them or some difficulty incidental to their work owing to war-time conditions or obligations (by way of what was called a "war-loading") then that lowest wage was not the basic wage but was something in excess of it. Again an examination of the award might discover—almost invariably it did discover—what "element" in that lowest wage was the basic wage to which the differentiating amount had been added.

I cannot agree that the High Court has held that all "industry loadings (special additions regarded as appropriate by reason of the conditions of work in particular industries)" and any "war loading (a special provision made to meet war conditions)" were part of the basic wage. What the High Court said may be repeated:—"It has been argued that some or all of the loadings are not part of the basic wage, and that only the 'needs basic wage' or, at most, the amount

(1) 78 C.L.R., at p. 402. (2) Ibid, p. 389.

of the 'needs basic wage' together with the amount of the prosperity loading, constitutes the real basic wage under the award. It is, however, unnecessary in the present case to deal with this specific question, because it is not disputed that if the application submitted to the Arbitration Court were granted the amount of the 'needs basic wage,' and therefore of any greater amount which could be described as the total basic wage, would both be reduced."

The question as to whether the term "basic wage" might include "a war loading (a special provision made to meet war conditions)" or the "prosperity loading in 1937 (an increase in wages designed to give employees something more than a bare minimum and to allow them to share in the general prosperity of the community)" or "industry loadings (special additions regarded as appropriate by reason of the conditions of work in particular industries)," was thus left unanswered by the High Court. In my opinion the amending Act No. 86 of 1949 was intended to provide the answers to this question.

The form of this amending Act has been criticised, or at all events discussed, in the course of the arguments addressed to us. Its title suggests that it is a declaratory enactment and has reference only to the determination of "a basic wage for adult females" and "purposes related thereto." Nevertheless the Act does include amendments of section 13 sub-section (b) and section 25 sub-section (b) and in my opinion these amendments are effective.

It is sufficient to refer to section 25. As this section now stands for present purposes its relevant parts read as follows:—

"25. The Court may, for the purpose of preventing or settling an industrial dispute, make an order or award—

(b) altering the basic wage for adult males (that is to say, that wage, or that part of a wage, which is just and reasonable for an adult male, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed) or the principles upon which it is computed."

Some difficulty is occasioned by the phrase "which is just and reasonable" and in particular by the use of the present tense. It is to be noted that the power conferred is a power of alteration of the basic wage. The Court must first find the basic wage, as defined in the parenthesis, before it can alter it. And it cannot I think be doubted, that the result of the alteration must itself satisfy the definition. But how can the resulting "wage" be "just and reasonable" if the wage altered *"is"* itself "just and reasonable?" In my opinion, the only possible way to give practical effect to the provision is to read the phrase "which is just and reasonable" as relating to the time of the fixation of the wage. In other words the "wage" or "part of a wage" which may be altered must be a "wage" or "part of a wage" of which the authority which fixed it, or the parties who agreed to it, can be properly regarded as having, at the time of fixing it, said or conceded: "This 'is just and reasonable for an adult male, without

regard to any circumstances pertaining to the work upon which, or the industry in which, he is employed'." And the result of the alteration, that is to say, the "wage" or "part of a wage" resulting by the order or award of alteration must be such as the Court making the order may, at the time of its order or award, say of it: "This is 'just and reasonable for an adult male, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed'." In my opinion such a construction of the phrase "which is just and reasonable," *ut res magis valeat quam pereat,* does not do too great a violence to the ordinary meaning of the words as used in the enactment.

I turn next to the phrase "pertaining to the work upon which, or the industry in which, he is employed" and in particular to the word "industry." In section 4 of the Act it is provided that "except where otherwise clearly intended" the word "industry" when used in the Act "includes— (a) any business, trade, manufacture, undertaking or calling of employers; (b) any calling, service, employment, handicraft or industrial occupation or avocation of employees; and (c) a branch of an industry and a group of industries."

In my opinion, there is no reason why any one or other, and indeed each, of the included meanings of section 4 should not be available in the construction of the phrase "or the industry in which, he is employed" contained in section 25. I do not think that the use of the phrase "the work upon which" as in form alternative to the phrase "or the industry in which" drives one to exclude either of the included meanings in paragraphs (a) and (b) of the definition in section 4 from the construction of the latter of the two phrases. "Industry" here includes in my opinion both "any business, trade, manufacture, undertaking, or calling of employers" and "any calling, service, employment, handicraft, or industrial occupation or avocation of employees."

The "wage" or "part of a wage" upon which the order or award of the Court must be confined to operate by way of alteration, and the "wage" or "part of wage" which results or is brought into being by the order or award, must in the first case have been fixed, and in the second case be fixed, "without regard to any circumstance pertaining to the work upon which, or the industry in which," the adult male concerned "is employed." The assessment or determination of that "wage" or "part of a wage" must have taken no account whatever of a circumstance pertaining to, that is to say, belonging to or connected with, "the work upon which, or the industry in which, he is employed." So much is clear. It seems, therefore, that the "wage" or "part of a wage" which it is claimed should be altered, or which it is proposed to alter, must contain no element of compensation or remuneration fixed or allowed on account of the existence of a circumstance connected with or belonging to the work upon which or the industry in which the adult male to whom its payment was prescribed was, or was to be, employed.

Kelly C.J.]

With the knowledge this Court has of its own decisions, I am of opinion that the wage element which can be found in an award or order to represent the result of the decisions of the Court in what are known as the Basic Wage Inquiry 1937 (1) and the Basic Wage Inquiry (Interim) 1946 (2) cases, in its application to any adult male, may be said to have had no regard to any circumstance pertaining to the work upon which, or the industry in which he was, or was to be, employed. If to that wage element it appears that some other amount has been added without regard to any such circumstance, then that amount must be included as portion of the "wage" or "part of a wage" which the Court may alter—the total comprising the "basic wage" which it is within the power of the Court to alter. Whether such an addition is or is not in fact an addition made without regard to any such circumstance may or may not be ascertained either from the award or order itself or from evidence *aliunde*. In this connexion I would think that a declaration or statement, if any exist, by the authority who made the award or order, as to the justification or purpose of the addition made by him or it, would be for all practical purposes conclusive. In the absence of such a statement or declaration, I am of opinion that the burden of proof as to what is the basic wage (as defined in section 25 (b)) of the award or order sought to be altered must lie upon the party seeking the alteration. It may have to be fulfilled by evidence indicating what parts of a wage were included with regard to a circumstance pertaining to the work upon which, or the industry in which, the adult male in question was or was to be employed. The balance would then be the "basic wage." In any case I think it would be incumbent upon the Court to make an examination of a "wage" or "part of a wage" sought to be altered. The use of such a label as "industry loading" or "war loading" may not be conclusive of the nature of the addition or amount so labelled. Whether that amount was in fact incorporated in the award or order with or without regard to any circumstance of the kind specified in the legislation is a question which the Court will in every particular case have to answer. For if an alteration of the "basic wage" is to be made, the amount of the increase (for in the present case it is an alteration by way of increase that is in every instance sought) will depend upon the difference between the new "basic wage" and the old. Moreover, as I have indicated alteration cannot be contemplated until one knows what one is altering. One has to know that what one is proposing to alter is indeed a "basic wage" within the terms of the statutory definition.

The order or award made by the Court, whether under section 25 or, by way of variation, under section 49, must result in a "basic wage"—because it has the effect of an alteration or variation of an existing "basic wage" the result must be to bring into operation a new "basic wage," or an altered or varied "basic wage." The result must thus be a "wage" or "part of a wage" which satisfies the statutory definition: it must be a "wage" or "part of a wage" which is, in

(1) 37 C.A.R., p. 583. (2) 57 C.A.R., p. 603.

the judgment of the Court, "just and reasonable for an adult male, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed." Since the possession and application of such skill as may be necessary to perform his work connotes a circumstance pertaining thereto, and the incorporation of any factor of remuneration or compensation therefor is proscribed, the "wage" or "part of a wage" adjudged to be "just and reasonable" will be appropriate for an employee without skill, for example, an "unskilled labourer." Likewise, if any other circumstances pertains to the work upon which, or the industry in which, such an unskilled labourer or employee is engaged, that is to say, any other circumstance calling for some additional and special payment by way of compensation or remuneration therefor, that will be a matter of which the Court cannot in assessing the amount of the new or altered or varied "basic wage" take any account.

More cannot, in my opinion, be said. In the result, I think the "basic wage" as defined by the section is identical with the "conceptual amount" of the *Food Preservers case* judgment [1] as found or discoverable in each particular award, order, agreement, practice or employment under examination, and, if alteration thereof be made, the ultimate result of such alteration must likewise be consistent with the same concept. In other words, the concept must be of a "wage" or "part of a wage" fixed, or to be fixed, as being just and reasonable for an adult male without regard to any circumstance pertaining to the work upon which, or the industry in which such adult male is employed. The amount which alone can be altered is the amount which has been fixed as appropriate to that concept. And the amount resulting from the Court's award or order must likewise be an expression in terms of money payment of the same concept.

In conclusion it is, I think, right to say that the constitutional validity of the insertion of the definition of "basic wage" in section 25, or of sections 13 or 25, or of the Act as amended, either in part or in whole, was not impugned before us.

Foster J.:

We are asked to interpret sub-sections (b) and (d) of section 25 of the Act, which are as follows:—

> 25. The Court may, for the purpose of preventing or settling an industrial dispute, make an order or award—
>
> (a) .....
>
> (b) altering the basic wage for adult males (that is to say, that wage, or that part of a wage, which is just and reasonable for an adult male, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed) or the principles upon which it is computed;
>
> (c) .....

(1) 45 C.A.R., p. 343.

(d) determining or altering the basic wage for adult females (that is to say, that wage, or that part of a wage, which is just and reasonable for an adult female, without regard to any circumstance pertaining to the work upon which, or the industry in which, she is employed) or the principles upon which it is computed.

The basic wage has had a long history; it was first incorporated in the award of this Court in the *Marine Cooks case* in 1908 [1] by Mr. Justice Higgins who took it from his Harvester wage [2] which, as is well-known, was not fixed in an Arbitration proceeding nor awarded in an industrial dispute. He said—"My sole duty is to ascertain whether the conditions of remuneration submitted to me (by H. V. McKay) are fair and reasonable." And his estimate was, ironically enough, made in pursuance of an Act (*Excise Tariff Act* 1906) that was invalid. At first Mr. Justice Higgins thought this wage might be varied in accordance with the prosperity of the employer's industry but very shortly he decided that it should be sacrosanct and not reducible (*Broken Hill case*). [3]

The basic wage soon acquired a widespread popular meaning as the lowest standard of living which the Court would permit in its awards. This arose from the nature of the enquiry in the *Harvester case* and was again made manifest in the Basic Wage enquiry of 1920 which was an enquiry into standards not wages as was the earlier one. The standard of living, being ascertained, was converted into money terms by pricing its content and making provision for its geographic and temporal adjustments and was thus incorporated in awards in terms of money payments.

By Act No. 18 of 1928 section 25D. was added to the Arbitration Act and Dethridge C.J. in *Newton v. A.W.U.* 1930 [4] referred to this section as having forbidden the Court to lower the *standard* created by the Harvester basic wage.

In the year 1930 (Act No. 43) the Legislature added section 18A (4) which provided—

(4) Notwithstanding anything contained in this Act, the Court shall not have jurisdiction—

(i) either to make an award—

(a) .....

(b) altering the basic wage or the principles on which it is computed; or

(ii) .....

unless the question is heard by the Chief Judge and not less than two other Judges . . . .

and it was in consequence of an award made by Drake-Brockman J. altering certain rates of pay for railway workers that this matter was

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(1) 2 C.A.R., p. 55. (2) Ibid, p. 1. (3) 3 C.A.R., at p. 32. (4) 30 C.A.R., p. 124.

taken by the Australian Workers Union to the High Court, and in 1933 that Court, after a very careful scanning of the awards of the Court, defined the meaning of basic wage as used in this section and was constrained to depart, as I believe, from the popular view of this term by consideration of the constitutional limitation of the industrial power. The Parliament could only make laws for the settlement by conciliation and arbitration of interstate industrial disputes and the wages fixed by the Court in an award must be in settlement of such disputes; therefore the basic wage must be found in an award and it must be a foundational wage in the sense that other wages are based on it; it must therefore be the wage of the unskilled labourer below which presumably there were no lower classifications.

On this view there could be many basic wages (though in fact owing to the Court's method of achieving uniformity there were not) thus departing from the earlier and popular concept of a fundamental living standard applicable generally.

No practical difficulties of any consequence arose as the result of section 18A and the High Court's decision theron because the jurisdiction of the Court was vested in each Judge and no great problem was presented in assembling a Court of three Judges required by this Statute to deal with matters referred to in section 18A.

The *Ozone case* (1) was decided after the 1947 Arbitration Act had shorn the Court and the Judges of the major part of its and their jurisdiction and had created new tribunals with completely independent powers, achieving a dichotomy which has already been and will continue to be a source of legal and industrial difficulties.

The problem of the nature of the basic wage is one upon which jurisdiction depends and so becomes one that transcends the Court and can only be finally and conclusively decided by the High Court. Thus all awards that involve the basic wage or any of the four matters in section 25 become of more or less uncertain validity and may at any time be overthrown by proceedings for prohibition or mandamus under the Constitution if the High Court takes the view that the Court has wrongly assumed or refused jurisdiction. The *Ozone case* did not exhaustively define the basic wage; it was sufficient for that case that the High Court found contrary to the view of the Arbitration Court that if the monetary amount of a certain element in the wage fixed by the award would be altered by the proposed variation in the method of geographical adjustment then that was an alteration of the basic wage and fell within the jurisdiction of the Court and not of the Conciliation Commissioner.

The question whether any variation of the standard of living would be involved was rejected as of no importance in determining the "basic wage" as used in section 25.

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(1) 78 C.L.R., p. 389.

Foster J.]

By this decision the High Court affirmed its earlier decision and applied it.

The *Ozone case* was decided on 9th August, 1949, and almost immediately a Bill was brought down to amend section 25 of the Act and in particular to define the term "basic wage" as used in it; it was assented to on 29th October, 1949.

The basic wage, whether for males or females was to mean 'that wage or part of a wage which is just and reasonable without regard to any circumstance pertaining to the work upon which or the industry in which he is employed.'

This should have ended the matter and what had remained in doubt should have been cleared up and perhaps would have been but for the intrusion of one small word, to wit, "altering." The Court was only empowered to make an award 'altering' the male 'basic wage' not to determine it, but was authorized expressly to determine as well as alter the female basic wage which was defined as appears above in precisely similar terms to that relating to the male basic wage. Nor would any difficulty have arisen if the basic wage as defined meant the standard declared from time to time by the Court as *e.g.* in 1937 (1) and again in 1946. (2) It thus appeared that the Court may alter a basic wage which is according to the definition 'just and reasonable' into something presumably not just nor reasonable and no clue is given anywhere as to how the Court is to find 'that wage or part of a wage' fixed say in an award in 1938, which '*is* just and reasonable' or as to whether it should be just and reasonable according to the award maker or to this Court or whether it was to be just and reasonable when made or now. So a knotty problem has presented itself to the parties. What is it that this Court is asked to do in respect of each of the 54 disputes now before it? And what is it that the Court is empowered to do under this new section.

The respondents, or a number of them who are represented by Mr. Wright claim to be in grave doubt and to be unreasonably embarrassed in the presentation of their case and invite the Court to give a 'ruling.'

It is to be noted and with interest that no decision inter parties is sought, no concluding of the issue between the disputants is asked for; this perhaps is as it should be because while the Court might give the ruling as asked and might even give a decision if asked it can do so only tentatively, section 16 (which makes decisions of the Court final and conclusive and immune from appeals or prerogative writs) to the contrary notwithstanding, so that its decision as a Superior Court of Record (section 17) will continue to persuade only until the parties or any one or fraction of one might feel disposed to take the matter by prohibition or mandamus to the Court of last instance and win from it a final conclusive and binding answer.

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(1) 37 C.A.R., p. 583. (2) 57 C.A.R., p. 603.

For the purpose of this "ruling" the constitutional validity of section 25 is assumed, the contrary was not contended for in any argument before us though hints of doubts were made.

It is perhaps a matter of interest that no problem at all events none that provokes any respondent to seek from this Court either a 'decision' or a 'ruling' arises in respect to the basic wage for an adult female for there the Court can determine according to its *own* standards one that is just and reasonable and does not need to 'alter' one that *ex hypothesi* is already just and reasonable.

For my part I take it that my task is to interpret the words of section 25 which I have already quoted. Having regard to the fact that they were enacted so shortly after the decision in the *Ozone case* and in the circumstances I have quoted, it would not be unreasonable to assume that the Parliament was not quite happy about the law as declared by that decision; if that decision were both clear and acceptable it would be a little hard to understand why Parliament —busy enough we are always assured—should have bothered to amend this Section which after all has only had since 1947 a very brief history. I do not therefore look to the Ozone case as a means of interpreting the new words. Every wage awarded by this Court and fixed in an agreement certified and filed in the Court and having the force of an award by section 37 for an adult male must presumably either be or contain the basic wage so that it seems to me that the Court must scan the award or agreement which was made in settlement of the dispute and find in it the wage to be altered—for surely if it is to alter something it must find somewhere that which is to be altered. From the relevant award or agreement it must find the wage (or part of a wage) which was just and reasonable for an adult male without regard etc. According to the award maker or the parties' agreement at the time it was made or entered into this may seem an abuse of the present tense '*is* just and reasonable' but it seems to me to be the meaning Parliament intended and the only meaning that can make the definition workable. What this just and reasonable wage is would of course be a question of fact to be ascertained as best it may be from the award or agreement itself or from what other sources may be available, the burden being on him who asserted that the wage in question was in fact the basic wage as defined.

"Without regard to any circumstances etc." gives some difficulty but it seems to me that the basic wage must exclude payment for any special matter relating to the job upon which the adult male is engaged or is in any way special to him and it must exclude any wage fixed because of some circumstance pertaining to the industry in which he works. This I think must mean the employer's industry as covered by the award and as defined by section 4 of the Act; this it also seems to me flows from Parliament's use of the contrasting phrase the '*work upon* which' and 'the *industry in* which' the male adult is engaged—whether it would also cover the employee's industry is open to doubt.

Foster J.]

These are all questions of fact. Whether any part of the wage in question is awarded in respect of the employee's work or the employer's industry or not must be determined by some investigation of relevant material; is it awarded because of the employee's skill or experience or because of some fact relating to his job which calls for some special remuneration, or is it awarded because of some circumstance pertaining to the employer's industry which calls for special recognition? If so, it is to that extent not basic wage; *e.g.* an industry loading might quite well be part of the basic wage; it equally quite well may not be. A prosperity loading looks clearly to be part of the basic wage; it neither pertains to the work nor the industry, it springs from the condition of the country's economy and the award granting it must be presumed to be just and reasonable. A war loading like an industry loading might be basic wage or again might not. Once more what are the facts? Though called a war *loading* it might possibly have been awarded because of some matter pertaining to the work or industry.

There are other 'loadings' to be found in the wages prescribed in some awards, e.g., 'Special' loadings; the 'Sugerman' loading in the Liquor Trades award (1), and so on. Some are clearly not basic wage *e.g.* where they relate to some skill or experience which the award maker has found to exist perhaps for all workers covered by the award; others may be basic wage and no criterion of judgment except in the words of the Statute can be offered. Is the loading so called in fact awarded because of some circumstance of the employee's work or of the employer's industry in the final analysis that rests upon the adjudicator's judgment on the facts as proved.

Two other matters arise—

(1) What is the position where there is no relevant award? Imagine a new organization applying for its first award—there is no basic wage fixed by or to be found in any award which can be altered though it is clear that the members are in receipt of salaries paid either by agreement between parties or because they had been members of another organization which did have an award. Obviously as a mathematical proposition the salaries either equal or exceed the Court's idea of a basic wage. Is the Court without jurisdiction or does it look to the wage actually being paid as a matter of private contract. In my view the Court is without jurisdiction.

(2) Assume that the Court is asked to alter a wage and finds that the wage in the award is the result of the exercise of the industrial or economic strength of one or other of the parties. Does such wage cease to be or to contain the basic wage because in the opinion of the Court it is not 'just nor reasonable' as the definition requires? In my view the Court must asume that the wage in fact fixed in the award

(1) 65 C.A.R., p. 975.

before it whether there by force of the Arbitrator's fixation or by agreement of parties is just and reasonable and should refuse to go behind the award at the instance of any party.

Dunphy J.:

A question as to the meaning of the term "basic wage" as used in section 25 of the *Commonwealth Conciliation and Arbitration Act* has been interpolated into the proceedings for the purpose of simplifying, if possible, the task of the parties now before the Court on the claim for an increase in the basic wage. The question arises with respect to the provisions of Amending Act No. 86 of 1949, which for the first time in the history of the legislation, inserts a definition of "basic wage" into the Act—the relevant wording being "the basic wage," that is to say that wage or that part of a wage which is just and reasonable for an adult male without regard to any circumstances pertaining to the work upon which, or the industry in which, he is employed."

It is not suggested by counsel representing employers or workers that Amendment No. 86 of 1949 alters or amends the existing law in so far as the meaning of the term "basic wage" is concerned. At page 4745 of the transcript, Mr. Wright (for the employers) says "The Legislature has simply codified by slipping into this declaratory Act a definition of what the law was as declared by the High Court" and Mr. Phillips, K.C. (for the Unions) at page 5632 says in answer to a question from the Bench as to whether the meaning of the term had been altered by the Amending Act said "No. I think they give statutory expression."

It is true that there is a division of opinion as to whether the Arbitration Court's interpretation of the term, or the High Court's interpretation of the term (as developed in the proceedings in both Courts on the *Ozone Theatres case* (1) is favoured by Parliament. Counsel for the Unions contends that there is no disagreement between the two Courts as to the meaning, whereas counsel for the employers argues that the High Court has overruled the Arbitration Court on this particular subject.

The question as to whether or not there was conflict of opinion between the High Court and the Arbitration Court on the meaning of the term "basic wage" has some importance in relation to the interpretation of Amending Act No. 86 of 1949. Whatever may have been the opinion of Mr. Justice Kelly as expressed in the *Food Preservers case* (2) or the *Ozone Theatres case,* the majority of his brethern in the latter case propounded definitions which did not conform to his own opinions or for that matter to the views or judgments of any Judge of the Arbitration Court or the High Court in the past. When the *Ozone Theatres case* was debated before the Arbitration Court the employers depended largely upon the High Court decision in

(1) 78 C.L.R., p. 389. (2) 45 C.A.R., p. 343.

Australian Workers Union v. Commonwealth Railways Commissioner [1] hereinafter referred to as the *Railways case,* but the High Court judgment was disregarded by the majority of the Judges in the Arbitration Court. When the *Ozone Theatres case* came from the Arbitration Court to the High Court upon mandamus the High Court Judges unanimously applied the *Railways case* in determining the meaning of "basic wage."

Thus, it would appear, that although 16 years lay between the *Railways case* and the *Ozone Theatres case* the High Court applied the 1933 decision in 1949 notwithstanding some legislative change had taken place in the meantime and several decisions of the Arbitration Court had either disregarded, distinguished or discarded the *Railways case* judgment in the interim.

From a close perusal of the *Railways case* and the *Ozone Theatres case* the following principles emerge.

(a) There can be no general basic wage or basic wage at large.

(b) The basic wage must be looked for in each award which is the determination or evidence of determination of the settlement of an industrial dispute.

(c) The Court has power only to *alter* the male basic wage. It cannot *determine* a male basic wage although it may determine a female basic wage. The restriction of the Court's power to an alteration of the basic wage presupposes the dealing with something already in existence *i.e.* the basic wage already prescribed by an award.

(d) The basic wage is a wage which is basic in that it forms the basis or foundation of a wage structure. Where, in an award, a wage is prescribed for a male adult unskilled labourer to which additions are made to remunerate skill or otherwise to differentiate workers, that wage is the basic wage as determined by that award.

If the decisions stopped at this point, there would, in my opinion, be no difficulty in ascertaining in or from the majority of this Court's awards what actually is the basic wage. One would only have to look for the wage prescribed for a male adult unskilled labourer to which—

(a) additions are made to remunerate skill.

(b) additions are made to differentiate between workers on some basis other than skill

however the *Ozone Theatres* judgment refers specifically (on page 404 of the Report) to the question as to whether "war-loading," "prosperity-loading," "industry-loading" which are prescribed in the award under review, and are payable to all workers in the industry, are part of the basic wage and leaves the question undecided. This want of finality becomes particularly significant when it is appre-

(1) 49 C.A.R., p. 589.

ciated that the full Bench of the Arbitration Court had in an interpretation of the Metal Trades award (1) decided expressly that "industry-loadings" and "war-loadings" are outside of the concept of the basic wage.

In the matter now before the Arbitration Court, the blanks have to be filled in as the specific question whether loadings form part of the basic wage or not has been asked. The employers contend that all loadings are a constituent part of the basic wage in that the "needs" base, plus the loadings, constitute

(a) the wage for the male adult unskilled worker or

(b) the foundational rate to which additions are made to remunerate skill or otherwise to differentiate workers.

Counsel for the Unions impliedly admits that the "needs" base, plus loading, except "war-loadings" and "industry-loadings constitutes the basic wage (see statement by Phillips K.C. at top of page 5663 of transcript).

In my view the basic wage is—

(a) Where the relevant award prescribes a minimum wage for an unskilled adult male—that minimum wage.

(b) Where the relevant award prescribes a minimum wage only for adult males who are not unskilled adult males and it is stated in or ascertainable from such award what portion of such wage is prescribed as basic wage—the portion so prescribed.

I can see no reason why an award which is concerned only with skilled workers should not contain a basic wage. For instance, if a dispute concerns an industry in which no skilled workers are employed or likely to be employed I can see no constitutional or practical objection to there being a wage structure which starts off with a "needs" base with loadings to which the margins for skill are super-added.

Although the High Court in the *Ozone Theatres case* did not answer the question of loadings, the *Railways case* therein affirmed dealt with an award in which there was a "needs" base and two loadings. If one or two loadings form part of the basic wage, why should not all loadings payable to the unskilled worker be included. If one inquires into the origin of loadings, the question might be (in colloquial language) "loadings to what?" and the only answer could be "loadings to the 'needs' base." These loadings have been a method adopted by the Court to—

(a) increase the wage of the unskilled worker without interfering the 'needs' base principle;

(b) increase the wage of the unskilled worker without bringing him into the field where margins in the correct sense of the the term differentiate between grades of skill.

(1) 60 C.A.R.

Dunphy J.]

These propositions are true even though loadings are payable to skilled as well as unskilled workers.

Furthermore, the High Court in the *Railways case* was concerned with an alteration by a single Judge of loadings and needs base, and decided that this was an alteration of the basic wage and the principles upon which it was computed without confining this part of the Judgment to the alteration of the needs portion only.

The very fact that at a comparatively remote period of time the Court prescribed a "needs" basic wage indicates that the "needs" was not the total. It was clearly a portion of the basic wage, and when one inquires as to the balance it must be, and, in fact, always has been the "loading" or "loadings."

The view that "loadings" form part of the basic wage is not new and is not foreign to the attitude of litigants in the sphere of industrial arbitration or the views of Judges of the Arbitration Court. It is interesting to note that the challenge to the jurisdiction of the single Judge in the *Railways case* was instituted on behalf of a union of workers, and an argument somewhat similar to that advanced now by Mr. Wright, for the employers, was successfully presented to the High Court by Counsel for the workers.

When the dispute upon which the *Railways case* was eventually decided by the Full Court of the Arbitration Court a written judgment was delivered and I make the following extract—

> "The High Court in its judgments did not find it necessary to consider whether 'district' or other allowances formed part of the 'basic wage,' but those cited expressions of the Justices referred to seem wide enough to include them as such part." (1)

At page 378 a paragraph in the middle of the page seems to indicate that district allowances were originally granted by previous awards in order to ensure the employees should receive the Harvester equivalent and if this were so such district allowances would undoubtedly form an integral part of the basic wage.

In *North Australian Workers Union v. Commonwealth Railways Commissioner* and others (2) mention is made (on page 945) of a basic wage which included a sum of one pound (£1) "which has been somewhat loosely described as a climatic allowance." The Court considered that this sum, a loading, had been added "for the purpose of providing a total basic wage which will provide for the basic wage worker a standard of living approximately equal to that operating in other parts of Australia."

In the Court's decision in the Basic Wage Inquiry of 1937 the following statement occurs—"This 'needs' basic wage will continue, but with loading additions, because of present prosperity and of

(1) 32 C.A.R., at p. 373. (2) 33 C.A.R., p. 944.

stabilising reasons. These loading additions will not be uniform but are assessed in amount according to the circumstances of the State concerned . . . . . The amount of the 'needs' basic wage plus the respective loading will be the total *basic* wage for the purpose of the award in which they are prescribed." [1]

In varying the textile Award in 1937 the Full Court is reported [2] as distinguishing between the "needs" and the "loading" constituents of the total basic wage, and in the judgment in the 1940 Basic Wage Inquiry [3] the constant loading was unequivocally recognised as part of the basic wage.

I do not consider that Amending Act No. 86 of 1949 has altered the previously existing situation. The form of the Amending Act gives no indication of Parliament's intention to alter the meaning of the term and if it were not known that there had been judicial declaration of interpretation, or judicial conflict concerning that interpretation, the reader would imagine from the form of the Amending Act either that the term "basic wage" was being explained for the first time, or that for some undisclosed reason the recital of its well-known and accepted meaning was being inserted into the Act. From the words of the Statute there is no indication of an intention to change an existing meaning, whether such meaning has been arrived at as the result of judicial decision or of long accepted and well-recognised usage. In view of the conflict of judicial opinion between the High Court and the Arbitration Court one would have expected some more positive recital of intention to alter if such had been Parliament's intention. Under these circumstances the question now for decision cannot be answered without depending upon decided cases, particularly as the wording of the Statute is not so precise that its meaning can be established without such extraneous assistance.

The Amending Act in its long title describes the Statue as "An Act to declare that the Commonwealth Court of Conciliation and Arbitration is empowered to determine a basic wage for adult females and for purposes related thereto." This wording does not indicate that any reference is to be made in the body of the enactment to the male basic wage in any way, and whilst there was necessity to give the Court power to determine or alter the female basic wage because of statutory deficiency, there was no such necessity insofar as the power of alteration of the male basic wage is concerned and the amending statute makes no attempt to give the Court the power of determination of the male basic wage.

It may be that Parliament considered it appropriate to insert a definition of the term "basic wage" on the occasion of the inclusion for the first time of a grant of power to determine a female basic wage, and that a uniform definition was desirable, but if it were intended as a primary object to amend the meaning of "basic wage" as far as males already provided for were concerned, the wording of the introductory title to the Act is not such an indicator. Further-

(1) 37 C.A.R., at p. 594. (2) 39 C.A.R., at p. 118. (3) 44 C.A.R., p. 41.

more, the lengthy recitals and strong wording usually associated with a true declaratory act (an Act to resolve doubts) or an Act amending a well-known and much litigated provision is conspicuous by its absence.

The Act is retrospective in that section 5 makes its provisions applicable to industrial disputes before the Court at the commencement of the Act, and again, if it were intended to alter a concept implicit in the creation of those disputes, and their successful prosecution, it is strange that more definite legislative expression was not given.

A problem also arises with respect to the wording actually used in the operative clause. The wage is one which "is just and reasonable for an adult male." Does this mean the Court alters a wage which is just and reasonable—

(a) at the time of passage of the Amending Act;

(b) at the time of fixation of the original wage;

(c) at the time the Court is called upon to adjudicate upon the claim for alteration

or are the words simply descriptive without any relation to time at all. In other words, do the words in brackets in section 3 (a) of the Amending Act simply mean that the wage is a just and reasonable wage. If a construction is attempted which relates to time then anomaly or absurdity can arise in each or every case, whereas, acceptance of a descriptive interpretation has no such result and is in accord with the proposition that the provisions affecting the male rate are merely explanatory of a well-known existing phrase. I consider the words as used are so descriptive.

When the Amendment is further examined, the meaning of "industry" must also be decided. This word has been the subject of a great deal of litigation where it occurs in a number of sections in the Act, and its appearance almost inevitably results in a problem of construction. It could mean the business of the employer, or the occupation of the worker, and although an added complication arises here because the word "industry" is associated in the wording of the section with the word "work" I consider "industry" here means the occupation of the worker. The phrase "without regard to any circumstance pertaining to the work upon which, or the industry in which he is employed" means that the basic wage is a fair and reasonable wage without taking into consideration the work actually being performed by the worker or his normal trade or occupation. In other words, the whole phrase is merely descriptive and does not amount to a statement of a method of assessment of the basic wage.

The wage of the unskilled adult labourer fits into this description, his wage, *i.e.*, the "needs" base with "loadings" has been prescribed for him as a fair and reasonable wage irrespective of the particular work performed by him from time to time, or his normal occupation. Loadings obviously have nothing to do with his work

or occupation as they have been prescribed for the labourer, the semi-skilled, and the highly skilled workman, but their totality, together with the 'needs' base has formed the foundation upon which the wage structure under the various awards has been built.

On 22nd August, 1950, the Court completed the hearing of the said matters and reserved judgment thereon.

On 12th October, 1950, the following judgments were delivered by the Court:—

Kelly C. J.:

A number of disputes and applications for variation of current awards have been brought before the Court by organizations of employees, registered under the *Commonwealth Conciliation and Arbitration Act,* seeking alteration of the basic wage for adult male employees, as prescribed in existing awards, binding upon their members, and, in many cases, the determination or alteration of the basic wage for adult female employees in awards applying, or to apply, to them. It is unnecessary to give details here of the different forms in which the various claims have been expressed. It is also unnecessary to discuss in this judgment either the procedural or the substantive aspects of the several logs and applications. I think that it is sufficient to explain that, acting upon an assumption that the claims have a feature common to all of them, the logs and applications were made the subject of a combined hearing. That feature was that each and all of the claims called for a decision by the Court upon the question of what amount should be regarded as the foundational element, to be either fixed or included in the ultimate determination of the claims. And the purpose of the combined hearing was to enable the Court, its attention having been directed exclusively to considerations common to all the claims, to express its view of what the common foundational element should be.

The assumption was consistent with the history of wage fixation by this Court. The procedure followed was appropriate because the foundational element, inasmuch as it would be based upon considerations common to all the claims, would be an ingredient common to the determination of wages in each of the cases. Indeed, in many of the cases before the Court the disputes or applications concerned only the definition and determination of this foundational element.

According to the decisions of the Court, its only power in respect of wage fixation is that which flows from sections 25 and 49 of the Act. As it stands today section 25 confers upon the Court power, for the purpose of preventing or settling an industrial dispute, to make an order or award "altering the basic wage for adult males" or determining or altering the basic wage for adult females." Section 49 confers upon the Court, "with respect to a matter referred to in section twenty-five of the Act"—which I read to mean for present purposes: with respect to the "basic wage for adult males" or the "basic wage for adult females"—power to—(a) set aside an award

or any terms of an award; or (b) vary any of the terms of an award. In all other respects the field of wage fixation under the Act is occupied exclusively by the Conciliation Commissioners. So the Court decided in the *Gas case* [1]. And on 17th April, 1950, in the course of the present proceedings, the Court declared that that decision should stand.

The basic wage to which the power so conferred upon the Court relates is now defined in section 25 itself as being that wage or that part of a wage, which is just and reasonable for an adult male (or an adult female, as the case may be) without regard to any circumstance pertaining to the work upon which, or the industry in which, he (or she) is employed.

If the decision in the *Gas case* be correct, the power of the Court over wages has been rigidly limited to alteration, in the case of adult males, or determination or alteration in the case of adult females, of a wage or part of a wage held to be just and reasonable without having regard to any circumstance pertaining to the work upon which, or the industry in which, the employee who receives, or is to receive it, is employed.

Difficulties certainly present themselves when one comes to apply the definition to a particular dispute or application. For the greater part they are difficulties which can only be met and solved by a determination of the facts presented in each case. But there are other questions which arise out of the phraseology of the definition itself. In this connexion I would refer to the views I expressed in a statement upon the construction of the Section, handed down on 12th July, 1950. [2] It is unnecessary to repeat what I then said. I am content to say now that nothing that has since transpired suggests to me that I should alter or modify the terms of that statement.

The constitutional validity of the arrangement of the 1947 and subsequent amendments of the Act, whereby the function of wage determination has been divided between the Conciliation Commissioners on the one hand (excluding from their grant of power the power to alter the basic wage in the case of adult male employees or to determine or alter the basic wage in the case of adult female employees) and the Court on the other, (confining its power to those portions of the field of wage fixation from which section 13 excludes the Commissioners) has not been questioned before this Court. In the circumstances it has, I think, been proper to assume, in particular that the grant of power to the Court in sections 25 and 49 has been valid.

Put very simply, the function of the Court is to decide what is a "just and reasonable" amount to pay as a wage to an adult male employee and what is a "just and reasonable" amount to pay as a wage to an adult female employee, assuming in either case that every circumstance which may pertain to the particular work upon

(1) 61 C.A.R., p. 200. (2) Supra., pp. 748-753.

which, or the particular industry in which, he or she, as the case may be, is employed is to be regarded as entirely irrelevant to the decision.

Of course, it must be borne in mind that the function is to fix a "wage" or a "part of a wage." The amount is to be by way of meeting, wholly or in part, an obligation arising out of a contract (express or implied) of employment. Its justice and reasonableness is not to be judged with reference to an assumption that it alone must be sufficient to provide for *all* the necessities of existence at some nationally acceptable standard. Such of the necessities as may be provided for otherwise, by the government or the laws of the country, will be taken into consideration. Their provision from some other source than wages must be taken into account when one decides what shall be a just and reasonable basic wage. A basic wage may be very different in a community which has no governmental provision of social services from a basic wage in a community which enjoys a substantial system of social service benefits, extending to those who will be in receipt of the basic wage either as being the sum, or as being a part, of the remuneration they get for work performed. Thus, if a law were to provide for the reimbursement from the Treasury to every workman of all expenditure incurred by him for the shelter of himself and of his dependants, justice and reasonableness in the assessment of the basic wage would not require the cost of such shelter to be covered by the amount to be determined.

Summarising my approach to what I have called the function of the Court, I would say that the Court must bear in mind that its purpose and duty is to determine an amount to be paid as a wage or a part of a wage; an amount which will be just and reasonable for an adult male or adult female, as the case may be, with reference to what it finds to be the expenditure which will be necessary to purchase what it regards as an appropriate standard of living for him or her. The Court will take account of the capacity of the economy to achieve and to sustain the standard of living it has in mind. It may pay regard to the practical necessity of rewarding the application of skill in varying degrees in the work of particular occupations, and of compensating for the varying conditions encountered in employment, by the payment of rates higher than the rate of the basic wage. In a period, such as the present, when labour is in short supply, the marginal structure of secondary wages is of special significance; for it is in such a period that the recognition and encouragement of skill is of special importance. That this is so may be seen from the present high level of secondary wages. The Court must, to the best of its ability, give attention to what is accepted as being a fair allowance of remuneration to management; and again, to what is allowed to be a fair return for the investment of savings and for the labour of those who toil for themselves. In my opinion, it cannot fail to take account of such contribution to the division of the fruits of the country's productive effort as is made in the way of social service benefits; not forgetting, of

course, the circumstances in which, and the extent to which, sections of the community other than that of the wage-earners also participate in such benefits. On the other hand, the Court should not, in my view, be influenced by the incidence or burden upon different sections of the community of taxation, direct or indirect. For this is a matter for which the legislatures of the country must alone be responsible. The Court must refrain from frustrating in this respect their will. Taxation is a matter between the citizen and the State; its incidence should not be allowed to affect a tribunal constituted to determine rights and duties attaching to the particular relationships of employer to employee.

In what has been referred to as the *Munition Workers' case* [1] decided in 1943, the Court in the course of an unanimous judgment examined very carefully the history of its basic wage decisions. Referring, in particular, to the subject of the basic wage for adult male employees, it said: "we think that it must be clear that, although since 1930, when 'the economic or productivity factor' emerged as the 'dominant factor' in the problem of assessment, the adequacy of the wage to meet the requirements of any 'specified family unit' has been only a subsidiary consideration, subsidiary that is to say to the question of the capacity of the national production to sustain a particular wage level, it is plain that the Court has not held that its basic wage has been fixed at too low a figure to meet the normal and reasonable needs of a family of husband, wife and at least one child." The passage continues:— "Nor has its adequacy to that extent been questioned. In this sense it can still be regarded as a family wage, inasmuch as it has been accepted as sufficient at all events to provide 'frugal comfort' for a man, his wife and at least one dependent child. For present purposes it is enough to say that, until a proper investigation demonstrates the contrary to be the case, we cannot but hold that the amount provided is more than sufficient to meet the normal and reasonable requirements of an unmarried unskilled worker with no dependants to support out of his earnings. And the same may be said of the living or basic wages determined by authorities functioning under State legislation as appropriate for male employees within their jurisdiction." [2]

I take the view that the requirement that the "wage" or "part of a wage" referred to in section 25 of the Act must be "just and reasonable" cannot be fulfilled unless the Court has regard for both the "needs" principle and the "economic capacity" principle. Indeed, practical effect, that is to say, the translation of it into a definition in terms either of purchasing power or of money, cannot be given to the first mentioned principle except with reference to the second. For it is, in the view of the Court, axiomatic that the "needs" to be contemplated in the assessment of a basic wage must be measured as liberally as the economy of the nation may permit.

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(1) 50 C.A.R., p. 191. (2) Ibid, at p. 208

If one may assume the efficacy of the Commonwealth Statistician's "C" series of index-numbers of retail prices for the purpose of maintaining the purchasing power of wages, there can be, I think, little doubt that the purchasing power of the basic wage for adult male employees prescribed as a result of the 1937 inquiry [1] by this Court has been more than adequately maintained. The "prosperity loading" portion of that basic wage was not made adjustable in accordance with the changes in the index. But even had this been so the equivalent of the 1937 decision, *e.g.*, 75s. per week as calculated upon the basis of the index number for the six capital cities (1st quarter 1937 : 864) would be now, as calculated by applying the index number for the six capital cities for the 2nd quarter of this year, 133s. per week. In point of fact the current basic wage upon the six capitals calculation is 138s. per week, that is to say, it is 5s. per week higher than the equivalent today of the full 75s. per week ("needs" basic wage plus "prosperity loading") awarded in 1937. This increase in the real value of the basic wage of 1937 has resulted from the "interim" addition to the "needs" basic wage made by the Court in 1946.

It must be assumed—there being no evidence to the contrary—that the basic wage awarded as a result of the 1937 inquiry was adequate for the adult male unskilled labourer at that date. Provided that the "C" series index is an appropriate measure of the variation in the purchasing power of wages since 1937, it will be evident that the standard of living provided by the basic wage resulting from that inquiry has not only been maintained but has been increased as a result of the 1946 "interim" basic wage decision.

Two questions have to be answered: the first: whether the "C" series index has properly measured the fall in the purchasing power of wages, and in particular the basic wage, since 1937; the second, whether some further increase of the standard of the national adult male worker in question can, in the light of all the evidence, be safely and effectively made.

The Acting Commonwealth Statistician stated in evidence that he was satisfied, having taken account of some influences which might have caused an overstatement as well as some which might have caused an understatement, that the "C" series index numbers since before the war had been a reasonably reliable measure of changes in the level of retail prices appropriate to the expenditure of wage-earner households. Apart from this, a section of the Unions' submissions concerned the propriety of adjusting wages by means of a price index, which by its nature could not measure rises in the cost of living if they resulted from a rise in the necessary standard of living, due to a change in convention or availability. The Acting Commonwealth Statistician in evidence indicated that this part of the Unions' claim did not concern the "C" series index *as a price index;* but he provided some details of possible changes in customary standard affecting certain items, chiefly rent, which might have caused a change in the "cost of living" in this sense. He quoted the difference

[1] 37 C.A.R., p. 583.

between the rise in average rents of four and five roomed houses which had occurred between June, 1933 and June, 1947, as revealed by the Census, and the corresponding rise in the rent of those houses *in a price sense*, as measured for the "C" series index. The difference, amounting to 1s. 8d. a week for the six capital cities combined, was not in his opinion due to any failure of the "C" series sample to measure the "price" element in the pre-censal rent rise with reasonable accuracy, but was a change in "cost of living" due to other factors than price, presumably a change of standard. A further difference of 5d. had emerged between June, 1947 and December, 1948; for a number of reasons it was uncertain whether any appreciable part of this was a "price" rise which should have been included in the "C" series retail price index. After examining the evidence on rent and other matters on which a change in conventional standard had been alleged, I am satisfied that the sums involved are small in comparison with the actual increase in the basic wage standard achieved by the 7s. increase granted in 1946. Moreover, if the alleged inappropriateness of the index has been almost entirely due to rising necessary or available standards, affecting certain items, my conclusion remains almost unchanged. Nearly 5s. of the 1946 increase must be taken as having operated to effect a significant raising of the standard recognised by the 1937 judgment. And this raising of the standard has been maintained by the application to the 1946 "Interim" addition [1] of the "C" series index.

In the *Food Preservers case* of 1941 [2] I described the basic wage of the 1937 judgment as "a minimum wage deemed appropriate, adequate and sufficient for the unskilled labourer in industry, the incidents or circumstances of whose employment are not regarded by the Court as warranting any differentiation or allowance in remuneration above the amount so declared." I do not claim any quality of elegance for the description. But I think that this must be said of it: that it purports to describe just what the definition of basic wage now included in section 25 of the Act comprehends. Indeed, the concept of the basic wage has never in the history of this Court paid any regard to the additional remuneration, by way of "marginal" payment, of an employee, attributable to any particular incident or characteristic of his work, or to the compensation which might be deemed to be proper for any unusual environment or circumstance in which it happens to be performed. The choice by Mr. Justice Higgins of the "unskilled labourer" as the type or class of employee for whom the basic wage might be regarded as appropriate was wholly attributable, I believe, to the fact that the work performed by an "unskilled labourer" was, at least at the time of the choice, of a type which was regarded as fittingly placed at the lowest level of any occupational grading for "marginal" purposes because it represented work which called for no additional remuneration or compensation than that provided by payment of the lowest wage which the Court was prepared in any case to prescribe.

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(1) 57 C.A.R., p. 603. (2) 45 C.A.R., p. 343 at p. 350.

I have thus concluded that the defined characteristics of the "basic wage" for adult males in respect of which the Court has jurisdiction under section 25 of the *Commonwealth Conciliation and Arbitration Act* 1904-1949, are the very characteristics of that basic wage which was determined by the Court by its 1937 judgment and introduced by it, in accordance with that judgment, into its determination of the several industrial disputes and applications then before it for settlement or decision. For the latter was (i) a wage or a part of a wage (ii) which was regarded, and fixed, as being just and reasonable for an adult male (iii) without regard to any circumstance pertaining to the work upon which, or the industry in which, he was employed.

The result of this conclusion, in combination with the opinion I hold of the effect of the expert evidence concerning the appropriateness of the "C" series index as a measure of changes in the purchasing power of a basic wage so declared and defined, is that my decision, as to whether an order of alteration of the basic wage for adult males in consequence of these proceedings should be made, will necessarily depend upon whether I am impressed with the propriety of raising the standard of living inferentially found by the Court to be appropriate as a basic wage earner's standard by its 1937 judgment to a level even higher than that to which the 1946 "Interim" orders have already raised it. In the expression "raising the standard of living" I include either or both of two methods of alteration, namely, (a) an improvement of the standard of living of the notional family group for which the present basic wage has been hitherto thought adequate (b) a provision of an adequate wage to meet the cost of a standard of living found to be just and reasonable for a family group larger than the notional group to which I have referred.

In this connexion, I refer to the statement submitted on behalf of the Australian Council of Trade Unions wherein it is sought that the Court "proceed to a hearing and determination of the claims following, and in the course of such hearing, conduct an investigation to determine the actual living costs of a family of five—a man, wife and three dependent children—based on a standard of living related to socially necessary requirements and the productive capacity of the nation, and a method by which such standard can be adjusted in accordance with increases in such productive capacity:—

(a) that the basic wage for all adults be an amount of £10 per week for the capital cities taken together, with higher or lower amounts for the separate capital cities in accordance with the actual difference in the cost of living as between the average of the six capitals and the several capital cities, with an additional amount of 10s. per week at Yallourn, Morwell, Whyalla and Iron Knob;

(b) that the prescription of lesser basic wage amounts in country areas be discontinued and the capital city basic wage amounts be the minimum for the respective States except where the six capital cities amount is adopted.

(c) that such wage shall be adjusted at yearly intervals by additions proportionate to the increase in the productive capacity of Australian industry.

(d) that the basic wage ascertained in accordance with the preceding claims . . . be adjusted at quarterly intervals by the application thereto of a specially designed system of index numbers which will fully provide for increases in the actual cost of living."

In support of the foregoing claims the Unions submitted—

(a) that the basic wage should be an amount necessary to meet the actual costs of living of a family of five (as described) based on a standard of living related to socially necessary requirements and on the highest level consistent with the productive capacity of the nation;

(b) that the costs of this standard should be met by the basic wage. "Other earnings should be available to workers for purposes of costs over and above this standard."

(c) that an average family unit of at least five persons (*scilicet* a man, his wife and three dependent children) is necessary to preserve existing population levels.

(d) that the adoption of a basic wage amount sufficient to maintain a family of five without hardship is necessary as a first step to the maintenance of present population levels.

(e) that as the capacity of industry to produce increases so should the minimum standard of living increase.

(f) that information available shows that the capacity of industry to produce has increased and is increasing to an extent which makes possible a greatly increased and progressively increasing standard of living as a national minimum.

(g) that the level of prosperity does not differ materially as between the States;

(h) that workers, irrespective of sex, should be paid at the same rate and the elimination of differing rates is necessary to prevent unfair discrimination by employers as between male and female workers.

I think it is fair to include as a submission in support of the claims that the Unions have alleged "that the basic wage has not been adjusted in a manner to preserve and maintain a constant real standard of living for the Australian worker"; that "this maladjustment has resulted from the failure of the "C" series index figures to measure accurately the increasing costs of food, groceries, rent, clothing and miscellaneous articles necessary to be bought by the basic wage worker"; and "that in consequence of this failure the standard of living of the Australian worker has fallen." I have already said that, in my judgment, these allegations concerning the "failure" of the "C" series index have not been sustained. There is certainly no ground for allowing the allegation that the present basic wage has fallen in purchasing power below the basic wage determined by the Court in 1937. On the contrary the present basic wage provides,

as I have shown, a significantly higher standard of living than did the basic wage determined in the 1937 inquiry.

Finally, it has been claimed by the Unions "that the share of the national income going to the wage and salary group has decreased whilst the share to other groups has increased" and that "at the same time the percentage of the total population included in the wage and salary earners' group has increased."

This claim may I think be regarded as vital to the case presented on behalf of the Unions. It has certainly required very careful consideration by all concerned. The employers in the course of their submissions rightly described as the "cardinal doctrine" of the Unions' case that "it is a function of the Court deliberately to plan redistribution of the national product." In my view, however, the only function of the Court is to assess a wage (or a "part of a wage") which is just and reasonable, bearing in mind the "just and reasonable" claims upon the national product of all the different sections of the community. It is of course limited to performing this function in the settlement of disputes. It operates, moreover, within a constricted field; so constricted that it cannot, if it would, assume the role of an economic planner.

The claim that "the share of the national income going to the wage and salary group has decreased whilst the share to other groups has increased" is put forward upon the basis of estimates made by Mr. H. P. Brown of the Commonwealth Bureau of Census and Statistics and incorporated in statements of "National Income and Expenditure" presented by the Federal Treasurer on the occasions of his bringing forward the budgets for 1948-1949 and 1949-1950, and of a paper upon the composition of personal income read by Mr. Brown to the Canberra Branch of the Economic Society in November, 1948. From figures extracted from these documents tables were prepared and submitted to the Court in order to show that since the year before the recent war broke out the percentage of national income comprised of "wages, salaries, pay of members of forces, etc." had fallen; whereas the percentage comprised of the income of "unincorporated businesses, farms, professions, etc." had increased. It was also submitted that the studies of "personal income" made by Mr. Brown indicated that the proportion of the whole of personal income earned attributable to that earned by the "wage and salary earners' group" had grown less.

The assumption at the basis of the Unions' claim is that the sources of income shown in Mr. Brown's estimates may be validly used as an index to the division of the community into mutually exclusive "classes." This assumption is not, of course, well founded. For instance, much of the income from "net rent and interest paid" (which the "National Income and Expenditure Statements" abovementioned suggest rose from £93m. for 1938-1939 to £115m. for 1948-1949), since it includes the rental value of owner-occupied dwellings, is strictly speaking "income" received by the "wage and salary earners' group." I would regard the share of the wage and salary

earners' group in the property of savings banks, friendly societies, insurance companies and such institutions and in the income derived therefrom, as being in the nature of income received by that group. Furthermore, the significance to the present case of an apparent fall in the proportion of the income derived from "wages, salaries, etc." cannot be truly measured until a definition and separation of "wages" and "salaries" enables the Court to observe whether and to what extent the latter part of the separation, namely, "salaries," has been adjusted, so far as nominal rates are concerned, to a rapidly rising price-level in the same way as the former.

It would certainly be most inappropriate, and I would add quite unjustifiable, to use Mr. Brown's studies of movements in the percentage of national income or of personal income attributable to "wages, salaries, etc." for the purposes suggested by the applicants. It should be understood that these studies were made for a purpose entirely different from that to which the Unions would put them. I am convinced after a careful examination of them and a consideration of the different sources from which the various estimates have been derived that they afford no safe guide in the determination either of wage policy generally or of a just and reasonable amount to be paid by way of a basic wage.

Since I hold that the foundation for the Unions' claim under discussion is, for the reasons indicated, both inappropriate and uncertain, I am not prepared to accept the submissions which were made upon a supposed acceptance of that foundation. It is unnecessary for me to say more than this: that I reject Professor Higgins' thesis that social justice requires a transfer to the "class" of "wage and salary earners" of some of the national product allegedly going to the other "classes" (in particular the "classes" of "unincorporated businesses, farmers, professionals, etc." and receivers of "net rent and interest") in the Australian community.

In fairness to Mr. Brown, since I have referred to the inappropriateness and incompleteness of his studies, when it is sought to apply their results to a purpose for which they have not been intended, namely the measurement of a "basic wage," I should refer to what he himself says in the concluding paragraph of his article. "The figures suggest that a detailed examination of the relationship between labour, entrepreneur, property and personal status income *might* assist in considering such matters as wages policy, farmers' home price schemes, problems of retail distribution and interest rate and rent policy, but as they stand they do not seem adequate as a basis for any firm conclusion. Moreover it would be desirable to have figures for at least another five years before 1928-29." I have pointed out that the function of the Court under the Act is far too constricted to justify any hope of a significant control by it of "wages policy."

The following submissions made on behalf of employers cannot be rejected:—

(i) that the variations in the proportions for different years of different types of income, as shown in Mr. Brown's calculations, are not sufficiently wide or consistent to establish firm conclusions, having regard to the large part which estimates play in deriving his national income figures, and also the major influence exerted by variable seasonal conditions and prices for farm products (for instance, 1938-1939, his base year is not a reasonable standard of prewar experience for farm incomes owing to severe drought; while the past three years and the current year have been favoured with above-average seasons);

(ii) that evidence given in the later stages of the case confutes the proposition that wages have not kept pace with prices;

(iii) that Professor Higgins' "conception of productivity increases" has not been substantiated.

It is also undeniable that, contrary to Professor Higgins' estimate, the proportion of working population constituting wage and salary earners has not increased very much over the last ten years. The witness was bold but unconvincing when he declared that the relative position of "wage-earners" to other sections of the community was less satisfactory (to the "wage-earners," of course) than in some other "advanced" countries. I do not accept the view that "labour's" share in the real national income of Australia could in existing circumstances be enlarged by any means within the power of the Court without serious inflation. In my judgment the inflationary effect of any attempt on the part of the Court to enlarge that share would be even greater now than at the time when the witness expounded his thesis. I confess that I do no understand the significance of his statement that "there is some point at which inflation would tend to become cumulative and that has to be avoided at all cost." My own view is that the vice of inflation is the social injustice it perpetrates to the sections of the community whose incomes do not increase with prices or the value of whose "savings" are seriously diminished by the falling purchasing power of the currency. In my estimate such an injustice is already very evident in the present situation. It is of a sufficiently serious nature to be noticed by all authorities (such as this Court) charged with a function to be exercised according to equity or to "justice and reasonableness." I am content to allow my rejection of the applicants' case for a re-distribution, by way of wage increase, of the national income to rest upon the following principal grounds, namely: (1) that it has not been established that social justice calls for a transfer to wage and salary earners of part of the income of other sections of income-receivers in the Australian community; (2) that re-distribution of the national income is not a direct function of the Court; nor, in the light of the now circumscribed powers of the Court, could any attempt by the Court to achieve some real re-distribution be effective; (3) that, in any case, the variations from year to year in the "shares" in the national income of incomes derived from different sources has been in a large measure attributable to the vagaries of climatic or seasonal conditions, affecting

the harvests, wool clips and sheep and cattle slaughterings, and of the prices available for our farm, station and orchard products; and (4) that, in any case, the "share" of wage and salary income in the national income cannot be significantly increased by a "basic wage" alteration without the grave risk, indeed the certainty, of serious inflation involving much injustice upon those whose money incomes are not readily adjustable in accordance with the resulting higher prices. I believe that in the light of the circumscription of the jurisdiction of the Court under the Act as amended, it must be quite illusory to claim that, in the absence of a control of profits and prices co-ordinated with its own action, the Court can effectively re-distribute the "shares" in the national income of the different classes of personal income receivers.

Parenthetically, it is noteworthy that the year 1938-39, taken by the applicants for their purposes of comparison, was a year of relatively poor returns to farmers. Since 1948-49 was one of good returns, it might have been fairer to have taken a good year as a basis of comparison. If 1936-37, a good pre-war year, had been taken, Mr. Brown's figures would show that the "share" of income from wages, salaries, etc., had not fallen in the comparison with 1948-49, as a proportion either of national or of personal income.

I now turn back to the claim of the Unions that the "basic wage" should be an amount necessary to meet "the actual costs of living of a family of five based on a standard of living related to socially necessary requirements and on the highest level consistent with the productive capacity of the nation." I take this to mean that the "basic wage" should provide upon as liberal a scale as possible for those desires of the standard family as society or the social conscience might regard as "fair and reasonable."

At the outset it may as well be pointed out that the Court has been afforded no evidence at all of the actual costs of living of a family of five based on any standard of living, actual or desirable; nor, indeed, of the costs of living of any family of any size. Nor is there any evidence at all to support the suggestion that the present "basic wage"—which is of greater real value (as I have found) than the "basic wage" declared by the Court in 1937—is not sufficient to meet the actual costs of living based on a standard of living related to socially necessary requirements and on the highest level consistent with the productive capacity of the nation for the family group for which it (the 1937 wage) was regarded as being adequate.

On the subject of the claim for selection of a family unit of particular size for the purpose of assessing a "basic wage", on the basis that it should be assessed at an amount which will be adequate to provide an accepted or acceptable standard of living for such a family unit, I adopt without repeating at length what Dethridge C. J. said in his judgement in the 1934 Basic Wage Inquiry.[1] Moreover, there is in fact no ground given in the Harvester case[2] for the "assump-

(1) 38 C.A.R., p. 144. (2) 2 C.A.R., p. 1.

tion" [1] that "a labourer's home" was "of about five persons." [2] It appears that it was many years later that Mr. Justice Higgins found justification for his "assumption" which, it is to be noted, was based upon an impression of an actual situation in labourers' homes and not upon a concept of dependency, such as that of "full measure of parental responsibility", discussed in the reports of the South Australian Board of Industry of 19th December, 1938 [3] and 9th November, 1940 [4] or in the study, by Mr. Rowntree, to which he referred in his *New Province for Law and Order.*

The reason which actuated tribunals in the past to assure themselves of the adequacy of a basic or living wage to meet the needs of a family unit of a particular size has been that the wage they were called upon to determine was to be the sole source of the family income, the sole means of providing for those needs. Today the situation is different.

The procedure of providing that the basic or living wage should be sufficient to provide an accepted or socially acceptable standard of living for a family group of any particular size was always open to this criticism: That, inasmuch as it became payable at once to all adult male wage-earners, it advantaged those with a smaller or no family group (who thus achieved a higher standard) at the expense, or to the disadvantage, of the members of the larger family group. The wage intended for the needs of, say, a five-unit family was paid to wage-earners (a majority of all wage-earners) with a lower dependency than that of a wife and three children; it enabled them to establish for themselves a better standard, and this in time—and in no short time—justified a further review of the five-unit family wage.

Today the situation in which the Court finds itself is different. So far as provision of an accepted or socially acceptable minimum standard of needs of a man, his wife and one or more dependent child of children is concerned the basic wage, like all other wages, is supplemented by the payment to him of child endowment. In the circumstances one can have no reluctance now to accept with but one modification, the statement made by the Court in 1934 as follows:—

". . . . the adoption of a (particular) family unit is not necessary, and that what should be sought is the independent ascertainment and prescription of the highest basic wage that can be sustained by the total of industry in all its primary, secondary and ancillary forms. That no doubt is the object, but the adoption of something like the real average family as the unit to be provided for is not without its use in the attainment of that object. There is no clear means of measuring the general wage-paying capacity of the total industry of a country. All that can be done is to approximate, and one of the methods of approximation is to find out the actual wage upon which well situated labourers are at the time maintaining the average family unit . . . . In determining the amount of living or basic wage, there is sound economic warranty for the ascertainment of the real average family unit and of the cost of providing something like the standard which such

(1) New Province for Law and Order at p. 95. (2) 2 C.A.R., at p. 6.
(3) 15 S.A.I.R., p. 506. (4) 16 S.A.I.R., p. 404.

families of well employed labourers have already reached. But obviously if the real average family unit is departed from, or a standard is sought for the likely maintenance of which experience gives no reason to hope, then an unrealizable wage level may be ordained."[1]

The modification I would now make to the passage quoted is that I would substitute the term "accepted notional family unit" for the term "average family unit" or "real average family unit" used therein. For whatever may have been said—as in 1940—of the inadequacy of maintaining at current acceptable standards a family group of some particular size (*e.g.* with two, or three dependent children) on the basic wage determined in 1937, it has been accepted that it was not inadequate to maintain *some* family group. (Beeby C. J. thought in 1940 a family group of three). Its adequacy in this respect has been supplemented with the passage of the Child Endowment legislation.

I would call the family group for which the 1937 wage, as adjusted and increased and supplemented, remains today adequate, a "notional" rather than a "particular" family group. And I find no ground in what has been put before us to depart from it.

The Unions have alleged that an "average" family unit of at least five persons, including three dependent children, is necessary to preserve existing population levels. Although one may concede this, there appears no ground for suggesting that the actual "average" income of male wage-earners would not support at a reasonable standard such a family. The Unions, however, go on to assert that the adoption of a basic wage amount sufficient to maintain a family of five without hardship is necessary as a first step to the maintenance of present population levels. This proposition, it need hardly be said, suggests first, that there are a significant number of basic wage or near basic wage earners in the community and secondly, that of these there are a significant number who have a family of five to support out of their wages supplemented only by an allegedly insufficient payment of child endowment. I do not accept the proposition because I do not accept the suggestions upon which is is based. Furthermore, there is no evidence, "expert" or otherwise, to suggest that the circumstance that the average family including dependent children contains fewer than three such children is or has been due to the inadequacy of family income; nor is there anything before the Court to inspire a belief that a rise in the "basic wage" portion of wages will have any effect at all on the average family unit in Australia.

I have spoken of "the 'basic wage' portion of wages." It is, indeed, necessary, when speaking today of "alteration of the 'basic wage' ", so as to accord with some alleged increase in the capacity of industry, or of the economy, to support a new general level of wages, to emphasize that the "basic wage" is today for all practical purposes an ingredient of wage rates and not a wage rate in its own right. An examination of the awards made under the *Commonwealth Conciliation and Arbitration Act* and under the legislation of the States demonstrates quite clearly that there are few, if any, workers who do not receive,

(1) 33 C.A.R., at p. 149-150.

upon the score of some circumstances said to be pertaining to their occupation or industry, some sort of a "loading", allowance or "marginal differentiation" above the general level of minimum payment which is universally accepted as the basic or living wage, usually the "needs" basic wage plus the "prosperity loading" of this Court. Beyond all question it is right and proper that consideration of the appropriateness, that is to say, "justice" and "reasonableness" of a "basic wage" with reference to economic adversity or prosperity, easiness or strain, cannot, therefore, ignore movements in the level of both total wage rates and total earnings, attributable to the circumstances of that very adversity or prosperity, or to the effects of that economic easiness or strain in either particular industries (as, for instance, where competition for labour is keen; or again, where orders are few) or in industry as a whole.

A communication addressed to the Commonwealth Statistician, seeking an estimate of the extent and significance of movements in the secondary wage or so-called "marginal" structure or portion of wages since the pre-war period produced an interesting table. It contained an index embracing the results of a study of some 2,600 award rates in some 680 individual manufacturing occupations. Whilst it relates only to the wages of adult male employees, a similar study of rates of adult females being impracticable for the sufficient reason that no certain "basic wage" for females was discoverable by the Statistician, the picture of movements presented by the index is one of movements if anything of a lesser degree than a corresponding picture of female rates drawn with relation to the generally accepted minimum rate for unskilled female employees in 1938-39—namely, 54 per cent. of the adult male basic wage—would have shown. Of his index the Statistician says: "So far as my investigations have gone it appears that the trend of secondary wages for adult males in manufacturing (taken as one group) has not been appreciably different from that in all industries taken together."

According to the index the nominal average basic wage, *i.e.* the average of the different Federal basic wages—"needs" basic wage plus "prosperity loading"—and the State basic or living wages, embodied in the award rates included in the compilation of the index, had at 31st March, 1950, increased since 1938-1939 by 68 per cent.—*i.e.* by $4\frac{1}{2}$ per cent. more than the "C" series index numbers, due principally no doubt to the 1946 "Interim" addition—whereas the nominal average "secondary" wage (the difference between the prescribed wage rate for an occupation and the basic wage (State or Federal) relevant to the occupation) had over the same period increased by 113 per cent., compared with an increase of $63\frac{1}{2}$ per cent. in the numbers of the "C" series index. It is beyond all question that the Statistician's figures completely, and they should finally, refute the assertion, so frequently and so irresponsibly made, and not only by Union officials or members, that wages have not kept pace with prices since the pre-war period. The (effectively weighted) average nominal wage rates, as shown by the Statistician's table, have risen by over 10 per cent. more than the "C" series index numbers, that is to say by more than two shillings in

the pound. The most enthusiastic critic of the "C" series index would not be audacious enough to claim anything like that degree of "failure" upon the part of what is the best measure available to respond to the fall in the purchasing power of money.

Another witness—Mr. Oxnam, a lecturer in Economics who made a study of movements not only of prescribed wage rates in all industries but also of earnings in manufacturing industries—presented a very similar picture of movement. He gave 84 per cent. as the extent of the movement upwards, since 1938-39 to the first quarter of this year, in the weekly wage rates prescribed for adult males in all industries. His corresponding figure for the movement in hourly rates was some 10½ per cent. higher—the difference being, of course, mainly attributable to the reduction during the period of standard hours of work from 44 to 40 per week, occasioning an adjustment of the hourly rates of pay. In manufacturing industries, Mr. Oxnam estimated that average weekly wage earnings per adult male, excluding "salary-earners", exceeded average weekly wage rates by nearly 11 per cent. in 1948-49.

Latest figures (June quarter, 1950) made available by the Commonwealth Statistician indicate that since 1938-39 the increase in his adult male nominal weekly wage-rates index is 89 per cent.; the increase in his adult male nominal hourly wage-rate index is 102 per cent.; the increase in his adult female weekly wage-rates index is 126 per cent. and the increase in his adult female hourly wage-rate index is 151 per cent.

Corresponding with Mr. Oxnam's estimate of 11 per cent. referred to above, the Commonwealth Statistician's figure was 13 per cent. for 1948-49; it had risen to 15 per cent. by the March quarter of 1950. The Commonwealth Statistician has been careful to point out that some of the increase shown was probably due to increased overtime.

Without accepting as absolutely conclusive the extent of movement suggested by the foregoing studies, it is manifest that the level of real award wage-rates, their purchasing power, has risen by something in the region of 12 per cent. in the case of adult males and considerably more in the case of adult females since 1938-39 (the date used by the Unions as a basis for most of their comparisons), and that actual wage-earnings per adult male in factories (including of course "overtime"—added to by the 40-hour week) are some 14 per cent. higher than the average of nominal wage rates. The report of the Governor of the Commonwealth Bank has estimated the increase in average weekly earnings during the past year at about 12 per cent. From the June quarter, 1949, to the June quarter, 1950, the Commonwealth Statistician shows an increase in average weekly earnings of 11.2 per cent. in manufacturing and 11.1 per cent. in all industries. In either case the increase is greater than the rate of increase in the numbers of the "C" series index.

In answer to the submissions, based almost entirely upon money value returns of different types of production, put forward on behalf of the Unions, there has been overwhelming proof of disturbing unsatisfied demands, that is to say, grave shortages, of such basic things as coal,

steel, power. The heavier vital industries are failing consistently to keep pace with orders for their products. Even essential supplies are not coming forward. The gravity of the inadequacy, in the supply of coal and steel (caused by coal shortages), is to a considerable extent being concealed by the figures of expansion of output since the war in what may be termed "light" industries. Fulfilment of most of the current demand for the products of these latter is, however, still due in part to larger importations. It is beyond question that the threat to the "light" manufacturing industries of competition from imports is rapidly gathering weight. For these any considerable increase in wage levels may well prove to be a major calamity. Their only hope of survival may then be by way of succumbing to the temptation of seeking and obtaining a government subsidy, the very mention of which should, I think, be avoided at all costs at the present period, when the exigencies of the world situation and the obvious demand for a large and growing expenditure upon preparations for military defence must occupy the first attention of our treasuries. In short, I do not think that the Court can possibly view the unbalanced state of the Australian economy with a degree of equanimity sufficient to embrace an experiment which at the best cannot but be suggestive of a considerable increase in the general level of costs. It is, of course, true that, owing to good seasons, our rural production has been happily able to avail itself of greatly increased prices for farm, orchard and station products. The wool clip is higher than in the years before the war; the last wheat crop (in bushels) was much higher. Indeed the volume of production of farms generally is higher; although in respect of some particular items the growing demands of the Australian population has resulted in a restriction of exports.

The principal effect of the greatly increased prices available overseas for most of our exportable rural products has been to increase vastly the inflationary trend; by which I mean the excess of the demand for consumer goods over their availability, and the willingness to pay higher prices to obtain them. The large increase in the return from sales of some of our primary products, occasioning the more insistent demand for consumer goods is far from being counterbalanced by their production or availability. The pressure and threat of competition from imports upon local manufacturers of some consumable goods is great. Moreover, at least equally great is their problem to obtain and retain labour in order to continue their production. Larger amounts of working capital are being needed to meet rising costs.

Any considerable increase in wages costs must increase the threat of imports to local production and employment. Such a threat will be principally directed against the unessential industries. I am prepared to think that if this brought about the transfer of labour from the unessential to the essential industries a better balance in our production would be achieved. By the same token, the threat of inflation might, depending upon the extent of the transfer achieved, become in such circumstances less serious. The present situation of unbalance in our Australian production has come about, in my judgment, largely

because at the end of the war we found that our price-levels had risen less than those of countries which had been our pre-war competitors. In consequence, we embarked upon the manufacture of goods of a type which we had previously imported. This has often been hailed as a splendid achievement by Australian industry. Inasmuch as it has diverted resources of labour and materials from industries more basic and essential to our development, it has been wasteful. Subsequently, as the difference between our own price levels and that of our competitors grew less (our wage costs, for instance, fairly rigidly controlled during the war, soon responded to the pressure upon the market for labour), the newer industries to which I have referred have become more and more susceptible to the attack from competing imports. Some of them have been pressing for tariff protection. Yet the older, and more basic, industries continue still to have an insufficiency of men and materials.

It is my opinion, nevertheless, that the gap in relative price levels, as between ourselves and our competitors, has not yet been reduced sufficiently, in other words, competition from imports is not yet general enough to restore, by transfer of labour and materials to our basic and more essential industries, the balance of our economic activity. The major threat is consequently the threat of inflation. It will continue so long as our production remains, as it is today, unbalanced.

I believe that what I have said—that the major threat to our economy is the threat of inflation—is supported by the fact that there has been a resumption of rearmament on a large scale overseas. The result of this must tend to a continued rise in overseas price levels, instead of the stabilization which we were entitled to expect after the effects of the devaluation of September, 1949 had worked themselves out. And if the tariff is used as has been urged to save threatened industries the unbalance to which I have referred will, to that extent at least, continue.

As indicated, I have not overlooked the fact that there has been some considerable lift in the prices of imports. In any diagnosis of the domestic price level, however, the effect of this upon the retail prices of consumable goods and services has surely been very much smaller than the effect produced by great excess of supply over demand for such goods, combined with the bargaining power, in a short market, exerted by labour of almost every kind against employers desirous of meeting existing, and of expanding for the fulfilment of potential and future, orders.

The present economic situation in Australia is indubitably one of insecurity and of an accelerating inflation, dangerous in character, because it is moving rapidly in the direction of a loss of confidence in the future capacity of industry to produce at a profitable return, and a co-related loss of confidence in the future value of savings, that is to say, a disinclination to save: which means a tendency towards an immediate expenditure of income, a willingness to pay higher prices for what goods are available.

In the present circumstances, the Court can, I think, do much harm to the economy, and therefore to the community as a whole, the greater part of which is comprised of the wage earners, by adding to the costs of production by way of establishing even higher wage levels, both nominal and real, than those which already exist. For the principal evil of the form of inflation which the evidence before the Court indicates to be rapidly gathering weight (apart from the grave injustice it perpetrates against the receivers of fixed or less responsive incomes) is already becoming very apparent in the investment by savers of their capital, and by workers of their labour, in the less essential forms of production, of goods which we could normally, and probably in the future will be able to, buy more cheaply and consistently from abroad, at the expense of production, in accordance with urgent requirements, of goods which are essential to the real development of the potential resources of this country.

The rapid deterioration in the value of money must, perhaps even with some serious sacrifice on the part of all, be arrested. Failure to arrest it will surely endanger this unbalanced economy to the material detriment of our established industries and to the general unhappiness, perhaps the early poverty, of large numbers of our people. I am not prepared to take any risks about this matter. There are other steps necessary to be taken by other authorities charged, as well as this Court, with such action as will adjust, so as eventually to remove, the effects of our unbalanced economy. Their existence, even their inaction, in some regard, to date does not absolve this Court from doing what it understands to be its particular duty. I believe that today its duty is to give a lead to the other instruments of adjustment by taking a firm stand to stabilise, as well as lies in its power, the level of wages; for it is undoubtedly principally owing to the rapidly increasing level of wages, both nominal and real, that costs and prices are now tending to become out of control. I say "as well as lies in its power", because it must be emphasised that its power is very limited. It has jurisdiction over only a part of the wages structure; so far as award wages are concerned it has no stabilising or even co-ordinating control over what may be awarded on the score of remuneration for, or of conditions obtaining in, particular classes of work or in particular industries. It has no influence, as in the days of the National Security (Economic Organization) Regulations, over concessions by individual employers, or by industries, competing amongst themselves for labour, of higher and still higher wage payments or of more and more attractive (but costly) conditions of employment. Nor has it power to withdraw the expansion of credit due to war-time conditions. It has no power to take steps to adjust in accordance with actual productive effort the totality of the level of wages resulting from and after war-time restrictions. The condition of so-called "full employment" does not mean that the increase in "employment" since the pre-war period is any sort of an index to an increase in the real productive effort of the community measured in essential goods and services. Since the introduction of the 40-hour week, labour costs in respect of the production of the last four of any

forty-four hours of work in a week have increased by at least half of what they would otherwise have been. There is absolutely no ground for believing that employees have worked harder during the new standard of forty hours in a week than they did in the first, or any of forty of the old standard of forty-four. The truth is that four hours of potential production at ordinary rates of pay is being lost per week. Where it is made up, this has been in overtime at additional and increased rates of payment. To say that this has not been a very great factor in the present inflationary trend is to close one's eyes to an obvious fact. Nevertheless, as I have said, the Court should not throw up despairing hands. However limited its power may be to "stop the rot", that power should be exercised. A proper exercise of it in the present case would, I think, involve a refusal to alter the existing basic wage for adult males. The amount which the Court should find to be just and reasonable for an adult male employee, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed, should, in all the present circumstances, be declared to be not higher than the equivalent of the 1937 basic wage as varied by the "Interim" decision of 1946.

The principle proposed, of comparing estimates of "real productivity per person employed" with real wages—proposed by both Mr. Evans, who appeared for the Australian Council of Trade Unions and Mr. Seaman, the economist attached to the South Australian Treasury and a member of the South Australian committee charged with the presentation of the claims of that State before the Grants Commission is, in my judgment, incapable of satisfactory application to the problem which confronts the Court. There are no reliable figures of comparative real productivity. Mr. Evans felt able to claim that the figures he chose to cite demonstrated a result wholly favourable to the claim that the percentage increase in real wages since the years just before the war did not correspond with the increase in real productivity per person employed. On the other hand, Mr. Seaman summarising his own study of the aspect of the case said that "even allowing that the 1937 determination of the Court, together with the then existing wage margins and conditions of employment, could have been somewhat higher without serious repercussions upon the economy, it would appear that the subsequent increase in real wages of some 17 to 20 per cent., the reduction in hours, the extension of paid leave, and other liberalization of conditions have gone somewhat further than might appear warranted by the real national income of the community." I have not been impressed by the so-called "evidence" quoted in support of the the Unions' claim that the advancement in real standards has lagged behind the increase in productive effort.

I conclude this portion of my judgment by an allusion to an interesting study made by Mr. Seaman of a comparison of the present equivalent of the cost of the standard set up by the so-called Royal Commission on the basic wage of 1920 and the present basic wage. ("Needs" basic wage plus "prosperity loading"). The results of this study appear in the following table prepared by the witness:—

BASIC WAGE COMMISSION'S 1920 LIVING COSTS AND 1949 EQUIVALENTS.

Group.	Sydney.		Melbourne.		Brisbane.		Adelaide.		Perth.		Hobart.		Six Capitals.	
	Amount. Shillings Per week.	Index.	Amount. Shillings Per week.	Index.	Amount. Shillings Per week.	Index.	Amount. Shillings Per week.	Index.	Amount. Shillings Per week.	Index.	Amount. Shillings Per week.	Index.	Amount. Shillings Per week.	Index.
November 1920 *Allocations.*														
Food and Groceries	46.7	1225	46.1	1220	43.1	1117	47.1	1225	45.0	1113	48.9	1293	46.2	1209
Rent	22.0	980	20.5	807	17.0	634	19.5	783	19.0	718	19.0	904	20.6	851
Clothing	27.0	1323	29.0	1422	26.0	1274	28.3	1384	27.7	1359	29.2	1430	27.9	1365
Miscellaneous	21.4	1209	20.9	1181	20.1	1139	21.2	1200	22.2	1262	19.8	1124	21.0	1194
Total	117.1		116.5		106.2		116.1		113.9		116.9		115.7	
December Quarter 1949 *Equivalents.*														
Food and Groceries	54.2	1421	54.8	1451	52.7	1367	53.8	1398	60.2	1488	57.3	1514	54.6	1429
Rent	23.5	1049	24.8	977	23.4	873	22.8	914	23.7	897	19.8	941	23.8	983
Clothing	44.1	2161	43.2	2117	42.3	2072	43.2	2113	43.9	2155	43.5	2129	43.6	2132
Miscellaneous	24.6	1389	24.7	1397	23.2	1316	24.9	1410	23.0	1305	21.7	1234	24.2	1378
Total	146.4		147.5		141.6		144.7		150.8		142.3		146.2	
Present Minimum Wages Plus Loadings and Child Endowment.														
"Needs" Basic Wage	129.0		128.0		121.0		125.0		127.0		127.0		128.0	
"Prosperity" Loading	6.0		6.0		6.0		4.0		4.0		4.0		5.0	
"War Loading" (minimum)	3.0		3.0		3.0		3.0		3.0		3.0		3.0	
Total Wage	138.0		137.0		130.0		132.0		134.0		134.0		136.0	
Child Endowment	20.0		20.0		20.0		20.0		20.0		20.0		20.0	
Total Income	158.0		157.0		150.0		152.0		154.0		154.0		156.0	

Mr. Seaman's own comment is:—
"The Commission based its standard upon a family of man, wife and three children. It will be seen that, when the present child endowment is brought into account, the income available to such a family today is, in all capital cities, in excess of the standards of the Commission. It is worthy of note that the Chairman of the Commission (Mr. A. B. Piddington, K.C.) in a supplementary report, indicated than an appropriate method of providing the standards set up by the Commission would be by child endowment."

In this connexion the following passage in the Report of the Commission may be recalled:—

"Decision as to the Class of Worker.

In the addresses at the close of the inquiry, two views were put forward as to the proper basis on which the Commission should proceed in determining the standard of comfort.

On behalf of the Federated Unions, Mr. Foster suggested that the Commission should not select any special occupation, whether skilled or unskilled, and ascertain the cost of living of the family of an employee in the occupation so selected, but should endeavour to picture the 'typical Australian man' and determine what is his 'reasonable standard of comfort.'

Mr. Russell Martin, for the Employers' Federation, contended, on the other hand, that the Commission should (as he put it) 'first catch its man' or in other words select a man in some definite calling, which, he maintained, should be that of 'an unskilled labourer' or 'the humblest worker' or the 'lowest-paid employee' or 'basic-wage earner', and ascertain for that employee's family the reasonable standard of comfort.

The exact terms of the Letters Patent which bear on this controversy are as follows:—

From clause 1.—'The actual cost of living at the present time, according to reasonable standards of comfort, including all matters comprised in the ordinary expenditure of a household for a man with a wife and three children under fourteen years of age."

From clause 3.—'How the basic wage may be automatically adjusted.'

While clause 1 does not in terms limit the scope of the inquiry to any individual occupation, or even to the wage-earning classes as distinguished from the professional and employer classes and people of independent means, yet clause 3 cannot be treated as if 'the basic wage' meant something not related to the 'actual cost of living' defined in clause 1. On the contrary, the history of the inauguration of this inquiry (vide supra), the announcement with regard to making the Commission's findings effective, the generally accepted view throughout the inquiry, and finally the obvious consideration that in Australia what-

ever is found to be 'the actual cost of living according to reasonable standards of comfort' will by one legal method or another become the basic wage—all these considerations left no doubt in the minds of the Commission that its task was to ascertain what the actual cost of living is in order that the amount so ascertained might be made the basic wage whether by the direct or indirect action of Parliament or by its adoption in the Commonwealth Court of Conciliation and Arbitration, or in other industrial arbitration tribunals of Australia."

Mr. Justice Higgins' reaction to this decision may also be recollected. I quote from the "The New Province for Law and Order" (at pp. 135-138):—

"Unfortunately, under the main question as put, the commission had to find, not a basic wage as hitherto well understood by the community, not the necessary wage for an unskilled labourer, but

> 'the actual cost of living at the present time, according to reasonable standards of comfort, including all matter comprised in the ordinary expenditure of a household, for a man and his wife and three children under fourteen years of age, and the several items and amounts which make up that cost.'

It will be observed that under this form of words the vital matter on which the report would turn was the 'reasonable standards of comfort'—reasonable in the opinion of the commission; and no distinction was to be made between what is reasonable for a porter and for a pattern-maker, for a messenger and for a millionaire. The report of the commission, November, 1920, was, as might have been expected, a cost of living which was far in excess of the basic wage on which the Court had been acting, in accordance with the rough estimate of 1907. The report found £5 16s. 6d. per week (for Melbourne), but it did not recommend that such a basic wage should be enforced. That is to say, if the report were to be carried out in practice a man could not be employed even in sweeping a yard or in running on messages unless he were paid £5 16s. 6d. per week. For the commissioners, on carefully scanning the question put, naturally thought that it was not their duty 'to discriminate between the standard reasonable for one type of employee and that which is reasonable for another type.' The result of the report has been disastrous. The Commonwealth Statistician has reported that the whole produced wealth of the country, including profits, would not be sufficient to pay such a wage; and yet many of the unions have combined to press for the wage as if it were a true basic wage. In the case of the engineers[1] the Court did not hesitate in refusing to act on such finding, and it intimated its intention to act on its rough estimate of 1907 (as increased to meet the decreased purchasing power of money) and until a more satisfactory standard can be found.

But out of the general confusion which has followed the report there has emerged a suggestion which is worthy of consideration. Our

(1) 15 C.A.R., p. 297.

basic wage, as is well known, includes provision for a man, wife, and 'about three' dependent children, and it has to be paid to a man who is unmarried, or who is childless though married, or who has more than three dependent children.

The object of this uniformity is obvious; the employer, in choosing an employee, should not be driven to concern himself with the man's domestic affairs or tempted to choose men who have no children or few children in preference to men who have many. The course adopted by the Court seems to be the best practicable under existing circumstances, as marriage is one of the normal needs of a man in a civilized community. The basic wage should include some reasonable allowance for family life and children. It is not in the interest of society that the practice of advertising for men with 'no encumbrances'—a practice not uncommon already—should become general. But if the State, or States, should see a way to provide for a subvention in aid of each child, whether the money is to come from the Treasury or from a tax on employers, the position would be greatly changed . . . .

The whole subject calls for careful consideration, and hardly falls within the scope of this work. I merely mention it because it is obvious that the basic wage payable by the employer may, with such a subvention, be reduced so as to cover the normal expenditure for the man, or for the man and his wife alone. In the meantime, until such a provision be made, the only course open to the Court seems to be to follow its existing practice, making the basic wage sufficient to cover a reasonable allowance for dependent children."

My reference to Mr. Seaman's study is not to be taken as meaning that I have at any stage regarded the Commission's standard as either appropriate for a "basic-wage" earner or as a practicable standard the cost of which could be paid in wages to all "basic-wage earners" irrespective of their marital and parental obligations. But the study made by Mr. Seaman does at all events demonstrate that comparison with the present equivalent of the cost in 1920 of the standards of the Commission does not afford any ground for suggesting that the present basic wage lies below the level in real value of the findings of the Commission.

Finally, Mr. Seaman's allowances for child endowment were made before the recent legislation providing endowment for the first or only dependent child of the family.

I now summarise the effect to this point of my conclusions. The case presented by the Unions amounted substantially to a claim for an increase in the basic wage so as to raise its real purchasing power. The claim has been put upon two principal submissions. The first is that the present wage has fallen below the equivalent of the pre-war wage. I have shown that, on the contrary, its purchasing power, according to the evidence available, is in fact higher than that of the pre-war basic wage. The second is that the existing standard or real purchasing power of the basic wage should now be increased.

The submission is presented thus:—(1) that the economy, because of current prosperity, particularly that due to the higher prices and greater income derived from the sale abroad of farm and station products, can support a higher level of wages and in particular a higher "basic wage"; (2) that a re-distribution of "national income" is called for on the ground that wage-earners (including the notional "basic wage" earner) are entitled as a matter of social justice to their share in the income derived by Australia from the export of farm and station products; (3) that this share has declined since the immediate pre-war period; (4) that it is both desirable and practicable to increase the real standard of the notional "basic wage" earner as a means of achieving such a redistribution and (5) that this increase in the real standard can be effected by raising the level of nominal wage rates and in particular of the "basic wage". I have given my opinion that in dealing with the problem, the "basic wage" cannot be considered in isolation. I have pointed out that there is no evidence to support a finding that the general level of wages has not risen in harmony with the productive effort of wage-earners. Apart from the criticism that the material available for measuring the real value from time to time of what is called the national product is inadequate and unreliable, and from my belief that the Court cannot, with any confidence in the effectiveness of its actions, ensure the re-distribution of national income sought by the Unions, I have been unable to escape the conclusion that any action in the direction of raising the nominal wage level (upon what I would regard as a pretext of redistributing the fruits of our productive effort) cannot lead to a raising of the living standards of the wage-earning community without an acceleration of the already rapid rate of inflation and to a further injustice to those whose incomes are either fixed or less responsive than the incomes of wage-earners to upward variations in the retail price-level or who have denied themselves in order to build up savings bank deposits, many of whom would be wage-earners themselves.

The figures cited by the Unions from Mr. Brown's papers do not demonstrate that the incomes of wage-earners who would be affected directly or indirectly by the decision of the Court in these proceedings have in fact declined in proportion to all types of incomes when compared with the years from the 1937 decision to the outbreak of the war.

I do not propose to say more about the claims for elimination of provincial and locality variations of the "basic wage" than that the submissions presented in support of these claims seemed to me so far unconvincing. But I think it should be left open to an applicant to submit why in any particular case a departure should be made from the general practice of maintaining the variations.

The proposal made in the claims of a periodical adjustment of the standard of living purchasable by the "basic" wage in accordance with some statistical index of either productive capacity or productivity, was not pursued by the representatives of the applicants.

Kelly C.J.]

I now turn my attention to the claim made on the subject of the "basic wage" to be determined for adult females. By definition, corresponding in terms with that of the "basic wage" for adult males, the "basic wage" to be determined for adult females must be "that wage, or that part of a wage, which is just and reasonable for an adult female, without regard to any circumstance pertaining to the work upon which, or the industry in which, she is employed."

An examination of existing awards applying to women employees discloses that in many of them there is discoverable a rate of remuneration, or an ingredient part of the rate or rates of remuneration prescribed, which *prima facie* accords with the definition of "basic wage" set forth in section 25, that is to say, which is an amount which was regarded by the award-maker as just and reasonable without regard to any circumstance pertaining to work upon which, or the industry in which the adult female, to whom it was to be paid, was employed. In these cases, the function invoked by the claim is that of *altering* the "basic wage".

There are, however, other cases where even the lowest rate of the award does, on the face of it, pay regard to the work upon which, or the industry in which the adult females covered by the award are employed; where, in other words, the award-maker gives no indication of what part, if any, of his lowest award for adult females he has included as being without regard to circumstances pertaining to their particular work or industry. In such cases, the function invoked by the claim is that of *determining* the "basic wage".

As has already been said, the "basic wage" claim of the Unions has been for the same basic wage for all adults. In other words, it is claimed that the amount determined as an appropriate "basic wage" for adult males should be deemed to be likewise appropriate for adult females. In either case the amount, so the Unions claim, should be "an amount necessary to meet the actual cost of living of a family of five—man, wife and three dependent children, based on a standard of living related to socially necessary requirements and on the highest level consistent with the productive capacity of the nation." It is submitted that the "elimination of differing rates is necessary to prevent unfair discrimination by employers as between male and female workers."

As to the submission just mentioned, it may be said at once that no evidence was presented to the Court upon which a finding of unfair discrimination by employers as between male and female workers could be reached. But in fairness, it should I think be understood that the present circumstances of a short supply of labour are not circumstances in which one could expect any considerable degree of such unfair discrimination. It is in times of diminishing orders, when employment is being endangered or reduced that the retention or employment of females (on lower wages than men) disadvantages the male employees.

The problem raised by the Unions' claim is whether the case for an equal "basic wage" for men and women can be validly put, that is to say, put upon the foundation of "justice" and "reasonableness", simultaneously with a case for assessing the "basic wage" with reference to a "standard of living, related to the socially necessary requirements and on the highest level consistent with the productive capacity of the nation," of a family of five.

The case has taken a form which in reality comprehends two alternative approaches. In its first and perhaps main approach, it is very simply a case for an equal "basic wage" for men and women; in its second aspect, which I believe I am justified in regarding as in the nature of an alternative claim, it gives attention to the "needs" of a working woman. In the first, it seeks a "basic wage" for women related, not to the needs of a woman, but to the needs, at a certain level of "socially necessary requirements," of a family of five. It cannot be denied that such a "basic wage" would provide for more than the "socially necessary requirements" of a single woman without dependants.

Reference was made to the fact that some women do have some dependants to support, either wholly or partly, upon their own wages; but this was put rather as a counter to the assumption that the basic wage for males must allow for some degree of dependency upon the receiver of the wage—an assumption which has not been made in the case of women's wages—than in direct support of the case for an equal basic wage. The substantial submission urged in support of an equal basic wage was, as I have pointed out, that it would eliminate unfair discrimination by employers, because of the lower payment possible for women than for men, against employment of the latter.

In the second aspect of their case, the Unions called evidence from a number of women as to the annual expenditure they considered, or had found, to be necessary for the purpose of providing themselves with food, shelter and clothes.

The fact is that no woman receiving 54 per cent. of the male basic wage or thereabouts, (the reference to this percentage will be subsequently explained) was called as a witness. All the women called were receiving more, in some cases considerably more, than that amount. It can be said that every one of these witnesses was not fully satisfied with the standard of living provided by her wages. Nor, indeed, would it be realistic to expect that any of them would be satisfied, or disposed to admit to satisfaction. But the satisfaction with their income of individual witnesses is not to the point. The question is whether the witnesses who were called represented the perhaps purely notional woman who is required to live on a wage which includes no special amount as a differential remuneration or compensation for her particular type of work, the conditions in which it is performed, or the exigencies of the industry in which she is employed.

The subject of an appropriate measure for the lowest rate of pay for women workers was very carefully re-considered by this Court

in 1943, in what has come to be known as the *Munition Workers case.*[1] In the judgment of the Court, in which I may say that I fully concurred, the history of the assessment of wages for women workers was recapitulated. I do not propose to repeat here the statement of that history. It is sufficient for my purposes to quote only the result of the historical study then made. "It is beyond question" said the Court "that the general rule adopted and followed by the Australian industrial authorities in the assessment of wages for adult women workers, engaged upon work suitable for women in which they cannot fairly be said to be in competition with men for employment, has been and still is to fix a foundational amount, calculated with reference to the needs of a single woman who has to pay for her board and lodging, has to maintain herself out of her earnings, but has no dependants to support; and to add to this foundational or basic amount such marginal amounts as may be appropriate in recognition of the particular skill or experience of the particular workers in question or as compensation for the particular conditions which they encounter in their occupations".[2] The Court then proceeded to a statement of the principles which should be followed in the determination of the basic wage amount for adult women workers. I think it necessary to quote what it said. "Just as the wages for male workers are assessed by adopting first a foundational wage—the basic wage—and adding to it marginal amounts fixed according to the relative skill and experience of particular workers or groups of workers, or to the special conditions they encounter, so too are women's wages, for work suitable to them in which they will not be disadvantaged by male competition, fixed by adding to a foundational or basic amount analogous margins. But in each case the foundational wage is in principle and justice different. The man's basic wage is more than sufficient for his personal needs; it purports to provide him with enough to support some family. The woman's, on the other hand, purports to be enough for her to maintain herself only. No allowance is made for the support of any dependents. The man's wage has been measured by this Court with reference to the dominating factor of the productive capacity of industry to sustain it and with due regard consequently to what its application in industry will mean, to the marginal structure which rises above it, and to the consequent wages which will in accordance with established rules and practice be paid to women and to minors.

"In the course of the hearing the Chief Judge drew attention to the necessity which would occur, if women's rates were to be assessed on the basis that relative efficiency and productivity (as between men and women) were to constitute the dominant factor, for a review of the principles in accordance with which the basic wage has been determined. That this necessity would arise must be apparent. For the basic wage for adult males has been fixed at as high an amount as the Court has thought practicable in all the circumstances of the case, including the circumstance of the existing proportionate levels of wages for women and minors. The share of men workers in the fruits of production will need to be reduced if women are to participate therein on an equal

(1) 50 C.A.R., p. 191. (2) Ibid, at p. 211.

footing, or on a better footing generally than that to which they have hitherto been held to be entitled.

"It is desirable that we should indicate as clearly as possible the effect of the conclusions to which the review of the principles of wage assessment we have made has led us. It is that, so long as the foundational or basic wage for women is assessed according to a standard different from that which is the basis of the foundational or basic wage—a family wage—for men, the Court will not, in the exercise of its function of adjudicating between opposing interests, raise the general level of women's minimum wages in occupations suitable for women, and in which they do not encounter considerable competition from men, according to a comparison of their efficiency and productivity with the efficiency and productivity of men doing substantially similar work. To do so would at once depress the relative standard of living of the family as a group, and of its individual members, as compared with that of the typical single woman wage-earner."(1)

In the case of the basic wage, by virtue of the definition included in section 25 of the Arbitration Act, no question of relative efficiency or productivity as between men and women can possibly arise. The definition itself cuts at the root of the submissions made to the Court in the present case in favour of the "payment for the job" method of assessment. The conclusion is indeed inescapable that accepting, as we must, the definition of the "basic wage" in respect of which the Court has jurisdiction, so long as assessment of the "basic wage" for adult males pays any regard to the needs, or "socially necessary requirements," of a family group (the Unions have proposed a family group of five; I have concluded that the present basic wage for males provides at least for some family group) the basic wage for women cannot, as a matter of social justice, even allowing for the additional expenditure necessarily incurred by a woman who has to go to work above that of one who remains at home, occupied by her domestic duties, be assessed at very much more than half of that basic wage (the adult male's) which is fixed as an amount adequate for the fulfilment of the needs of a family group. For if needs are to be a matter for consideration in the assessment of a basic wage it cannot I think be denied that the view taken by Mr. Justice Higgins was correct. That view was adopted also by Mr. President Brown in the *Cardboard Box Makers case*.(2) I cannot do better than to quote his expression of it. "It will be obvious" he said "that the living wage for women should not be out of all relation to the family living wage, or to the allowance, made in the family living wage, for married women." (3)

A large body of evidence was presented of the existing lowest rates prescribed in the awards of Federal and State industrial authorities for adult women employed in the particular industries covered by them. In many of these cases the rates prescribed have *ex facie* taken into account circumstances pertaining to the work upon which or the

(1) 50 C.A.R., at pp. 212-213. (2) 3 S.A.I.R., p. 11.
(3) Ibid, at p. 23.

industry in which the women concerned are employed. This is certainly the position where the rates have been fixed as "flat" rates. In others, it cannot be doubted that the rates referred to have been influenced either by the decisions of the Women's Employment Board, constituted under war-time legislation with a particular charter and a particular purpose, or by the application to so-called "vital" industries of the National Security (Female Minimum Rates) Regulations.

In my judgment, no sufficient ground has been presented for departing from what has hitherto been regarded as the proper basis of assessment of the basic wage element in the wages of adult female employees; namely, that, in the absence of specific evidence relating both to the appropriate "just and reasonable" standard of, and to the cost thereof to, the adult female employee whose work or industry includes or involves no circumstance warranting any specific item or allowance in the computation of her minimum payment, her basic wage should be not outside of the region of 54 per cent. of the basic wage determined for the adult male.

In the light of the considerations which I have attempted to describe and to weigh in this statement, I find myself unable to agree with my brother judges that a case has been established for an alteration of the "basic wage", either of adult males or of adult females. As to the "basic wage" for adult females, I think the Court should, in any particular dispute or application in which a determination is called for, determine this at an amount—adjustable from time to time in accordance with adjustments of the "basic wage" for adult males—equal to 54 per cent. (as approximately as may be covenient) of the "basic wage" for adult males.

Foster J.:

HISTORY OF CASE.

In May-June, 1937, the Full Arbitration Court heard claims by some 64 Unions for increases in the basic wage fixed in their respective awards.

The proceedings, for the convenience of Court and parties, were consolidated, and the hearing in effect became an enquiry into the state of the national economy with a view to ascertaining what alteration (if any) in the existing basic wage could be made. The Court announced [1] that the principle upon which the basic wage had heretofore been fixed was "to secure a particular standard of living for wage earners whatever might be the conditions of the industry or the district in which they were engaged."

The inquiry lasted from 10th May to 23rd June, 1937, and the result was that rather than re-consider either the needs or the unit for which the wage was to provide, the Court, finding that industry was prosperous and might safely bear a higher standard for the workers in industry, added a 'prosperity' loading of 6s. for the three more prosperous States and 4s. for the others. This was not made adjustable

(1) 37 C.A.R., p. 583.

and due to the onset of war, rapidly lost purchasing power, and is now worth about half its original value.

The Court did not alter the basic wage but described the total of the "needs" basic wage and the new loadings as "the total basic wage."

In the period August 1940-February 1941, the Full Court (Beeby C.J., Piper and O'Mara JJ.) again undertook a basic wage inquiry. I quote the following from the judgment of Beeby C. J.

"The Needs Basic Wage.

The Court has always conceded that the 'needs' of an average family should be kept in mind in fixing a basic wage. But it has never, as the result of its own inquiry, specifically declared what is an average family, or what is the cost of a regimen of food, clothing, shelter and miscellaneous items necessary to maintain it in frugal comfort, or that a basic wage should give effect to any such finding. In the end economic possibilities have always been the determining factor". (1)

By the time the Court finished its inquiry the war situation had grown ominous and the Court's conclusion as expressed was—

"Under existing circumstances I am of opinion that the declaration of 23rd June, 1937, should not be disturbed at present. I do not think that the applications should be dismissed, but should stand over for further consideration after 30th June, 1941". (2)

It was in this case that the employers agreed "that the aggregate returns of labor shall be as high as the relevant economy can sustain."

The claims were not dismissed but further adjourned and remained in abeyance until 1946.

In the meantime, the pressure by the Unions for a higher standard had to some extent been met by the addition of war loadings, by the elimination of unemployment, the working of overtime which was extensively undertaken at overtime rates and the fixation by the Women's Employment Board and Statutory Regulations of higher female rates. In addition, the needs of war called into the labor force workers who ordinarily had found no place there and family incomes were substantially augmented.

In 1945, after the cessation of hostilities, the Unions pressed for a review of standard hours in industry, and the Full Court, again consolidating the application, undertook this investigation. It proved to be more protracted than was at first anticipated and lasted in all for 22 months. The Unions resisted suggestions that fell from the bench and from the employers that this Hours claim should be abandoned temporarily or adjourned in favor of a further consideration of the basic wage, and the Court, having regard to the long hearing, and on the application of the Commonwealth Government, decided to re-instate in the list the 1940 claims which had already been adjourned. After a comparatively short hearing the Court, in December 1946, made an interim award(3) adding 7s. to the adjustable basic wage and making

(1) 44 C.A.R., at p. 47. (2) Ibid, at p. 55. (3) 57 C.A.R., p. 603.

no alteration in the nature or amount of the 'prosperity' or other loadings. Such difficulties as arose as to ambit were overcome by the creation of new disputes and ultimately the awards were adjusted by the Full Court to incorporate this new interim addition.

In October 1947, the new Act became law, materially altering the nature of the Court and greatly limiting its jurisdiction. The new Court now consists of not less than three Judges , and on 22nd February, 1949, constituted by Kelly, Foster and Kirby JJ. (Drake-Brockman C. J. being absent on account of illness) heard claims by the Amalgamated Engineering Union and others and the Federated Ironworkers Association of Australia for a basic wage, and the ground work was laid for consolidating the hearing of all these claims and for the representation of parties and interveners. The Attorney-General of the Federal Parliament and of the State of Victoria were granted leave to intervene and later also the Attorneys-General of South Australia and Western Australia.

On 6th April, 1949, Mr. Evans, on behalf of the Australian Council of Trade Unions, applied for leave to intervene, and this too was granted, and the further proceedings on behalf of the Unions were almost entirely left to that Council though some Unions still reserved a right to present a separate case, but none did.

From time to time during the hearing, Conciliation Commissioners and employers drew the Court's attention to the existence of strikes and bans by various Unions in respect of claims for increased wages, and the Court was asked to take some action. It did, by de-registering the Australian Tramway and Motor Omnibus Employees Association[1] and the Federated Engine Drivers and Firemen's Association of Australasia[2] and by striking out of these proceedings the claims of six other Unions,[3] to wit—

The Amalgamated Engineering Union
The Australasian Society of Engineers
The Federated Ironworkers Association of Australia
The Sheet Metal Working Agricultural Implement and Stove-making Industrial Union of Australia
The Boilermakers Society of Australia
The Blacksmiths Society of Australia

As the case proceeded, difficulties of interpreting the new legislation arose and the proceedings in the main case were held up to hear discussion upon these matters, and adjournments granted at the request of the claimants for the purpose of instructing counsel.

In consequence of the Court's decision, the Act was amended in December 1949 (No. 86 of 1949) and this amendment was itself

(1) 66 C.A.R., p. 345. (2) 64 C.A.R., p. 288. (3) Supra., pp. 730-748.

subject to further debate and ruling by the Court in July, 1950.[1]

In November 1949,[2] the Court adjourned its public sittings because at that time matters actually being debated in the Court were actively agitated by political aspirants in the Federal elections then being held, and it was thought highly desirable that the party political atmosphere generated on the hustings should be excluded from the Court's proceedings. The Court effectively re-arranged its procedure and with the assistance of the parties was able to shorten the time allotted for the hearing of the matters at that time being presented. Notwithstanding this, the claimants, whose difficulties had already occasioned many adjournments, sought a mandamus in the High Court to compel the Court to proceed with public hearings, and were able to induce at least one Judge (Webb J.) to agree to grant it. (By a majority the High Court refused the mandamus).

Hearing of the case proceeded, sittings were held in Adelaide and Sydney as well as Melbourne. Many interruptions occurred, due in part to the inability of some of the parties to organize the case with sufficient speed, and in part to the pre-occupation of the Court (there is only one Court under the new legislation) with many other matters through-out Australia, including, amongst other things, the Coal Strike 1949.

During the course of the hearing Chief Judge Drake-Brockman died, and Kelly J., who had, as Senior Judge, presided up to this time, was appointed Chief Judge. Mr. Justice Kirby took over the Stevedoring Industry under the *Stevedoring Industry Act* No. 2 of 1947, and on 17th May, 1949, Mr. Justice Dunphy took his seat.

In all the Court sat on 122 days, and on 22nd August, 1950, reserved judgment.

INTRODUCTION.

I congratulate the Australian Council of Trade Unions and their advocates, and the employers and their counsel, and all those behind the scenes, whose unremitting work kept the evidence up to the Court, on the tremendous task they have achieved; 6,950 pages of transcript; 440 exhibits and 125 witnesses is no small achievement. Without that assistance and the great skill and knowledge that they have brought to bear, their patience and resourcefulness in the face of my constant interjection, interrogation and impatience, the Court could not have done its work. It is a big thing to ask private individuals and organizations to undertake for the public good so great a task, so to my gratitude should be added that of the community as well. Some sensitiveness has been expressed by counsel for the employers arising from a phrase used in the standard hours judgment about the 'historic role of employers to oppose' etc. but that sensitiveness does little justice to the paragraph from which the phrase is quoted, and which

(1) Supra., pp. 748-765. (2) Supra., p. 725.

did no more than state what is commonly known history and expressed the conflict which economists find is inherent in the capitalist system and imputed no motives that were inconsistent with "a deep sense of responsibility to assist" which Mr. Wright assures us employers now feel, though I doubt that he is claiming to speak for all employers local and oversea over the last 100 years. It is clear enough I suppose to an onlooker that employers did oppose the claim for a 40 hour week, and I think it equally clear that they oppose a claim for any increase in the basic wage for either males or females in these proceedings, but as this is done out of 'a deep sense of responsibility' consciences are clear, the community well served and the Court greatly aided.

I approach this task with great humility; its magnitude and responsibility are such as to bring dismay to a mind and heart far greater than mine. No decision, however well grounded, could hope to escape criticism where interests are so vital, data so immense and so speculative, and there is so much room for thoroughly honest differences of opinion. To quote a passage from the judgment of this Court in the *Standard Hours case.*

> "To action in one direction or another and in some form or another we are committed. From that task we cannot retire upon the ground that all the evidence might in some respect or other appear imperfect, contradictory or insufficient or opinions too diverse to act upon. We are bound to select that which is the most reliable guide to action in the present issue. 'The economic and social sciences', Mr. Justice Brandeis has truly said, 'are largely uncharted seas . . . Merely to acquire the knowledge essential as a basis for the exercise of this multitude of judgments would call for some measure of prophecy . . . man is weak and his judgment is at best fallible' . . . But he adds, 'To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation'." (1)

In the few years since 1945 that I have been in this jurisdiction this Court has had the task of making decisions fixing the period of paid annual leave, standard hours, the marginal structure, the present basic wage, and has now to alter or otherwise the basic wage for males and to fix for the first time a basic wage for females. This judgment will then have completed the tasks imposed upon the newly created Court by section 25 of the 1947-49 Act.

A perusal of the history of these claims set out above shows that they actually began with logs of demands made in the years preceding 1940. The war situation led the Court then to adjourn the cases indefinitely. In 1946 they were revived at the instance of the Commonwealth Government in the midst of the hearing of the Standard Hours case. The Court said—"In arriving at this decision (to grant 7s. increase) the Court has weighed all the material before it and given grave consideration to the many problems raised by the evidence and by the submissions of counsel. It has decided that as this is an interim decision only and as it will therefore be necessary for the Court at a later stage to express its final opinion upon the same material together with such further material as will in due course be placed before the

(1) 59 C.A.R.

Court, it would be undesirable and indeed possibly prejudicial, to set out in this interim judgment, any statements of the reasons for the Court's present decision." (1) I think it would not be an improper inference from the Full Court's decision to grant an *interim* increase of 7s. a week in the basic wage in December 1946, (1) that that Court regarded the amount then granted as an instalment of what might ultimately be granted; that it was the Court's opinion that the 7s. was well within the capacity of the economy as it was then to sustain, and that in declining to give reasons on the ground that it had yet to hear further evidence it clearly indicated that the further evidence was to be directed to ascertain how much more than the interim grant of 7s. should in the final award be granted. The Court has now heard the evidence which it indicated in 1946 it expected to hear and it has heard it after 3 years during which it has been able to watch both the effect of that award and of the 40 hour week. I am confident that far from indicating that the 7s. should be regarded not as interim but as final, the evidence and experience indicates that the economy as the Full Court expected then, was and is now competent to sustain some increase upon the grant it felt safe in then making.

Not only has the economy sustained that standard but it has shown clear capacity of sustaining a substantially higher one.

The present claims are based on separate logs and are not uniform but generally were referred to as the £10 basic wage claim. The majority is in the form known as the A.C.T.U. form and is as follows:—

"CLAIM

2. (a) That the basic wage for all adults be an amount of £10 per week for the Capital Cities taken together, with higher or lower amounts for the separate Capital Cities in accordance with the actual difference in the cost of living as between the average of the Six Capital and the several Capital Cities, with an additional amount of 10s. per week at Yallourn, Morwell, Whyalla and Iron Knob.

(b) That the prescription of lesser basic wage amounts in Country areas be discontinued and the Capital City basic wage amounts be the minimum for the respective States except where the Six Capital Cities amount is adopted.

(c) That such wage shall be adjusted at yearly intervals by additions proportionate to the increase in the productive capacity of Australian Industry.

(d) That the basic wage ascertained in accordance with the preceding claims hereof be adjusted at quarterly intervals by the application thereto of a specially designed system of index numbers which will fully provide for increases in the actual cost of living."

To facilitate the proceedings the respondents made reply as follows:—(though dealing in detail with each of the claims, the reply was in effect:—)

"On the broad issues involved in the A.C.T.U. Statement, Employers claim—

(a) There is no justification for computing the Basic Wage on the basis of a family unit of five. The average adult male wage and salary earner

(1) 57 C.A.R., p. 603.

(whether earning the basic wage, or above it) has not a family of that size to support.

(b) Basic Wage fixation must take account not only of productive capacity, but also of such factors as actual production, the return obtainable from production, the proportion of production going to wage and salary earners otherwise than in the form of Basic Wage, the proportion of production to which other sections of the community are properly entitled, the calls of public finance, and national welfare.

(c) There is no justification for the prescription of the same basic rate of wage for males and females.

(d) If the basic wage is, or is to be, fixed in relation to 'socially necessary requirements', account should be taken of the amounts available to parents by way of Child Endowment.

Regarding paragraph 2 (a) *and* (b)—

(i) The claim for any general increase will be contested, upon the ground that the basic wage level is as high as, or higher than, the economy can sustain.

(ii) The determination of questions relating to the method of computing and/or adjusting the basic wage for particular industries or localities, whether by way of an index, combination of indexes, additions or subtractions, or by the prescription of special bases, is inappropriate to a general enquiry, and should be dealt with in relation to individual awards, or groups of awards.

(iii) As regards the claim for an additional amount of 10s. per week at Whyalla and Iron Knob the Broken Hill Proprietory Co. Ltd. will contend that the Court should adhere to its decision of the 11th November, 1947".

The replies of the States were:—

Victoria.

"*As to Objective:*—

1. *Unit of Computation:*—

If the Court should decide to compute the basic wage by relation to family units it will be submitted that the Court should take into account in such computation all social service or other benefits available to family units as such.

2. *Relation to productive capacity:*—

It will be submitted that the computation of the basic wage on the basis of the 'productive capacity' of the nation is impracticable.

3. *Equal pay for the sexes:*—

It will be submitted that the same basic wage should not be fixed for both men and women.

As to Claims:—

1. It will be submitted that if the Court should decide to conduct such an investigation as is mentioned in paragraph 2 the investigation should precede any consideration of the claim in paragraph 1.

2. See paragraph 2 of Reply as to Objectives.

As to sub paragraph (a). The Determination of this claim should rest upon the outcome of the investigation under this paragraph. As to sub paragraph (b). Where there is at present any practice by virtue of which a lower basic wage is fixed for country areas such practice should not be disturbed. As to sub paragraph (c). See paragraph 2 of Reply as to Objectives. As to sub paragraph (d). Until the structure of any such system of index numbers is known no reply can be made to this claim".

South Australia.

"The grounds upon which the Government of South Australia and the Railways Commissioner oppose the applicants claims are:—

(1) An increase in the basic wage of the magnitude claimed by the Unions is beyond the capacity of the Australian economy as a whole to provide and sustain.

(2) Any attempt to provide such an increase would have a dangerous inflationary effect by greatly increasing the gap between purchasing power on the one hand, and the volume of civil goods and services on the other.

(3) The impact, both direct and indirect, of such an increase upon rural industries would eventually be disastrous, so that when prices of primary products return to normal there would be dislocation of the whole Australian productive structure.

(4) The effects of such an increase upon Australia's present and potential export trade, in both primary and manufactured products, would be most damaging.

The Government of South Australia and the Railways Commissioner will advance the following contentions:—

(1) That the general level of the basic wage ought to be determined by having regard to the capacity of the Australian economy as a whole to provide and sustain the wage.

(2) That, whilst the Australian economy is now capable of providing and sustaining a higher reward for basic wage employment than in 1937, such increased capacity has been fully absorbed by reduction of standard hours, the "interim" increase of about 7% in the basic wage in December, 1946, the provision of child endowment and other social services, betterment of leave provisions, increase in wage margins, etc. Accordingly, at least, until the recent major improvements of reduction in standard hours and revision of wage margins, have been fully absorbed by the Australian economy, and their effects assessed, no further improvement should be attempted.

(3) ——

(4) That this Honourable Court should retain a margin between provincial and metropolitan basic wages because:—

(a) differences in economic circumstances make such a margin desirable; and

(b) as a general rule costs of living are somewhat lower in provincial areas mainly because of lower costs of rents and fuel, and less requirement for fares.

(5) That the basic wage for adult female employees and for male and female juvenile employees shall continue to bear much the same proportion to the basic wage for adult male employees as at present".

Western Australia.

"The Attorney-General will submit:—

(a) That insofar as the Court may decide to compute the basic wage upon any considerations relating to family units and their living costs, it should take into account all additions and concessions available to such family units, whether by way of social service benefits or otherwise;

(b) That insofar as the Court may decide to compute the basic wage upon any considerations relating to family units and living costs, it would be inequitable to grant the claim by the Applicants for equal pay for the sexes;

(c) That the claim by the Applicants for additions to the basic wage proportionate to productive capacity should not be accepted;

(d) That the Court should complete the hearing of the whole of the matters raised by the claims of the Australian Council of Trade Unions before making any decision as to whether or not there should be any alteration in the basic wage".

DISPUTES STRUCK OUT.

The present proceedings commenced, as appears above, in February, 1949. During the course of the hearing the Australian Tramway and Motor Omnibus Employees Association[1] and the Federated Engine Drivers and Firemen's Association of Australasia[2] were de-registered and the settlement of their disputes about the basic wage has ceased to be debated and presumably so far as this Court is concerned will remain unsettled. On 9th May, 1950, the basic wage claims of six Unions—the Amalgamated Engineering Union; the Australasian Society of Engineers; the Federated Ironworkers Association of Australia; the Sheet Metal Working Agricultural Implement and Stovemaking Industrial Union of Australia; the Boilermakers Society of Australia and the Blacksmiths Society of Australasia were struck out and these too have ceased to be heard in Court, and these disputes, as with the Tramways and Engine Drivers, will remain without settlement. It is estimated that these Unions represent in all somewhere about 300,000 men and women. They are the main skilled section of Australian workers. I do not hesitate to believe that the Court is less favorably equipped to deal with these basic wage problems because of their dismissal and consequent absence from the proceedings of their representatives and their point of view, their discussion and cross-examination. Mr. Souter who represented the Amalgamated Engineering Union was, as it happened, the advocate chosen to present the case for females, and Mr. Baker of the Ironworkers Association was allocated the task of handling special statistical problems, but after May 1950 they no longer appeared. It is perhaps a little ironical that the action taken by the Court against these Unions should have thus re-acted upon the Court's work and so upon the community.

BASIC WAGE.

As I have said, these basic wage proceedings are based partly on logs filed prior to the 1940 hearing and upon the law as it was then and the authority of the Court as it then was. Whether this fact has any constitutional significance in light of the changed meaning of "basic wage" upon which the existence of a dispute depends, I do not stop to debate. The 1947-1949 Act has changed both the Court and the meaning of "basic wage." The dichotomy it set up has greatly added to the difficulties of the Court's task, if it has not actually made it insuperable as will hereafter appear.

The result of the 7s. interim increase was to raise the standard of living of Australian workers—or those, and they are the vast majority, who were directly or indirectly affected by awards of this Court. The added amount became adjustable by the "C" Series of the Commonwealth Statistician in each award and so resulted in a permanently increased standard which so far as the "C" Series is effective remains unaffected by the depreciation in purchasing power of the Australian pound. So far as the female minimum rate was concerned and so far as it was fixed as a percentage of the male rate, females in Australia shared the benefit of this basic wage increase. No constitutional

(1) 66 C.A.R., p. 345. (2) 64 C.A.R., p. 288.

difficulties arose, for the Court then had power to fix and alter both the basic wage for males and females. The 1947 amendment of the Act however created a new Court constituted of at least three Judges, the jurisdiction of which was vested in such Court and limited its jurisdiction to four matters set out in section 25 which as far as these problems were concerned restricted its authority as to altering—

"(b) the basic wage or the principles upon which it is computed;
(d) the minimum rate of remuneration for adult females in an industry."

After this Court's decision in the *Female Minimum Rates case* delivered on 29th July, 1948[1], deciding that the female minimum rate meant in effect a female basic wage, and as in point of fact there was no such wage fixed by this Court and so none to "alter" the Act was amended to empower the Court to *determine* or alter the basic wage for adult females, but the power with respect to males remained to alter only and not to determine. The difficulties arising from this are very great and will continue to hamper and embarrass the Court and the parties in respect of each of the awards which are before the Court in these proceedings.

As to the basic wage: The original Act of 1947 dealt with the "male basic wage" but referred to the female "minimum rate." Difficulties arose as to what was meant by "basic wage" in this legislation and in the *Ozone Theatres case* [2] this Court defined it but was overruled upon mandamus proceedings by the High Court which laid down what it regarded as the basic wage for the guidance of this Court whose invention and development both the wage and its conception were. Again the legislature stepped in and expressly defined what it meant by the "basic wage" as used in section 25 as "that wage, or that part of a wage, which is just and reasonable for an adult male (or female), without regard to any circumstance pertaining to the work upon which, or the industry in which, he (or she) is employed." This too proved to lack clarity and the Court was invited to interpret it and in a majority decision did so. However, its decision is unfortunately not final and though expressly made unchallengeable by section 32, is nevertheless subject to prerogative writs under the Constitution at the suit of any person affected by any award fixing or altering the basic wage. This position is surely intolerable for if after a hearing lasting now for more than 18 months the High Court rejects the majority view of the meaning of this term in section 25, the whole proceedings may prove to have been abortive and involve both employers and employees in irremediable difficulties, loss and frustration. It is certainly highly desirable that these problems of jurisdiction be cleared up finally by the High Court which alone in the present form of the legislation and the Constitution can give a decision of binding force. Again I point out that the Court's judgment in these cases must always remain in doubt until at the suit of some person affected or some party to the award the High Court sets the matter at rest, and I again express it as my view that in all such jurisdictional matters the parties should

(1) 60 C.A.R. (2) 62 C.A.R., p. 484.

in every case seek the judgment of the only authoritative Court in the land, and that this Court should do its best to discourage such proceedings before it. In the legislation preceding the 1947 Act a method was provided by section 21AA for the solution of problems of this kind, but no such procedure has been devised under the present system. I do not stop to determine whether the necessary proof of the existence of the special kind of dispute which is the basis of the Court's jurisdiction has been given in each of the cases before the Court. I anticipate that this will have to be faced when each applicant presents his award for variation in pursuance of the decision of the Court.

THE COURT'S DIFFICULTIES.

Of the wage structure only the basic element is left to the Court but obviously the Court cannot do adequate justice to the problem while it is aware that upon that base completely independent and uncontrolled Conciliation Commissioners may erect such superstructure as they may find desirable in the settlement of industrial disputes before them. How can the Court say that any sum is the "highest the economy can bear" unless it knows or may control the marginal superstructure of males and females and the whole area of juvenile rates? How can the Court make any scientific approach to its problem of securing some equitable distribution of the national dividend between wage and salary earners and others if its only power is to alter the basic wage as now defined in the Act?

There are in this country at least the following bodies engaged in some one or more aspects of this problem: This Court; the Conciliation Commissioners; a number of special Boards such as Coal, Stevedoring, Public Service; all State tribunals; the State legislatures and the employers themselves who by agreements have extensively augmented wage rates both basic and marginal. In addition considerations affecting the problems agitated in these proceedings are affected by tariffs, subsidies, international agreements, taxation, endowment, social services, pensions, about all of which the Court must speculate because its judgment operates *in futuro*.

It seems to me therefore that it is impossible for the Court to make reliable or reasonable assumptions as to what these other wage fixing bodies will do with the wage structure and the economy, and that the Court is compelled to take some arbitrary stand and proceed to its judgment frankly upon that basis.

The expert witnesses in this and the earlier *Standard Hours case* made it clear, as it obviously is, that the Court's judgment as to wages is very closely affected by the Government's policy regarding social services, child endowment, old age, invalid and widows' pensions, while Government policy as to tariffs, subsidies, inflation, monetary revaluation, price-fixing, banking and international trade is all closely interrelated to the Court's function of fixing wage rates.

In fixing the basic wage we are urged to remember that the worker's standard is raised by child endowment and all other social services and that if all are considered, his standard today is far higher than it has ever been, notwithstanding the increased cost of living.

We are urged not to raise the wage cost of production lest our industries suffer from overseas competition which may o'er leap our tariff wall, nor to risk further inflations, remembering always that the Commonwealth Constitution prevents, except in times of war, any adequate control of this economic problem because it denies legislative power to the Federal Parliament upon matters necessarily associated with this matter of inflation, and the divided power of the States legislatures is inadequate, unwieldy and is limited too by the Constitution. We should, it is further urged, always make the most pessimistic and conservative speculation as to the operation of all external forces lest our judgment prejudice the economy.

For my part I shall do my best with the assistance of the evidence and discussions to weigh these matters and evaluate them. I however shall ignore all Government policy on endowment and social services. I shall not speculate at all upon re-valuation of the £A. either as to when or how much. I shall be concerned with the fact that an increase in the basic wage which will inevitably permeate the whole wage structure will increase prices and so add its modicum of inflationary pressure, but inflation and its control are matters for the Government and, it may be argued, a little remote from the Court's immediate task of settling each of 54 disputes about the basic wage which is of course its task however generally it may be believed that the Court is a quasi-legislative body whose duty is to make laws in the public interest. I must assume that the proper authorities will take such steps as they are advised to safeguard the community from the effects of an inflation arising in the main from causes other than any action of the Court. Of course the Court is properly expected to fulfil its function and settle these disputes about the basic wage.

PUBLIC INTEREST.

I have quoted section 25 of the Act in which Parliament has prescribed and limited both the Court's power and its duty, but behind the Act is the Constitution which by section 51 placitum 35 defines the legislative limits of Parliament's authority thus:—

To make laws for the peace order and good government of Australia with respect to—

> "xxxv. Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State."

So it would seem that the subject matter placed in the legislative control of the Commonwealth was the settlement of interstate industrial disputes and further limited to their settlement by conciliation and arbitration. This Constitutional provision has been strictly interpreted by the High Court.

When therefore the Act speaks of public interest it means no more and no less than that the Court will achieve its constitutional purpose and serve the "public interest" it is created for when it bends its efforts to the settlement of these industrial disputes. Obviously the Court must not subordinate its central function which alone calls it into action

in order to achieve some judicial conception of what is for the public good and to that end to refrain from settling a dispute or settling a dispute in a particular way to accomplish it. It may be thought by some that it was "in the public interest" to stay inflation by lowering wages or by maintaining them at present levels or to consider the lot of the housewife and prevent any further rise in her cost of living or to protect industry from the possibility of overseas competition, and that the Court should act accordingly whether it settled the dispute in fact or not. In my view the Court is not only not empowered to act "in the public interest" at large but could not be so empowered under the Constitution to so function except in-so-far as the public good was incidental to the settlement of an interstate industrial dispute. Obviously the principles which the Court applies in reaching the basis of settlement will conform as far as possible with its conception of the public good but its task must always remain the settlement of the dispute.

It is a common misconception that the Court is the repository of the Commonwealth's legislative power with respect to industrial matters at large—It is no such thing and cannot under the Constitution be so endowed. It is at most and at least the organ for the settlement by conciliation and arbitration of a limited class of industrial disputes. If the Court is to be more, the Constitution must confer more.

NATURE OF PROCEEDINGS.

The procedure which the Court has always adopted has the form of litigation but I do not regard these consolidated proceedings as ordinary litigation in which the usual principals of onus of proof and of rules of evidence etc. should apply but as problems calling for judgment based upon the widest knowledge that can be obtained with all the resources available to the Court and with the assistance of the parties and interveners which in these proceedings include both State and Federal Governments. The claims not only of the immediate parties to the dispute but those of all sections of the community are in issue so far as they are relevant to the settlement of each dispute while each such dispute calls for a fair and equitable settlement as between the parties to it.

It should be remembered as well that the Court's present task differs from that of earlier Courts in their fixation of the basic wage. The new definition as amended in 1949 in section 25, as a majority of the Court held on 7th August, 1950, in the *Gas Workers case,* changed very markedly the meaning of basic wage that theretofore prevailed. Up to 1949 the basic wage meant what the High Court said it meant in the *Railways case*[1] and the *Ozone Theatres case*[2] namely the wage payable under a given award to an unskilled laborer. It now means that wage or part of a wage payable to a worker as such (I have quoted the actual definition above). So that considerations governing the new fixation may differ from those of earlier fixations for if the unskilled laborer was awarded under the old definition some addition to his wage because of his work or industry then his basic wage under the

(1) 49 C.L.R., p. 589. (2) 78 C.L.R., p. 389.

new definition in section 25 would be less by the amount of that addition. This consideration may make comparisons between the new and the old a little misleading.

The new basic wage earner under the 1949 amendment is very like the man defined in the judgment of Kelly J. in the *Food Preservers case*[1] as follows:—As the man who is to receive "a minimum wage deemed appropriate adequate and sufficient for him where the incidents or circumstances of his employment are not regarded as warranting any differentiation or allowance in remuneration above that amount" and that sum having been ascertained was applied to the unskilled laborer because it was found that he had generally no claims arising from his work or his industry to any special consideration. It is readily conceivable that some special circumstance arising out of his work or industry might justify or call for some additional remuneration even to an unskilled laborer. So that it is clear that the wage of an unskilled laborer is not necessarily the Court's basic wage.

THE BASES OF THE BASIC WAGE.

Two alternative bases are suggested for the fixation or alteration of the basic wage. (1) Needs and (2) Capacity. Both are extremely vague and difficult of application. Needs! According to what standards and for what unit? Capacity! Upon what principles and subject to what limitations? If we accept the view the employers support that the wage should be as high as the economy can sustain the only issue that remains is, can it sustain the present nominal rates, the present actual rates or some increase on the former or the latter? No question of the moral or economic claims of the workers and their families to a higher standard of living arises. That is implicit in the principle that they shall have the highest that is reasonably and justly possible. But there is very wide difference of opinion as to the present facts and their interpretation, the assumption that should be used, the prospects for the future, the judgment to be arrived at as to what the economy can stand or when it reaches the stage of not being able to maintain a given standard of living for its workers. Is it unfair or inequitable to place any additional burden upon any section of the community in order to achieve what all regard as desirable—a higher working class living standard? The conclusion is one of judgment based on data that changes as you write. It is my view that this Court has long since abandoned "needs" as the basis. When in 1937 it added prosperity loadings it must have been satisfied that without the loadings the "needs" of workers were provided for by the "needs" portion of the wage, and because of prosperity it was possible to add something and so to raise living standards. Nothing short of calamity should induce the Court to lower those higher standards thus created and sustained. But this has, since 1937, had an indirect effect; it has accustomed Australian workers to live at this rate of wage and so created a new standard of living, so that now their "needs" should be measured by that new standard. Every progressive State must contemplate and expect steadily rising living standards for its people, and

(1) 45 C.A.R., p. 343.

this Court is, in this community, regarded as the method by which the workers are to achieve this. I should like to quote a passage from the judgment of the majority in the *Basic Wage case* in 1934[1] and quoted with the approval of the Chief Judge in the 1940 case—

> "But whatever family unit is adopted by a wage-fixing body, the power of that body to endow that unit with any desired standard of living depends on the productive capacity of the community as a whole. With few exceptions the determinations of industrial tribunals show that this limitation has been realized—though perhaps it has not been sufficiently acknowledged by them. Generally speaking, however, it may be said that the outcome of this realisation is that the basic or living wage prescribed would have been about the same in amount, regardless of the size of the family unit ostensibly adopted. The larger the family assumed as the unit, the lower the possible standard of living prescribed, the smaller the family assumed, the higher the standard prescribed.
>
> This suggests that the adoption of a family unit is not necessary, and that what should be sought is the independent ascertainment and prescription of the highest basic wage that can be sustained by the total of industry in all its primary, secondary and ancillary forms. That no doubt is the object, but the adoption of something like the real average family as the unit to be provided for is not without its use in the attainment of that object. There is no clear means of measuring the general wage-paying capacity of the total industry of a country. All that can be done is to approximate, and one of the methods of approximation is to find out the actual wage upon which well-situated labourers are at the time maintaining the average family unit. We may be pardoned for saying that Mr. Justice Higgins very wisely used this criterion in the Harvester case". [2]

There is no evidence before us which would enable me to estimate the cost of this new standard for any particular unit and for that reason if no other, the "needs" approach would have to be rejected. I am very confident that in the years that have elapsed since 1937 when the prosperity loading was added, the standard of living actually enjoyed by the basic wage worker is higher, due partly to the Court and partly to Parliament, than that which could be purchased today by the existing nominal basic wage, for the evidence shows how extensive is the practice of paying over award rates and how common are both consent awards above the basic wage and special though artificial upgrading of workers. There are industry loadings which are payable to all as in the Gas industry; experience payments as in the Metal trades; there are bonus payments for all sorts of reasons, *e.g.* good-time keeping, regular attendance for work; there are so-called incentive schemes and special concessions as attraction wages. It became a commonplace during the hearing to refer to the basic wage earner, male or female, as a *rara avis,* an almost extinct species. These payments and other factors particularly full employment have given rise to an existing standard now well established and accepted at a higher level than the award rate. If this new standard exists it could clearly be safely awarded. The problem then becomes, can the economy sustain an even higher standard than the *de facto* one? This approach has the advantage that it renders unnecessary a determination of the unit for which the "needs" should be ascertained or whose standard considered. It recognizes an existing state of affairs to which our people have grown accustomed and asks whether the economy can sustain

(1) 33 C.A.R., p. 144. (2) Ibid at p. 149.

some improvement of it. I do not know and cannot ascertain what unit this standard maintains or is expected to maintain. The passage quoted from the 1934 judgment shows that the basic wage in its original form at the hands of Mr. Justice Higgins relied on this concept that the prevailing wage provided a standard which the community was accepting and which he appeared to think was regarded as providing for a family unit of about five persons.

The A.C.T.U. claim was for a five unit family, but that is a purely arbitrary number and has no relation to any statistical fact nor economic factor, and to suggest that such a unit should be chosen in order to encourage child bearing is to ignore all demographic learning.

So that in my view there is an existing standard which industry is in fact sustaining and which the economy is bearing with a very full measure of success and it is clear on the evidence as I think that that standard is higher than the present nominal basic wage could provide for either males or females. So that the Court could award basic rates which would secure that existing standard with ample confidence.

What can the economy sustain? If it has to, it can do amazing things as the war period showed, but that of course cannot be the concept. Nor can it mean what each particular industry could sustain; nor the group of industries covered by an award sustain; it might mean as measured by the total production of goods and services in some given period, a year, a triennium or a quinquennium. Then at which point can the economy be said not to sustain a given working class standard? The extreme cases are easy enough to contemplate. In times of great depression or restricted production the standard sustainable would be lower, while in times of great prosperity, higher. If the economy were left to the influence of "natural" economic forces, then these conditions of poverty and affluence would reflect themselves in the prevailing standards, but since the Court is interposed between these forces and their normal consequences then its judgments must be the medium by which periods of great poverty as in 1931, or great prosperity as today exists, get reflected in working class standards. Opinion must differ very widely as to where the proper line should be drawn between these extremes.

Increasing wage rates produce immediate and secondary consequences; they bring benefits to the recipients; they increase costs and prices to all consumers; they distort the distribution of the national income; they produce hardships upon some sections whose incomes are fixed which include workers as well as others; they produce problems of finance for public, private and quasi-public institutions; they increase the problems of private employers and may even threaten the existence of their enterprises. At some point the hardships are such that they ought not to be imposed for they then outweigh the social benefits that flow from higher living standards and could be no real settlement of the dispute. This is where there is called for the kind of judgment spoken of by Mr. Justice Holmes—"to see as far as one may and to feel the great forces that are behind every detail." It is tremendously difficult and controversial; it must be based on the evidence and it must be conservatively undertaken.

Foster J.]

The Court must proceed cautiously because its decisions, though they can be reversed or modified as was proved in the depression of 1930, are nevertheless in fact really irremediable, and what has been done, not capable of being undone or restored. On the other hand the Court must not be too conservative for it is by common consent the community's method of ordered progress in industrial relations. The community demands progress and as much progress as is reasonably possible, and the Court should beware lest it come to be regarded as an unreasonable brake upon that progress, lest the people who come to it asking to share in the notable advance of technical science and human achievement be driven to seek less orderly and desirable avenues.

The general impression that has come to me from the evidence, particularly the official statistical evidence, is that the economy is very prosperous, that the prospects for the immediate future are bright, perhaps very bright, and that in the foreseeable future no threat to its continued prosperity should be feared. Not that there are no threats; there are. A third world war is a possibility. A war economy and so an inflationary one may be necessary because of the threat implicit in the Korean episode to which Mr. Wright in the last words of his address, referred. A major depression may arise notwithstanding the best efforts of now well-informed and equipped administrations. Overseas prices may fall disastrously and overseas competition become threatening, while droughts may diminish our productivity.

But one should hope and add that the international picture is not all painted in dark shades. There are patches in lighter colors. International peace is not an impossibility, international trade, particularly for Australia in her juxtaposition to awakening Asiatic markets may be accelerated and provide for our products, primary and secondary, an outlet in return for commodities needed by our own community.

NATIONAL DIVIDEND.

The general claim of the Australian Council of Trade Unions was largely based upon the national income figures. These are—

Composition of National Income—Australia.

	1936-37. Per cent.	1937-38. Per cent.	1938-39. Per cent.	1945-46. Per cent.	1946-47. Per cent.	1947-48. Per cent.	1948-49. Per cent.
1. Wages and salaries including pay of forces	50.9	52.0	54.5	60.7	57.2	51.6	54.0
2. Income of unincorporated enterprises (businesses, farms, professions etc.)	24.9	23.9	19.8	18.9	22.1	30.8	29.6

	1936-37. Per cent.	1937-38. Per cent.	1938-39. Per cent.	1945-46. Per cent.	1946-47. Per cent.	1947-48. Per cent.	1948-49. Per cent.
3. Company income			10.4	10.1	11.4	10.3	10.2
4. Surplus of public authority business undertakings	24.2	24.1	3.9	2.8	1.8	1.0	0.3
5. Net rent and interest			11.4	7.5	7.5	6.3	5.9
National Income	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source:—"National Income and Expenditure 1948-49" Table 1. (Last five columns above)

First two columns: H. P. Brown, "The Composition of Personal Income," Economic Record, June 1949.

Composition of Personal Income—Australia.

1. Wages and salaries including pay of forces.	55.2	56.3	59.4	60.2	59.1	53.6	55.6
2. Income of unincorporated enterprises							
Farm	15.3	13.9	10.4	(			
Other	11.7	12.0	11.1	(18.7	22.8	32.0	30.6
Total	27.0	25.9	21.5	18.7	22.8	32.0	30.6
3. Dividends, rent, and interest							
Dividends	3.0	2.9	3.3	2.3	2.4	2.1	2.1
Rent and Interest	10.8	10.9	11.6	8.2	8.5	6.8	6.3
Total	13.8	13.8	14.9	10.5	10.9	8.9	8.4
4. Cash social service benefits	4.0	4.0	4.2	5.1	6.1	5.1	5.4
5. Deferred pay (forces)	—	—	—	5.5	1.1	0.4	—
Total Personal Income	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source:—First three columns: H. P. Brown, "The Composition of Personal Income," Economic Record, June 1949. Remainder: "National Income and Expenditure" 1948-1949. Table 6.

Composition of National Income—Australia.

	1938-39. £m	1945-46. £m	1946-47. £m	1947-48. £m	1948-49. £m
Wages, salaries, pay of members of forces etc.	444	788	776	904	1,055
Income of unincorporated businesses, farms, professions etc.	161	245	300	540	580
Company income	84	131	155	180	200
Surplus of public authority business undertakings	32	37	25	18	5
Net rent and interest	93	98	102	111	115
National income	814	1,299	1,358	1,753	1,955

Source:—"National Income and Expenditure" 1948-49, Table 1.

Composition of Personal Income—Australia.

	1938-39. £m	1945-46. £m	1946-47. £m	1947-48. £m	1948-49. £m
Wages, salaries, pay of members of forces etc.	444	788	776	904	1,055
Income of unincorporated businesses, farms, professions etc.	161	245	300	540	580
Rent and Interest	87	107	112	115	119
Dividends	25	30	32	35	39
Cash social service benefits	31	67	80	87	103
Deferred pay of members of forces	—	72	14	7	—
Total personal income	748	1,309	1,314	1,688	1,896

Source:—"National Income and Expenditure" 1948-49, Table 6.

These last two tables are in adjusted money terms and must be corrected by some process to make them comparable. There is no agreement amongst economists as to the proper index to be used for this purpose, but various composite indexes have been suggested. All I am able to do with them is to indicate that to quote them as published is misleading and that I do not make any use of them in this form.

Mr. Seaman (Exhibit H.1 p. 3) estimated that by 1948-49 the Australian national income produced reckoned in real terms had increased by somewhere between 20 per cent. and 25 per cent.

Mr. Evans and Professor Higgins suggest that wages and salaries percentage should be increased to "restore the workers' share."

The percentages relied upon are those for personal income in Australia and it is pointed out that in 1938-39 wages and salaries were 59.4 per cent. and in the two years 1945-47, 60.2 per cent. and 59.1 per cent respectively, while in 1948-49 it was 55.6 per cent. At first sight this would seem to indicate a fluctuation of the earnings of wages and salary earners with a fall in 1948-49, but it is clear that a fluctuation of any other component would affect the percentage of all the other groups so that the fall in 1947-48 to 53.6 per cent. is explained in part at least by the increased income of unincorporated enterprises which rose from 18.7 per cent in 1945-46 to 32 per cent. in 1947-48, probably largely due to the fluctuation of farm incomes. It is clear that, even if a substantial increase in the basic wage be granted, the wool cheque estimated at about £590 million that Australia will receive for 1950-51 clip will cause a fall in the percentage going to wages and salaries. And it is significant when contemplating the possibility of increasing the real wage that this enormous increase in the return from wool does not mean any substantial increase in the quantity of wool produced and would not enable a higher real wage unless the terms of trade still favor us.

This approach in my judgment places altogether too much reliance on the accuracy of these estimates and is affected by so many factors which bring about variations both in gross amount and percentage that I find it impossible to rely upon them except in a negative way and feel the best I can say is that they do not suggest that my conclusions otherwise reached are in error. Mr. H. P. Brown of the Commonwealth Statistician's Office, and himself largely responsible for these national income figures, says of them—

> "The figures suggest that a detailed examination of the relationship between labour, entrepreneur, property and personal status income might assist in considering such matters as wages policy, farmers' home price schemes, problems of retail distribution and interest rate and rent policy, but as they stand they do not seem adequate as a basis for any firm conclusion. Moreover it would be desirable to have figures for at least another five years before 1928/29".

I have, as has appeared, very largely based my decision to grant basic wage increases upon the strong impression created in my mind by the evidence, figures and experience of the existence of a standard of living of the basic wage worker in Australia higher than the basic wage would buy today.

SHORTAGES.

Much store was placed by some employer witnesses and by their counsel upon the existing shortages of workers and of all sorts of goods and services. There is even a shortage of social and sporting clubs if one can judge by the length of their waiting lists. Particularly is there a shortage of Australian coal and steel and those things dependent on them; they are the basic things and all agree that a much higher standard would be possible if those basic shortages could

be overcome. The employers blame the coal miners who in turn blame their employers, but wherever the blame lies, and I make no judgment on this, it is clear that Australian production is below its requirements and has been for some years, mainly because of its greatly expanded and expanding industry and the inability of the coal industry to resolve its internal stresses and strains. Our overseas resources however are such as to enable coal imports to be safely made, even if the price is higher than the local one. This is a matter outside the control of Australian workers and one now being undertaken by Governments. As I write, reports indicate the production of coal in New South Wales, notwithstanding the disastrous floods, is expected to reach a new high level but still short by some 3,000,000 tons of requirements. I am optimistic enough to believe that these difficulties will be overcome. They are not beyond the resourcefulness of the Australian democracy.

It must not be forgotten that shortages are not an unmixed evil. In a progressive progressing economy there must always be shortages which is only another way of saying there must always be active demand. No employer nor employee either, would wish to contemplate a condition of surfeit where there were no shortages. Shortages, however, if excessive as they clearly appear to be, apart from the hardships that may be involved, are hampering production because the delays involved are very wasteful of labor and resources.

I do not propose to justify by any quotation of figures or evidence this impression of prosperity and buoyancy which is greater in my mind today, and the losses due to shortages less and growing less than when I participated in the 40 hour judgment in 1946-47, and perhaps it would not be out of place to refer to the passage headed 'Shortages' of the Standard Hours judgment. (1) The evidence and material placed before the Court is so voluminous and vast, so controversial and involved, that I have concluded that in this judgment no useful purpose could be achieved, even if it were possible, by undertaking any detailed examination of it. I have therefore thought it proper to confine myself to firmly held general impressions created in my mind by the evidence and discussion undertaken throughout this very protracted hearing. It is clear, particularly so to those who have sat through the case, that there is data and evidence which might be quoted to support contrary opinions to those which have come to my mind, but I have not neglected these in reaching my own conclusions.

The business world is prosperous as the Commonwealth Bank researches show. Mr. Crawford testifies to the condition of every aspect of primary industry and this before the spectacular rise in wool prices for the 1950-51 season. Our overseas position is buoyant, perhaps too buoyant. The latest figure for London Funds is £651 million. The bank deposits are higher than ever. The seasons have been good and our sheep population is growing in numbers and

(1) 59 C.A.R.

value. The population is increasing and immigration policy active and successful. The balance of trade favorable, and the dollar position better than ever, both by reason of our trade with the United States of America and by reason of the recent dollar loan. Public works and enterprise, particularly in power, water, coal, forests, are making provision for the future requirements of much greater population.

Productivity has not increased as greatly as many had hoped it would and still hope it may; there are many explanations offered, some affecting employers, some employees, and some arising from factors beyond the responsibility of either or both, but apart from this the indicia of prosperity are present in the economy today to even a more pronounced degree than when this Court wrote in the *Standard Hours case*—

> "All criteria of an active virile progressive economy are present today. Our population has increased and all are working. Our sources of power are taxed to their limit and that limit higher than ever before. Business is showing a continuous unsatisfied demand for products of all kinds. Orders sufficient to maintain activity at the highest levels are booked for years ahead over a wide range of industry. Many industrial undertakings are expanding their capital to a total extent of millions of pounds and prospectuses indicated very good prospects. Overseas companies are finding in Australia increasing opportunity for further extension and development of their enterprises, while the reports of local companies are generally optimistic. The profit rate continues at high levels and substantially above the relation to gilt edge securities usually expected". (1)

Mr. Lewis C. Burne, President of the Victorian Employers Federation, and their representative at Geneva, is reported in the Weekly Service Letter of the Victorian Employers Federation of 15th September, 1950, to have said on his return—

> "Nowhere in all the countries I visited are the conditions of employment as advanced as they are in Australia. Nowhere is the opportunity for enterprise and development more marked".

It is said he based his opinion not only on the information and views interchanged at the conference but on a first hand study which he made of countries *en route* to Geneva.

But of course we do not ignore the darker shades that make up the picture—the rising costs and prices which mark the inflationary spiral, the shortages of essentials, particularly houses, the failure of management, the slackness of workers, the distortion of the economy from production of vital goods to the production and distribution of less needed and less desirable goods, the threat of overseas competition and so on.

I do firmly conclude that the economy will not be unduly hampered if the Court goes further and not merely awards the existing standards but requires it to adjust itself to a slightly higher one.

Any increase in wages tends to increase prices and reduce the value of money and there is not the slightest doubt in my mind that

(1) 59 C.A.R.

the increase I propose will cause a rise in prices in Australia and this in turn will cause a redistribution of the national income and affect some sections of the community, including of course workers, adversely. To a great extent the worst effects could be mitigated by Governmental action by which the community can be helped to a satisfactory re-adjustment. And one remembers that every improvement in working class standards whether in reduction of hours or increased wages has had this sort of effect and will always have it.

INFLATION.

The existing inflation that is causing such concern is due in part to the action of this Court by its principle of automatic wage adjustment and by its awards increasing marginal and other rates and by its standard hours decision, while the action of employers in voluntarily increasing wage rates has added its quota, but the economists all agree that the major cause of this continuing danger, if it is properly so described, and which had its origin in our war-time economy, is due to factors outside the Court's activities and arises partly from the devaluation of the £1 and from the spectacular rise since 1947-48 in the price of wool and of other primary produce, and from the failure to take adequate precautionary safeguards.

The gross value and average prices of wool produced in Australia rose as follows:—

Season	1946-47.	1947-48.	1948-49.	1949-50.	1950-51.	
Gross value	£97m.	£157m.	£202m.	£308m.	£590m.	(estimate)
Average Prices	24.5d.	39.5d.	48.1d.	63.4d.	118d.	(approximate average to date

The 1950-51 figures are based on 1,200 million lb. clip and the approximate average price, full-clip basis, realised at August and September sales.

At the moment of writing the prospects that the prices will hold, look to be very good.

Mr. Oxnam in his interesting study (Exhibit 118 p. 42 *et seq)* has discussed for the Court at some length the origin and continuing causes of this inflation. It is too long to quote here but should be carefully studied.

We have been reminded during the hearing that the coming year may hold new inflationary pressures arising from the payment of war gratuities and the possibility of a Governmental war-time economy. The Commonwealth Government has not informed the Court that this will be so and of course even if both policies were carried out it need not necessarily be so.

How far the Court should be constrained to avoid adding anything to the inflationary forces prevailing now in the ecomony is a

very moot point; the influence of the Court's awards is not of itself a menacing one. The Court has no machinery of its own and no control of the machinery which experience has shown is available to regulate to a substantial measure these forces. The evidence has shown that steps are possible by the appropriate authorities to largely mitigate these dangers, and for my part I would not hold my hand in doing economic justice to Australian workers because there was failure for the time being to take these precautionary steps. I do assume that they will be taken. We have been urged to grant wage increases and so to increase prices in order to achieve a transfer of part of the alleged excess income in primary producers hands due to the extraordinary overseas prices for their products. An increase of wages will have this effect but it is a crude and inefficient and non- discriminatory method and I should decline to use it for this purpose if the Court had access to any method of avoiding it. It certainly has an unjust incidence on the other equally worthy sections of the community. But price increases are inevitable if wages are raised and that must be their effect; this is regrettable but as the Court pointed out in the *Standard hours case,* there is a corrective remedy in relief of these sections easily available to the Parliament but beyond the Court's powers. If the Court refuses to make any increase in the awarded basic wage because of the inflationary effect of such increase then it says in effect that there is no real dispute calling for settlement by the Court or that its proper settlement in the interests of the parties is to refuse the claim in *toto.* I cannot conceive either course having any relation to the realities of the present economic and industrial relations.

How far inflation in Australia is a present danger or a future threat is hard from the evidence to estimate; it depends to some extent on Government policy. That it is causing widespread concern is clear. It seems inevitable that we will have to grow used to living with a much depreciated £ and as far as I am aware it is unlikely that "value can be put back into the £." Inflation as a very interesting article in the Journal of the Institute of Public Affairs[1] shows is not an unmitigated evil. But as the article also points out it has its ill effect as well—

> "because it brings a prosperity which is as much imaginary as real. It increases the *money* incomes of all sections of the community but not the *real* incomes. To many, particularly to those sections who are politically unorganised, such as pensioners and some salary earners, it means lower real incomes and economic hardship. It diverts production into the inessential channels and obstructs the great work of national development. It weakens incentive and tends to make able brains concentrate on the easy gains to be had from capital inflation rather than on work of real national worth. And, of course, it produces the irritating and to some extent distressing phenomenon of a constantly falling value in the purchasing power of money".

But while overseas prices rise and ours lag the spiral will continue and perhaps should continue. Experience has shown that controls have

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(1) July-August, 1950 issue, p. 100.

been effective and may again when the people are sufficiently impressed with the necessity of exercising them.

It is often said that increased productivity will relieve the inflationary position. It seems to me that this is only half the story; it should read—increased production *at the same wage cost* would reduce prices. It is clear that if the increased production was paid for in full the relation between supply and demand would not alter—we would have both more goods and more purchasing power and they would, more or less, balance. Only when the *needs* of the people were met would the *market* show signs of collapsing and prices fall and unemployment ensue.

"C" SERIES.

I agree completely with Mr. Wright's submission that "of the many things which have emerged from this case none is as satisfying as the examination of the construction of the "C" series index numbers. No doubt can remain that the Statistician's methods and technique completely satisfy the requirements of an index designed for the purpose for which the "C" series is designed."

After having from Mr. Carver, Acting Commonwealth Statistician, the assurance that a conference of Statisticians held after he gave evidence (but during the course of the case) had resolved against any alteration in the technique of compiling this Series, I am of opinion that for the Court's purpose the "C" series is adequate, satisfactory and should not be altered. That does not mean that the index is perfect, no such claim is made for it and no such perfect index is possible, but it works within reasonable margins of error and is satisfactory.

I am satisfied that for the purpose of the adjustment of wages the index maintains the basic standard with sufficient accuracy and therefore the standard fixed by the "needs" basic wage in 1937 has, notwithstanding the depreciating £, been maintained and that such additions as have been directly made to it have been a real gain in standard. The prosperity loading of 6s. (4s. for South Australia, Western Australia and Tasmania) has depreciated for it was not adjustable; it is now worth a little more than half (57 percent.) in terms of 1937 pounds. The same applies to other loadings. The 7s. added in 1946 was a real and permanent advance for it was made adjustable. Nor should we overlook the gains workers have made through increased annual leave on full pay, paid sick leave, reduced standard hours, and so on. To this wage standard there are in addition, social services in various forms, maternity allowances and child endowment, unemployment and sickness and hospital benefits, widow, age and invalid pensions. These so far as they reach the basic wage earner are accretions to his standard of living but they are equally accretions to other citizens as well. They are matters which must be weighed. The State pays them; that is, the citizens of which the wage and salary earners are a majority pay them, and they are substantial contributors through direct and indirect taxation to the funds out of which they are provided.

SOCIAL SERVICES AND CHILD ENDOWMENT.

There are several ways of looking at this question. It can be argued that child endowment (before the recent extension, at any rate) was paid for from the proceeds of pay-roll tax, and is therefore paid by employers. This is true historically; the pay-roll tax was introduced to meet the cost of child endowment. But the pay-roll tax has long ago been passed on into prices, and the consumer in general bears its burden.

Child endowment is an accretion to all families of dependent children; it is however a debit to all who pay taxes, so that the workers without dependent children, the unmarried, the childless, the workers whose children have outgrown dependency, are contributors, not sharers. To that extent the working class is providing their own endowment. I do not have to be reminded that it all comes out of industry. The answer is, there is no other source; it is the cornucopia out of which all wealth is poured but it is not less the industry of employees than of employers.

As individuals some workers—those with dependents and for the period of that dependency—are substantially benefited. From the 27th Report of the Commissioner of Taxation (Exhibit A86) I take the following figures. There are 1,445,000 income tax payers with personal exertion incomes of £500 and under; they pay £51,000,000 income tax. There are in all 1,597,000 personal exertion income tax payers who pay £77,000,000. Of composite income tax payers with incomes under £500 there are 227,794, they pay £10,000,000; there are in all 369,000 paying a total of £74,000,000. If we assume that under £500 per annum represents largely the working class group, they pay a very large percentage of direct taxation and by their overwhelming preponderance in numbers, a very substantial percentage of indirect taxation. The total amount of child endowment paid in 1947-48 to all claimants was £20.5 million, the total amount of income tax of this under £500 a year group is £61,000,000. The increased wages due to my proposed increase in the basic wage will result in an increase of taxation both direct and indirect from the workers and thus will increase their contribution to the funds out of which social benefits are paid, the total of which will not be altered unless and until Parliament alters the rates.

Here again the facts present a problem. It is agreed that these social benefits do raise the standards of those that receive them; the net value depends upon the amount of taxation paid in each case or if measured by classes, paid by each class. They are not limited to the basic wage earner, they are universal in application. What then should the Court do about it? In my view the Court should not allow Government policy on these matters to disturb its judgment for the settlement of these disputes any more than it should be concerned to modify its decision by the Government's policy on defence, conscription, tariffs, international relationships and so on, all of which affect the Court's present problem in some way. Social benefits are the Government's policy for the re-distribution of Australian income after it is earned

and of course may be modified at Parliament's will. The Court's task is now to settle disputes about wages which are earned in the production of that income out of which Parliament distributes its bounties.

Mr. Seaman whose evidence given on behalf of South Australia was so helpful and impressive, as part of his full discussion of all the Court's problems showed how the 1937 standard had been affected by what has happened since that date and concluded—

Exhibit H 1, *page* 7—

> "Since 1937 there has been a number of award provisions for an increase in real wages. Among the more important of these have been the inclusion of 'war loadings' the increase in the 'needs' basic wage in 1946, wholesale revision of margins particularly during the past 4 years and an extension of penalty rates and of paid sick leave . . . . the indication from all the data is that real wages for ordinary work have increased between pre-war and 1948-49 by at least 17 per cent.—20 per cent. This would be equivalent to something like 10 per cent. to 12 per cent. of the national income".

As to Social Services, he has this to say at page 10—

> "An additional 2 per cent of the national income is now absorbed in social services and a further 2 per cent. is to be anticipated shortly (he wrote before the increase in child endowment was made). These social services affect wage and salary earners substantially and constitute a re-allocation of national income largely in their favor. Accordingly their existence should have a place in the considerations of the appropriate new level of real wages".

The employers do not ask that wages be reduced by the extent of these benefits but do suggest they should be considered and estimated before any increase is awarded.

It has been pointed out that any increase in the basic wage will enure to the benefit of all workers both basic wage and marginal wage earners covered by awards of Federal or State Courts—it will not affect at least so far as this Court is concerned, the 300,000 unionists whose organisations have been de-registered or whose case has been struck out—unless and until they are in some way restored to the list.

BUDGETING POSITION.

As I have said, neither the State nor the Federal Governments of Mr. Chifley nor Mr. Menzies has offered the Court in these cases the benefit of their opinion as Mr. Chifley did in the *Standard Hours case;* they have all remained actively neutral. Nor did the Federal Government indicate what its future policies might be with respect to matters either aggravating or relieving the inflationary position now existing. Each State Government presented much information about the cost to the budget of wage increases. So that the Court is aware of the debit side of granting of the claims, either wholly or in part. However, there is a credit side, though this was not presented. It is an essential corollary of the increase of incomes and prices that taxation receipts will increase. The best inquiry I can make shows that the credit probably exceeds the debit and certainly equals it. I do assume that appropriate adjustment of the situation as between States and Commonwealth will be achieved either by the Grants Commission or by agreement

between the States and the Commonwealth, so that, while superficially presenting a financial burden which might embarrass Governments, in reality need not do so.

As to State enterprises outside the budget. There is no doubt that their costs will be increased by any wage increase and is being affected by the automatic wage increases; the figures for each of them are before me but need not be quoted; suffice it to say upon an increase of £1 per week in the male basic wage the amount is substantial. Every increase in standard has involved some increased burden, every depreciation of the £1 also involves it. It is of interest to realize that the 1950-51 wool clip by further depreciating the £1 will add to the public authority costs and so may involve an adjustment in their charges. If we are ever to raise standards this must be faced and I have no doubt will be, as it has been by increased charges and Governmental budgetary policy and we always hope by better management and more economical administration.

OVERSEAS COMPETITION.

The employer witnesses from both primary and secondary industries urged the Court not to increase their costs lest they lose their markets to overseas competitors. First I am not satisfied that I should share their fears. They impressed me as efficient administrators and showed that much of their plant was of the latest types acquired to meet our war-time needs; their workers are Australians and they won praise from many witnesses (Mr. Aird of Thomson's added his eulogy). They have tariff and transport protection and an increasing local market due to the flow of immigrants and lastly they have exchange protection of 25 per cent. and the protection of overseas prices relatively higher than ours, and I would not be surprised if the new level of wool prices does not indicate a further general rise in overseas prices and so provide a further margin. No industry indicated that up to the present it was unable to market its products; practically all indicated their inability to satisfy the existing demand. Even if I was as pessimistic as they professed to be, and I remember they expressed similar fears in the Hours case, is such competition an unmitigated evil? It is a challenge to their initiative and enterprise and perhaps profits have been too easy in the post-war years as the I.P.A. article quoted above suggests, and if they nevertheless fail to meet it, it may be that a transfer of employees from these industries which cannot make the grade to our more basic and essential industries will be of some advantage to the economy. Perhaps we may see a re-birth of competition which is said to be the very soul of capitalism which easy profits and gentlemen's agreements seem to have relegated somewhat to the background. Then again, how are we to get paid for the valuable exports we have sold abroad? We must accept payments in imports of goods or reconcile ourselves to the idea that we have given our wool and wheat, our meat and butter and metals away for nothing. In 1939 we had £55.7 million in our London funds; in 1945 we had £208.3 million. The figure now is £651 million. Of this it is said £300 million is "hot" money (all figures are Australian £ and as at June 1950). Our balance

of trade is "favorable," that is, we give more than we get and much of the "hot" money looks like cooling off and "freezing" in Australian investments. Lowering prices, even stabilisation of prices is a check on inflation and if imports achieve this it is advantageous on this score. The argument against a wage increase looks like this—Don't increase wages lest we aggravate inflation by increasing costs and prices. Don't increase wages lest if by encouraging imports we reduce prices and lead to deflation. If ever imports really threatened employment in Australia I have little doubt the Tariff Board would respond promptly to the importunings of the threatened industries. In any case is it altogether undesirable that our prices should not be brought closer to overseas prices and can we stay the rise in our prices until the two approach nearer to equality? As it is we pay their high prices while they buy at our lower ones.

At all events, the knowledge and experience gained in the last four years makes me feel less oppressed today by this fear of oversea competition than I was in 1946-47 when in the *Standard Hours case* this argument was strongly pressed.

In what I have written I have not overlooked the evidence relating to the Fruitgrowing industry and the threat to its world market by the huge surplus production of the United States of America.

40 HOUR CASE.

I think every employer witness was invited to express an opinion upon the 40 hour week and I think all condemned it. The loss they say has been almost exactly proportionate to the loss of hours. I have not any doubt that they believe it is so and that it applies to all production. Their conclusions were not completely convincing—

(a) Most said they were working some overtime so that in their cases the reduced standard hours meant increased labor cost and not loss of national production.

(b) It is inconceivable that none of them were able by better management, better organization, better methods or better plant to mitigate the loss of working time. In fact I know that in many industries the lost working time was so met either wholly or partially.

(c) Dr. Stevens' investigation, criticized as it was, was the only reliable investigation and met in every respect the inspired cross-examination of Mr. Wright; in no place could counsel suggest a flaw in Dr. Stevens' methods; on the contrary he was able to indicate some precautions to safeguard his results that showed he was completely aware of all the pitfalls. He did indicate that his results were tentative, were inadequately based and were in their preliminary stages. No employer witness was cross-examined upon the basis of his belief and as it seemed to me that standard hours having become part of the law of the land and were not likely to be changed in the immediate future, the beliefs of witnesses, however strongly held about its effects, were almost irrelevant.

(d) At all events, no Statistician would agree that the over-all effect of the shorter week upon Australian production could be shown by any figures and it is my firm view that while opinions may be held, proof is not possible.

(e) Hardly any of the worst fears of the witnesses in that case have been realized and some of them have been falsified not altogether because they were wrong but because other unforseen factors and conditions intervened.

The Court itself indicated in its judgment that a fall in production and rise in prices was expected to follow a shorter working week and as far as one can judge (though a solidly based judgment is not possible) the expectations of the Court in this respect have not been exceeded.

THE FEMALE BASIC WAGE.

Section 25 confers jurisdiction on the Court to determine the female basic wage. This the Court does not seem to have done before though it has in most awards fixed a minimum rate for females in the industry covered by it.

Mr. Souter who had specialized on the female case ceased to appear after his Union (the Amalgamated Engineering Union) had been dismissed from the proceedings, but had before that tendered the evidence of 21 females from Melbourne, Sydney and Adelaide. None of them were on the female minimum rate, their annual income averaged £337 for Melbourne, £332 for Adelaide and £378 for Sydney, while 54 per cent. of the male rate would have been about £190. Though their evidence was helpful in elucidating the way in which females in their respective positions were able to live, and in disclosing the kind of standard they were able to achieve on their respective incomes, their evidence was entirely inadequate for the determination of a basic wage based on needs, which was to prevail throughout Australia. From their evidence it was not possible to estimate the reasonable needs of female basic wage worker in industry or to arrive at a standard of living which should be regarded as basic within the meaning of the new definition in section 25. Mr. Souter also tendered the evidence of departmental managers from the Myer Emporium and of Mr. Moore who had been manager of Foy and Gibson Ltd. and was still associated with the textile industry. They were tendered as experts upon the needs of a female basic wage worker and upon the character of the clothing which ought to be allowed for and as to its durability and cost. Though their experience was greater than mine in these matters they did not justify Mr. Souter's claim that they should be regarded as experts in the problems the Court had to solve. There is no evidence before the Court upon which I could arrive at a basic wage upon a needs basis and if the burden was on the Unions to provide such evidence then they have failed, and so far as they are concerned I have access to no material upon which I could independently assess it, and if these were proceedings in which the principle of burden of proof applied, the Unions' case for a female basic wage should be dismissed. There have been other inquires to which I have access, *e.g.*, those

conducted by the South Australian Industrial Commission, those by the New South Wales and Queensland tribunals and the Piddington Commission of 1920. Miss Heagney who gave evidence as an expert who had been associated with the Piddington Commission and with movements advocating "equal pay" (so-called) relied upon a number of investigations in the United States of America while Mr. Souter relied on the English Royal Commission for equal pay and mainly on the minority reports in it. I found this evidence entirely unsatisfactory for this Court's purpose and no judgment of this Court upon a "needs" basis could be based upon it and very little guidance upon any basis obtained, while Miss Turner who gave evidence as the Vice President of a Business and Professional Women's Club so far failed to understand the Court's task and the nature of the real problem or the statistics which she used as to lead me to reject her testimony entirely. From the lack of evidence and sources, the Court must seek another principle upon which to estimate the female basic wage. The claim by the Australian Council of Trade Unions is for equality with the male basic wage for adults; if this be rejected, the highest that industry can sustain; a third alternative is the needs of some arbitrarily chosen type of female worker.

Very early in these proceedings the Court intimated that it rejected the claim for equality if based on the present male basic wage. It seems to me that such a claim cannot be sustained because—

(a) the male basic wage was a social wage for a man, his wife and family;

(b) no claim was made for a unit wage upon which equality of wages could be based. As this might have resulted in a lower male basic wage the Union's failure is easily understood, but this approach might furnish an acceptable and perhaps desirable basis for equality of reward but it means procedures which would need the aid of Parliament and is beyond the power of the Court;

(c) "equal pay" based on the male basic wage would put intolerable strain on the economy;

(d) it was socially preferable to provide a higher wage for the male because of his social obligations to fiancee, wife and family;

(e) while single females were said to be anxious to receive the higher wage their interest changed on their marriage which occurred in Australia at the average age of about 25. As married women they became concerned that their husbands should bring home the largest possible pay envelope;

(f) the productivity, efficiency and the needs and the responsibilities etc. of females were substantially less than that of males in this community; and

(g) lastly the re-distribution of the wage fund so that young unmarried females would receive very substantially increased spending power would disturb the ecomony in a manner certainly to the disadvantage of the married basic wage worker and his wife and family and probably of the whole community.

If, as has been suggested, there is a wage fund, *i.e.* a percentage of the national dividend absorbed by or represented by wages and salaries, then an increase in female rates must be at the expense of other wages and salaries and result in a lower amount for males both as basic wage and as margins. While some approach to equality might be justified and accepted, the complete equality immediately and without a complete recasting of our wage structure would be, in my opinion, socially undesirable.

If, as I do, we reject the claim for equality and find no means of basing an award upon the reasonable needs of the humblest female worker, then upon what? The most industry can sustain? This presents a dilemma; if we award more for the male then there is less for the female and conversely, so that we cannot adjudge either one without first fixing the other.

Mr. Wright's written final address at page 87 seems to provide an answer. He said—

> "Our attitude to female rates was plainly and unequivocably stated namely—
>
> There is no justification for the disturbance of existing rates of female employees in industry."

He probably meant no disturbance of existing *award* rates but he must forgive me if I take him literally because that does seem to me to be an acceptable basis which might lead to satisfactory results and my task would then be to find what were "existing rates."

The evidence, the statistics, and one's experience and knowledge prove pretty conclusively that no female today works on the minimum rate of 54 per cent, adopted as the female minimum rate by Courts and legislature and to award such rate would not be to settle the dispute but to aggravate it.

As the result of the war the demand for female labor led to higher actual rates as well as higher award rates. The Women's Employment Board under its special charter to fix rates according to the relative efficiency and productivity of females and at not less than 60 per cent. or more than 100 per cent. of the male rate, fixed a rate generally about 90 per cent.; further, by regulation (Female Minimum Rates) a rate of 75 per cent. was fixed for females in the "vital" industries, and

a rate of 75 per cent. (flat) by this Court in the Clothing Trades industry.

These rates have spread widely through industry and though both the Women's Employment Board and the vital industry rates have ceased to be binding and effective, the evidence shows that "the relatively great shortage of male labor has placed female workers in a uniquely favourable situation in the labor market," to again quote Mr. Wright at page 87, so that their actual rates have not fallen back to the award rates. I believe that it would be hard to find today any adult female in Australia working on the 54 per cent. level.

The result is that if the adult wage is to be fixed at as high a level as industry can sustain (and I feel strongly that the Court should not enforce a settlement of a dispute at a lower figure) and as there is good evidence that industry is sustaining and has sustained these actual higher levels, then it would be safe for the Court to prescribe a sum as a basic wage that would give legal sanction to existing actual rates. This should enable the higher standard of living which since the war the community has become accustomed to for females to be protected by an award. The Court in estimating the effects on the economy of its awards has in the past always assumed that its rates were observed and in effect the minimum awarded was almost universally the maximum also. Today it is known that economic forces are such as to make the awards of the Court effective only as minimum prescriptions, that the law of supply and demand is active and will so long as the present conditions prevail, have its way, and that employers will compete with each other in the market for labor. But what can the Court do? It has no power to fix maximum rates nor to impose any sanction upon an employer who pays over award rates. We are aware that not only do employers pay such over award rates but they also consent to awards fixing special rates. Of such a character is the present shearing rates agreed to by the Graziers Association and now incorporated in an award [1] which more than doubled existing rates and was conceded because of the prosperity of the Wool industry. I am confident that even if the Court dismissed all the 54 claims that it would not affect the actual rates being paid nor affect the earnings of workers in Australia. Economic forces and not the Court are today largely dicating wage rates. If, instead of dismissing the claims with respect to females, the Court decided to increase the male basic wage and the female percentage of it the new award should absorb *pro tanto* the existing *de facto* rates. No doubt that efforts would be made, as is rational enough, to add the new award increase to the existing rates, but whether this effort succeeds or not is a matter for the employers and is beyond the Court's power. Conscious that our task is the settlement of the dispute, I cannot see how an award fixing rates substantially lower than those actually being paid would settle the disputes. It would be so unrealistic as to tend to bring the Court into contempt. I think the Court must, as in the past, go on assuming

(1) Supra., p. 81.

that its awards will be observed as maximums as well as minimums and refuse to contemplate or to take responsibility for what employers individually or as organizations may do. We can merely tell them that the Court has awarded what it regards in all the circumstances as fair, equitable, reasonable and in the public interest. If it is disregarded and there is substituted for the Court's judgment one of their own making, the Court can do nothing whatever about it.

ACTUAL EARNINGS AND NOMINAL RATES.

Mr. Oxnam did in his study (Exhibit No. 118) consider this matter and his table is at page 46, while the Commonwealth Statistician, at my request undertook an investigation as to the difference between actual average earnings and award rates, and while the results are not as satisfactory as I had hoped because they are necessarily subject to a number of provisoes estimations and limitations, the amount for adult males is just over £1 per week which includes an unascertainable amount for overtime. That amount is being paid and could be awarded. However, for reasons which I have stated, I am of opinion that the economy can safely sustain a higher standard for its workers and feel confident that the economy will not over-all and upon the whole suffer by an award raising the male basic wage by £1 per week and fixing the female basic wage at 75 per cent. of that basic wage. More specifically I would, in settlement of any dispute, alter the male basic wage for Melbourne, which I assume for the purpose of this illustration is the "needs" basic wage plus the prosperity loading, from its level of £7 to £8 and the female basic wage for Melbourne I would fix at £6 which is 75 per cent. of the rate fixed for males. What would be done with respect to other cities and provinces would, in general, be governed by the principle that the Court should, as far as possible, secure to the worker an equivalent standard wherever he worked in Australia.

I do not claim that either the £1 or the 75 per cent. is scientifically, statistically or intellectually verifiable. It is a round figure; the 75 per cent. has the justification of an existing and past fixation as well as Governmental decision by Statutory Regulation. I know of no method, no figures, no enquiry that would enable a tribunal to determine a figure or percentage with convincing precision. I expect that my figures will be challenged by both sides and by many of no side. I would have no difficulty in challenging them myself; like all such figures in the past from the Harvester judgment [1] onwards, they are the best conclusion the adjudicator can arrive at. He may quote pages of figures and reams of economic opinions; in the last analysis it must rest upon his judgment.

CONCLUSION.

This case was finished just as the new season's wool sales commenced and before it was known what the new prices were to be. So

(1) 2 C.A.R., p. 1.

far they are almost twice last season's average and if they are maintained will mean £280 million unexpected income for the wool growers. These riches are almost embarrassing. They make such an addition to our inflationary pressure as to give rise to considerable concern. That they will swamp all other factors in this regard is clear; that there is now, at least for the ensuing year, a fund out of which additional wages could safely and I think properly be paid, is also clear, as well as providing ground for protecting those classes, or at least some of them, which will be so heavily hit by the inflation that will follow this enormous accretion to our spending power, with practically no increase in our goods—at least no increase until imports flow in in payment for our exported wool.

Little fear remains in my mind that the Australian economy can sustain a higher basic wage both for males and females and that the Court should, in this general judgment, indicate that in the disputes it will have to settle in each of the cases still before it, it should increase the male and female basic wage.

I would leave for particular consideration in each case the question of its application in the various States into which each particular dispute extends. I would indicate that there should be no differentiation between the States on grounds of alleged differing prosperity. And would likewise reserve the problem of provincial differentiation for each award, indicating only that the principle to be kept in mind is that equality of basic standard is always to be aimed at. As to the special rates for particular localities such as Whyalla, Iron Knob and Yallourn, I would leave those for particular scrutiny in each award. Now that the Metal Trades and the Engine Drivers and Firemen's awards are excluded, the remainder of the awards may not occasion much controversy. Further, I would leave open in each case the consideration of the insertion of a clause in the award that while the upward adjustment of the basic wage shall be automatic and according to the "C" series index no reduction in accordance with that index should occur except by order of the Court. And lastly I would refuse to usurp the function and authority of the Conciliation Commissioners by declaring that this judgment exhausts the economy and that there is nothing more in the wage field for them to do. I will assume that the Conciliation Commissioners will fulfill the task that the legislature has imposed upon them with responsible competence; in any case the wage structure other than the basic wage has been deliberately excised from the Court's jurisdiction and placed in the hands of this newly created authority. It is proper that the democratic will should prevail.

I should only add that the Australian Council of Trade Unions made no case for the adjustment of the basic rates according to Australian productivity. There is no satisfactory index available for this purpose and the present practice of the Court to undertake periodic investigations of the economy seems to me as at present advised to be far more satisfactory.

Dunphy J.:

The Court is asked by united applications on behalf of a great number of Federal Unions, whose industries are covered by awards of the Court, to prescribe a basic wage for all adults, male and female, at an amount of £10 per week, which by adjustment would amount to approximately £13 per week at the present time. This is, in truth, a very short statement of what the unions general claim amounts to, but as there had never been any real doubt about this fact, and the employers themselves have not bothered the Court with any great degree of technicality, it is perhaps unnecessary to make any lengthy comment upon the great number of inconsistencies which do arise out of even a cursory examination of the general claim and some of the individual applications which have been lodged. It could be recited, for instance, that not all the unions claim a £10 basic wage, some which do claim the £10 basic wage have no provision for adjustment to bring it on to the £13 scale, and there is not such a uniformity of expression with respect to what might be classed as the subsidiary demands as one would expect to find in a case which was claimed by trade union leaders to be the most important which had ever come before any Court in Australia.

If the estimates of one of the Union advocates, Mr. Baker, are to be taken for granted and the claim is accepted as involving a total increase in wage distribution of £658,000,000 per annum there is no doubt it is the largest money claim ever made in any Australian Court, and I doubt whether a claim of any such magnitude has ever been made in any Court in the world. This case does not only affect the wage of the lowest paid worker—if the increase is awarded as claimed —it is added equally to the wage of the unskilled, the semi-skilled and the highly skilled. Men, women and juniors would all share in the benefit and the reaction could not be confined to awards of the Commonwealth Court. State tribunals could hardly remain unaffected by a Federal decision which made an upward alteration of the foundation of the structure upon which Australia's Federal wage system has been built.

The claim, if granted in full, would result in varying increases depending on the basic wage now prescribed in the various awards. For instance, under the Sprinkler Pipe Fitters agreement[1] the increase would amount to £7.10s. per week, under the Saddlery award, [2] the increase would amount to £6 per week, and as an example of the increase involved with respect to female rates of pay under the Artificial Fertilizer and Chemical Workers award, [3] £7 per week would be added to the ruling minimum rate. However, in spite of all the peculiarities, irregularities and inconsistencies which appear from a perusal of a number of claims lodged independently of what is known as the Australian Council of Trade Unions "stock form," the Court and all parties before it clearly understand that the main issues as far as the unions are concerned, are—

(1) 47 C.A.R., p. 686. (2) 67 C.A.R., p. 76. (3) 65 C.A.R., p. 69.

(a) the granting of a male basic wage, which, at the moment, would be in the vicinity of £13 per week and—

(b) the determining for the first time of a female basic wage of a similar amount.

This, therefore, gives some idea of the importance of a case which according to a number of "authorities," including certain sections of the Australian press, should have been decided "swiftly and expeditiously" apparently by some form of summary process.

The proposition was advanced that this type of claim should be settled by statistical methods—for instance, by harnessing the basic wage to figures of productivity on somewhat the same principle as the "needs" base is now adjusted to cost-of-living changes. Such a scheme ignores a number of fundamentals, not the least of which is the fact, acknowledged by representatives of workers and employers and by the Government Statistician, that no such statistical records exist, that such a system would take years of research to establish and that a vastly increased staff would be necessary for the purpose. This latter item would be very consoling, no doubt, to those who currently advocate a reduction in governmental employment. Economists also disagree as to what methods should be adopted to secure a valid measuring stick of productivity and possibly the Court's first inquiry would have to be whether or not proper methods had been adopted. The "C" series index has been, over the years, a battleground between the contending parties and a new system, involving the relating of wages to production, would possibly be not quite perfect upon its first introduction.

However, above all such minor criticism, the inescapable fact is that the claimant Unions are not basing their demands on any such method, and, although they are depending to a great extent upon figures of productivity as they see them, they are making a straight-out claim for a basic wage of £10 per week irrespective of whether or not their statistical evidence, viewed in the most favourable light, justifies the granting of such a claim. It would be a most inacceptable and most dangerous procedure for this Court to direct or restrict the method of presentation of a case of this nature and the most the Judges can do is to make themselves available at the most convenient times for the full period of presentation, as required by those vitally concerned.

An inquiry of this magnitude cannot possibly be concluded on a "slide rule" system, and, in my own view, there is much to recommend the extension of a case of this sort from one financial period into another. The enormous changes which can occur are illustrated by the vastly different situation existing in 1950 as opposed to 1949, and if the Court had given its decision last year, it would not have had the advantage of knowledge of the unpredictable developments which have recently occurred. Some of the firm opinions of the few really reliable expert witnesses called in the early stages of this case have been confounded by happenings arising in the past few months.

The first striking fact which emerges from this very lengthy hearing is the inability of the unions to establish that there is a "basic wage earner" employed in industry. Like Sairey Gamp's mythical friend Mrs. Arris "there ain't no such person." Not one witness who appeared before the Court was solely dependent for a livelihood from the "needs" basic wage, and awards of the Court which prescribe the "needs" basic wage, plus prosperity loading, as the total rate for any worker, or class of workers in industry, are so few and far between that the unions were unable to place before us a list of such awards. This rather surprising fact is due to the improvement over the years of the financial status of the lowly-paid worker who has, per medium of loadings additional to the prosperity loading, and, in many cases, of the addition of a minimum margin, advanced beyond the basic wage earner class, as that term has for so long been understood.

Actually, the period of development above referred to is comparatively short since the "prosperity" loading was first added to the "needs" wage in 1937.[1] In a period of thirteen years Industrial tribunals have found so many devices to improve the economic status of the lowest-paid worker, without officially taking him out of the basic wage class, that it is no longer true to talk about workers generally, or even a very restricted number of workers, as now living on the equivalent of the Harvester standard of 1907. There have been other advances which have had enormous beneficial effect on the economic status of the Australian worker, and the development of the marginal structure is one of the most important. It would be hard to say which particular aspect of this line of development is the most significant, but perhaps the elevation of what was formerly classed as unskilled work into the category of semi-skilled work is most noteworthy. The granting of margins for work which was for many years classed as eligible only for basic wage payments has resulted in a consequent increase in the recognition, from the monetary point of view, of the semi-skilled worker, and the true tradesman. It has also reduced to a practical minimum the basic wage earner class, whether you look at the basic wage earner as the person in receipt of the "needs" basic wage plus prosperity loading only, or the "needs" basic wage plus loadings other than margins. If this fact were more widely recognised it should at least save speculation and worry as to how the Australian working community can exist on the basic wage. The plain truth of the matter is that even without taking into account overtime working or over-award payments, no Australian worker is obliged to live on the basic wage.

Taking the labourer in the Metal Trades Industries as an example, in 1937 he achieved his 6s. "prosperity" loading; in 1941 a "war-loading" of 3s. was added; in 1946[2] a real basic wage increase of 7s. was granted, and in 1948[3] the Metal Trades labourer was lifted out of the basic wage class altogether, achieving a margin of 6s. after three months' experience. Thus, this particular labourer now receives 22s.

(1) 37 C.A.R., p. 583. (2) 57 C.A.R., p. 603. (3) 61 C.A.R., p. 111.

per week over the "needs" basic wage without working a minute overtime in any week, and this is not an exceptional case, as many such examples are to be found within the fabric of our wage system.

Another point which cannot be disregarded is the increased speed of adjudication upon all money claims brought on behalf of workers. Whatever demerits may be still alleged to exist in our arbitration system, it can no longer be said that there are substantial delays in the adjustment of money claims. The apointment of 16 Conciliation Commissioners has resulted in all matters respecting claims for margins and allied money claims being dealt with much more speedily than was ever the case in the prior history of industrial arbitration in Australia. Unions have no longer had to refer their subsidiary claims to a restricted number of judges, but have had ready access to the new tribunals established by the Amending Act of 1947. Not only have margins therefore been adjusted substantially in amount, but the adjustments have taken place much more swiftly than ever before.

Whilst it is true that alterations of the basic wage have reactions throughout all industry, whereas an adjudication upon a marginal claim applies only to an individual award, the multiplication of tribunals operating under a simplified process has resulted in marginal claims being dealt with as swiftly and frequently as to have very much the same wholesale effect as basic wage adjustments.

The above improvements also answer the suggestion that the wages employee is not as well off as formerly because the £1 is not worth as much as it used to be. Some of the older witnesses, giving verbal testimony to the Court, were quite emphatic in their belief that their standard of living had improved considerably in recent times. This does not mean, of course, that workers are obliged to be content with existing standards, nor does it justify any suggestion they should not strive by legitimate means to improve their lot, but it does supply the answer to the suggestion that the workers' standard in Australia has deteriorated, and it destroys any false sympathy which may be built up on the basis that the deterioration in real value of the Australian £1 means that the workers today are not as well off on their adjusted wages as they were years ago on the Harvester standard. Whilst the £1 cannot purchase as much as formerly, the worker now has many more pounds to spend and this very desirable state of affairs has to a great extent been brought about by the adjustment of the "needs" basic wage to cost-of-living increases, the addition of a number of loadings to the "Needs" base and the increased field of marginal coverage as well as the increase in the margins themselves. Whilst the Victorian Railway Department can advertise (daily and unsuccessfully) permanent positions for unskilled workers at eleven pounds per week, and the Tramway department follows suit with offers of permanent positions for 18-year-old workers at eight pounds per week and upwards, it is false sentimentality to talk of "an economic gale blowing in the face of the worker."

During the course of the proceedings, the individual members of the Court were bombarded with advice and suggestions, sometimes from anonymous sources, as to how the basic wage should be finally determined. One particular principle which had a number of adherents under a variety of forms was the introduction of a unit wage as opposed to what is now, theoretically at any rate, the family wage. The unit is not a new idea, nor is it entirely devoid of merit. In terms of pure logic, there are many strong points of argument against the paying of a family wage to an unmarried person, or to a married person without children, if the family wage includes an allowance for children. In fact, the only substantial argument in favour of the present system appears to be grounded on the ethical concept that an adult worker should be entitled to a wage which would support a family if he had one. However, the Court was prevented from full consideration of the unit wage by the simple fact that neither organised employers, nor organised workers were prepared to support any such revolutionary change. Although the Court is very loosely bound in its original inquiry into basic wage matters, when it comes to the settlement of individual disputes which are tied up in the general cases, there are insuperable constitutional barriers to going outside the ambit of the particular dispute. If neither party to the dispute favours the introduction of an entirely new scheme with respect to the basic wage, the Court could hardly be acting within its jurisdiction ambit if it introduced a wage system which neither party to the dispute sponsored, requested or approved. I do not here intend to suggest that the Court is bound to accept any agreement between worker and employer as to the nature, constituents or amount of a basic wage. Even if such an agreement were entered into with respect to a particular industry the Court's statutory duty would impose upon it the obligation of closely examining the agreement before ratification thereof. Even if there were no jurisdictional limits, as above mentioned, the Court could hardly be said to be acting in accordance with equity, good conscience or in the public interest if it imposed a new basic wage scheme of which both contending parties heartily, and bona fide, disapproved. Accordingly, those well-meaning logicians, protagonists for the unit wage, should take it for granted that there is and never will be any chance of the implementation of their pet theories, which, as I have said before, have substantial merit, unless they can first convert one, or both, of the parties who have main right of access to the Court on the all-important matter of the basic wage.

If the suggestion that Australian employers invariably oppose wage increases and support wage reductions is true their failure to seize upon the obvious benefits of the unit wage from the point of view of their own interests means they are somewhat out of character. Their further decision not to ask for a reduction of the basic wage because of the institution by the Commonwealth Government of its very meritorious child endowment scheme does not bear out the proposition that the employer is invariably concerned in beating down the wage standard. Actually, the employers defined their position by saying that the Court had the responsibility of fixing the highest basic wage that it is possible for

industry to bear, and whilst they were not alleging inability to pay an increased basic wage, they claimed that any increase would have to be reflected in increased prices.

At the commencement of its inquiry the Court had statutory authority to make an order "altering the basic wage, or the principles upon which it is computed" and/or "determining or altering the *minimum rate of remuneration for adult females* in industry." By an Amending Act passed after the inquiry had proceeded some distance, the term "basic wage" was defined and the Court, for the first time, was empowered to "determine a basic wage for adult females."

The historical development of the Court's functions in the field of fixation of the primary wage, has shown that there are two possible reasoned principles upon which a decision can be based—

(a) the needs of the employee, and

(b) economic capacity.

In the beginning the "needs" of the employee formed the main submission, but in more recent times, possibly because methods of improvement in the wage standard on the "needs" basis are becoming more difficult to visualise, "economic capacity" has become the modern approach. In the present case there was a combination of the two principles, the "needs" being the minor issue. Mr. Evans reiterated the principle that the Court's investigation should involve a consideration that the basic wage should be ascribed to the needs of a family of five people. It was dealt with by a rather half-hearted attack by Mr. Baker on the efficacy of the "C" series index and by lengthy verbal testimony from women witnesses supporting the claim for a basic wage for their sex equal in amount to the male basic wage. No evidence was called to prove that the "needs" basic wage was insufficient to support, in reasonable comfort, a married worker with family responsibilities, although the Court was asked by the unions to maintain the family unit as the standard.

Mr. Carver, the Acting Commonwealth Statisticiain, had a lengthy occupancy of the witness-box, and was subjected to intensive questioning from all parties interested, including members of the Bench, as to the efficacy of the "C" series index in relation to basic wage matters. The index has been subjected to attack in prior basic wage proceedings and has been criticised by economists, and would-be economists, outside the Court, and by employers organisations, and the labour movement in alternation over the years, without the Court itself ever finding any material fault in its structure. I doubt very much if such a full and complete exposition of its purpose and the machinery of its working as was presented in this hearing has ever been given before.

To my mind, Mr. Carver's memorandum, Exhibit B.1. (which really constitutes his evidence in chief) together with his cross-examination,

and his supplementary submission, Exhibit B. 14, should be embodied in one document and widely circulated amongst all those who have any real interest in these very vital proceedings of the Court.

Annexure 1 to Exhibit B.1. is a record of replies by Mr. Carver to questions asked by delegates to the A.C.T.U. Congress in Sydney in June, 1945, and it appears that at that time the Acting Commonwealth Statistician was ready and willing to answer all questions which the labour movement cared to ask relating to the index, and, in fact, did answer a number of most pertinent questions dealing with current problems. In particular, publication of his treatment of that hardy annual, "the non-inclusion of fresh fruit and vegetables, other than potatoes and onions," from statistical calculation should bring home to all concerned, the facts in relation to what is often regarded as a vulnerable omission from the so-called regimen.

It seems to me that the odds are in favour of the omission inflating rather than deflating the "needs" wage up to the moment. The main reason why fresh fruit and vegetables have been omitted is the very great difficulty associated in tracing the fluctuations of price movements with respect to these commodities. They are most unstable both with respect to regularity of supply and uniformity of price, so that the position changes almost from day to day. Whilst it may be true that available statistics indicate that during the war years prices of fresh fruit and vegetables have increased more than most other food commodities, and their inclusion might, during that period, have had an inflationary effect, for many years prior to the war, and particularly in depression times, fresh fruit and vegetables were most susceptible to deflationary trends. If, therefore, they had been included prior to 1939 they would have had a deflationary effect on the "needs" wage over quite a lengthy period which would have off-set any inflationary effect during more recent years. If the Statistician's methods are properly appreciated it should be realised that the addition to food commodity items of new items bearing a low average cost (no matter how common or necessary the use of such items may be) will inevitably result in a deflating of that particular portion of the index. Probably the use of the word "regimen" in relation to the "C" series index had given the false impression that the index purports to be a list of items of general average consumption, the total weekly value of which forms an integral part of the basic wage, and that therefore the omission of such necessary and everyday articles keeps that wage below the needs of the worker. Study of Mr. Carver's submissions completely debunks this superstition and, in my own view, the basic wage earner would have been worse off rather than better off if fresh fruit and vegetables had been an original item.

Apparently, this was appreciated by Mr. Baker because at page 1,849 of the transcript he says—"If the Court pleases, on the particular matter of fruit and vegetables, I want to make it clear that there is no application or suggestion by me that the index should be altered to include

fruit and vegetables," and at page 2,572 he reinforced this statement as follows:—"There was some discussion as to the possibilities and desirability of including fresh fruit and vegetables and I think to some lesser extent fresh fish in the regimen, and I just wanted to make my position clear that at this stage we are not suggesting that any major alteration such as the inclusion of classes of items which are not at present in the index should be included."

Mr. Carver did discuss at some length the assertion that the "C" series takes no account of changes in the standard of housing available to wage earners in relation to the rent figure. There is a possible discrepancy here and the maximum deficiency, if any, appears to be now in the vicinity of 2s. 1d. Three alternatives were provided as tentative methods of adjustment, but as the inquiry on these particular lines is really only in the embryo stage, and was not fully debated before the Court, I would not be in favour of adopting any one of the three alternatives without a more exhaustive examination. The disclosures in this direction date from the 1947 Census, and even if they are finally and conclusively established it could not be said that the basic wage earner was out of pocket to this extent because the 7s. real increase granted in 1946 more than compensates for any such deficiency. During the course of the proceedings we were advised that a conference of State and Commonwealth Statisticians had made an up-to-date examination of the "C" series and found it so substantially effective that they were not prepared to recommend any vital alterations, and this fact, together with all of the foregoing considerations, leads to the inevitable conclusion that nowhere in the world has a better system of measurement of price fluctuations been devised. I, therefore, consider it is impossible to successfuly submit that the Australian worker has not been as fully protected as human ingenuity can manage against rising prices outstripping his basic wage, and it should be remembered that in times of falling prices, whilst the "needs" portion of the basic wage may decline in money figures the unadjustable loading remains constant, thereby reacting to his benefit.

Having come to the conclusion that the cost-of-living adjustments to the "needs" base have formed a substantial protection to that portion of the minimum wage and being satisfied that the constant loadings have given all workers, including the lowest paid worker, a share of national productivity, it becomes necessary to consider whether any further improvement in this direction is justified.

In 1931 the Court declared that the basic wage was to be the highest amount which industry as a whole could pay, and this principle was expressly reaffirmed by the Court in its judgments in 1932,[1] 1933,[2] 1934,[3] 1937[4] and 1940[5] and by implication in 1946.[6]

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(1) 31 C.A.R., p. 305. (2) 32 C.A.R., p. 90. (3) 33 C.A.R., p. 144. (4) 37 C.A.R., p. 583.
(5) 44 C.A.R., p. 41. (6) 57 C.A.R., p. 603.

The foregoing history indicates that even in the depths of the depression the Court, as then constituted, considered that the "needs" should not necessarily be the only constituent of the basic wage, and that some addition should be made thereto if, in the opinion of the Court, the economy could stand a further financial impost. In 1937 the Court found the economy in such a sound position that an increase of the substantial amount of 6s. was justified. Apparently, it was also satisfied that in spite of gloomy prognostications to the contrary, wages increases, particularly basic wage increases over the years, had not been followed by the economic disaster which opponents of the increase, or the system, invariably predicted.

In 1940 the Court, in considering claims for further basic wage increases compared the economic situation of the period with 1936 "the time of the last fixation," and came to the conclusion that no further increase was then justified. From a perusal of the 1946 judgment,[1] it is not possible to discover what principles were adopted by the Court in its "interim" decision to add 7s., so that it would not necessarily be in line with precedent, and, indeed, from lack of evidence, it is not possible to compare the 1949-50 economic situation with that existing in 1946. However, the matters of which the Court took cognisance in 1937, when it granted an increase, and in 1940 when it refused an increase, are clearly stated, and it seems to me that if the Court now takes into account the considerations which actuated the Court in 1937 and 1940, it will at least be acting in accordance with established principle.

It is not reasonable to expect to find exactly identical situations in any two of these periods. In 1936 the nation had emerged from the effects of the worst financial depression the world had ever known. 1940 was the commencing period of the worst international conflict in all history. It also was the threshold of wage pegging and price control. In 1950 we are in a period of rising inflation, which has many signs and portents of developing into something more serious, this situation being complicated by the commencement of a diversion of peace-time industry into war-time production. It is not possible to get any uniformity of seasonal conditions in any of the periods, commodity prices are likewise difficult of comparison, and figures of productivity, mainly through changed methods and reduced hours are not easily reconcilable. It is only possible to generalise, particularly when it is appreciated that the point of view of the producer and consumer never coincide, and it is always dangerous to take signs of apparent prosperity for granted without a more intimate examination of facts. The almost incredible prosperity of the wool-grower, for instance, is reduced by the highest taxation rates ever levied in Australia, rising costs for all essential commodities available, shortage or complete lack of other essential commodities, with consequent retardation of production and lack of man-power having a similar depressing effect. Naturally, wage increase claimants

(1) 57 C.A.R., p. 603.

are always inclined to exaggerate the capacity of the employer to pay, and just as naturally the employer is inclined to exaggerate his inability to meet added wage cost, but, at least, these exaggerations are constant factors throughout the history of basic wage inquiries in Australia.

I would reject the claim for the £10 basic wage out of hand for two main reasons:—

(1) The economy of the country could not stand such an impost. In this period of essential material shortage the granting of the claim in full would inevitably lead to serious inflation and the printing press would have to work overtime to flood the country with notes to pay wages and salaries.

(2) Not one reputable witness was prepared to support this monumental claim, in fact, all witnesses with any sense of responsibility at all recoiled in horror from the proposition.

(3) The result of such an increase amounts to a negation of the basis of the claim. "A fairer distribution of productivity" does not involve the distribution of something not in being. Taking more out of the pool than is already in it is an impossibility, and as the workers demand a real increase the granting of an unreal affluence would negate their claim.

As far as I am concerned, it is only a matter of whether any lesser amount should be considered.

In 1940 the Court stated very clearly its attitude to the principle of assessment of basic wage increases on the productivity basis [1] and the details of the comparison made between the economic situation in 1940 as opposed to in 1936 will be found in its judgment [2]. What is the comparative situation today taking into account the factors considered by the Court in 1940?

COMPANY PROFITS.

Since that year Company profits have shown nominal rises in most instances, some of such rises being very substantial (Commonwealth Bank Bulletin). Exception to this rule arises with respect to those companies concerned with manufacture and services where there appears to be a slight decline. As the 1940 situation was better than 1936, the 1950 situation is better than either of these two years.

OVERSEAS EXPORTS.

On the whole, these are higher than either 1936 or 1940, and, in most instances, the prices for primary products are higher also. Prices

(1) 44 C.A.R., at p. 58. (2) Ibid., at p 59.

for wheat and wool in particular have reached astronomical proportions, with no forseeable limit to the demand. Favourable seasons are assisting towards restoration of Australia's sheep population, though there is still a long way to go before the 1940 near record total is re-established. However, the 1940 gross value of production was £63,000,000, whereas the 1949/50 estimate is £287,000,000, which latter figure is now obviously an under-estimate.

Very much the same comparison could be made with respect to wheat, and present indications denote a good harvest.

The major improvement over 1936 or 1940 is not only the overseas demand for primary products, but the international agreements which, on their face, provide at least short term security for the producer. In general, the position of the primary producer is much better than in either of the two years under consideration, and, in many instances, has never been better in the whole of Australian history. The coincidence of good seasons and high prices is a rare situation which is admittedly offset by some draw-backs not sufficiently detrimental to destroy the overall prosperity.

GOLD MINES.

Some years ago the Commonwealth Government conducted an exhaustive examination of the financial situation of those gold mines in Western Australia described as "marginal mines," and a few of these were eventually found deserving of Federal Governmental assistance. Since that date the revaluation of the Australian pound has added approximately 50 per cent. to the value of each ounce of gold produced, the present price constituting an all-time record. Under the circumstances, the goldmining industry must now be regarded as being in a very favourable position, a much better position certainly than it was in in 1940.

SECONDARY INDUSTRY.

The picture with respect to secondary and tertiary industry, whilst not comparable with the primary scene, is generally better than was the case in 1936 or 1940. The increase of factories noted in 1940 has continued and the inflow of capital for industry now established, as well as new industry is unprecedented. The 1940 judgment[1] refers to the establishment of new industries for the production of goods previously imported or not required, but I doubt if anyone at that time envisaged the extraordinary development in this particular field which has since taken place. The reverse side of this picture contains some unhappy features and there are some major secondary industries which through a variety of causes have a somewhat gloomy outlook for the future. In the main this pessimism is introduced by the flow of imports which are beginning to oust the Australian product from the

(1) 44 C.A.R., p. 41.

home market. This circumstance is attributed to rising costs of Australian manufacture, with a consequential reduction, or elimination, of the margin between the price to the consumer of the imported as against the local product. Lower wage costs in countries outside Australia are giving back to the outside producer the advantage lost during the war and a further increase in the Australian basic wage is alleged to be likely to result in well-established heavy industry becoming incapable of competing. The continuity of this situation depends, of course, upon the holding down of wages in countries exporting successfully to Australia, but, for my part, I find it difficult to believe that any of our present competitors will be able to restrain wage levels any better than we can. At the same time the likelihood of destruction of really valuable industry in Australia, through too high a wage standard, is a factor the Court cannot forget. If some of our "mushroom" manufacturers, producing luxury goods, were put in jeopardy, I would not be concerned in the slightest, but it is a different matter when producers of real wealth are likely to be driven out of the field of secondary industry. Even if the value of heavy industry for defence purposes is ignored, and even if no consideration whatever is given to the interests of the employers, the destruction of any substantial section of worth while secondary industry would reduce the heritage of the Australian skilled worker, and take away his immediate and potential value to the whole community. The effect of loss of employment would not have any noticeable result whilst the present man-power shortage in industry exists, but no one believes that slumps have been eliminated from our economic life, and there is no guarantee against their recurrence in the future.

On the whole, I consider that secondary industry in Australia is in a better position than it was in either 1936 or 1940. When the Court has looked at the question of whether the basic wage is the highest that industry *as a whole* can afford to pay, it has never decided that unless the whole of industry was prosperous no increase could be granted. It has always been appreciated that in the times of great prosperity some anomalous situation might arise which would cause a certain degree of comparative poverty amidst plenty. Our co-ordinated wage system which results in the fixation of minimum rates of pay depends upon averaging, and whilst the Court looks to averages in deciding the needs of a worker, so it must average out the situation as it affects the employer. If the Court had to wait until each and every individual industry was in the state of high prosperity it is likely that no increase to the basic wage would ever be granted. In our time, if labour and material shortages could be overcome, the high wage situation would not be nearly as significant as it is at the moment. On many occasions during these proceedings material shortages have been alleged to depend almost entirely upon shortage of coal, and if the coal-miners of New South Wales, in particular, could be induced to supply the nation's demand for their essential product, material shortages of Australian produced goods would be reduced to a minimum. This is an undisputed fact, and, in the presence of coalminers' leaders, evidence was given that Australia is being deliberately deprived of a full and sufficient supply of coal. This sworn testimony has never been contra-

dicted and must, therefore, be accepted as the plain and inescapable fact. From the workers' point of view this results in their own wage destiny being detrimentally affected by a darg upon the production of coal and it is a sad commentary that one section of workers, apparently acting in the false belief that they are penalising the alleged capitalist employer, is prepared to make their fellow Australian workers suffer the economic consequence.

As the Court has expressly accepted the productivity basis when favourably considering claims for basic increases it should have long been obvious to workers that increased productivity is a pre-requisite to their getting a greater share of national prosperity, and any restriction upon output or opposition to increased production is a betrayal of the interests of the workers.

NATIONAL INCOME.

Both real and nominal is well above any previous figure.

UNEMPLOYMENT.

We appear to be in a phase of over-full employment which is likely to remain for a considerable time. The only valid answer to shortage of man-power is immigration, and all National Governments have pursued vigorously a policy of importing labour to such an extent that I understand that Australia's rate of population increase from this source is, in recent times, the highest known in the world's history. The economic and military value of such a policy and result is too obvious to enlarge upon, but as one effect is greater consumption of home produced goods, it also requires a greater production thereof, not so much in value as in quantity. Whatever the figures of unemployment may have been in 1936 or 1940 there is no unemployment at the present time, and, in fact, the demand for skilled and unskilled workers throughout all industry is insatiable.

Although at times sweeping allegations are made that the Australian worker, as a class, is not putting forth his best efforts during his shortened working hours, there has been no substantial evidence during the hearing to support such a proposition, except insofar as the coal-miners are concerned. In fact, a substantial proportion of employers' witnesses who were interrogated on this point were not prepared to support such an allegation and almost without exception those who had introduced incentive payment schemes certified to the happy result, both from the employers' and the workers' point of view. My own personal observation does not induce the belief that all classes of workers are going slow and, in fact, I believe that some are working harder and faster than previously. There is no doubt in my mind that when the residue of unreasoning prejudice against anything in the nature of incentive payment schemes is eliminated a more general participation therein will, by the combined efforts of management and

employee, raise the standard of economic life in a very substantial measure. As increased productivity has for a long time now been one of the major arguments advanced by Unions in favour of an increased basic wage, opposition to schemes fairly administered which result in increased productivity reacts against the interests of workers generally.

It is extremely doubtful whether ever before we have had the coincidence of high prices over practically the whole field of production, ample home and overseas demands, good seasons, short-term stabilising schemes, bright propects for the immediate future for most industries not subject to stabilising schemes and complete absence of unemployment. I consider that in general the economic position of industry in 1950 is so much an improvement upon the 1936 and 1940 situation that an increase in the basic wage is justified. However, I doubt if the improvement of 1950 over 1936 or 1940 is of the relative magnitude of the improvement of 1936 over 1931. The only remaining problem is the extent of the increase to be granted.

The Court is authorised by the Statute to determine a basic wage which is just and reasonable. In view of the Court's undoubted duty to have regard for the public interest it must have a wider vision than the mere looking at what may be considered just and reasonable from the viewpoint of the worker only. The granting of a wage increase of such an amount that serious inflationary effects followed could not possibly be considered as acting in the public interest or for that matter granting a just and reasonable wage. Although the Union advocates asked us to disregard the question of inflation, I think such an attitude would be contrary to the workers own interest as they would be detrimentally involved in a serious inflation just as they have always suffered severely in a period of depression. A wage increase which caused or greatly accelerated the onset of an inflationary cycle could not by any possible stretch of imagination be considered just and reasonable. The Court has always looked to the possibility of inflationary results when making this type of determination. It did so in 1940 and has done so on previously recorded occasions and the principle is so sound that it cannot be disturbed.

The mere injection of additional money into circulation does not of itself constitute a major economic danger as long as there is an ample and even distribution of goods, but when the supply of essential commodities is inadequate to meet national requirements, the sudden provision of large amounts of currency to a section (great or small) of the community inevitably results in unfair competition for the restricted amount of available necessities. The resultant sky-rocketing of prices means that only the few with large amounts of currency in hand are able to take part in the competition for goods, and it is unlikely that the working class as a whole and those in the lower grades of the fixed income group would be able to cope with this competition. For some time past the fixed income group (including pensioners) has been holding the thin end of the economic stick and looks likely to continue to suffer

for an unpredictable length of time. It is not the function of this Court to expound economic theories to the community, nor to impose its economic theories on the community. We take the situation as it is, and, having regard, *inter alia,* to the public benefit decree what is a basic wage which is just and reasonable without attempting to affect or direct the internal or external economic policies of the Commonwealth Government for the time being. A decision which would give doubtful benefit to a large portion of the working community and at the same time add to the already heavy burden of a substantial minority would not be a just and reasonable decision.

When determining the actual amount of the increase the opinion of economic experts cannot be an absolute guide, even if all the experts happen to agree on a precise figure. Such a concensus of agreement appears beyond the realms of possibility and certainly does not exist in the present instance. It is not unusual to find that expert witnesses on matters of economics have a peculiar propensity for expounding their doctrines as dogmas, without appreciating that they had been preceeded in the witness box, or will be succeeded there, by fellow practitioners who have flatly contradicted their theories or will inevitably do so. In this case we at least have the benefit of the unanimous, if negative, admission that no one economist can be positive that a moderate wage increase must inevitably have detrimental economic results. A number of non-expert witnesses (non-expert in an academic sense) who are in their daily avocations practical business men, have rather confirmed the view that a moderate increase would be justified. As a further support for this view we have the lesson of history which shows that previously granted moderate increases have not brought about economic disaster upon Australia.

The main objectionable result from an increased basic wage is a consequential increase of prices generally. The index numbers have shown sudden and alarming developments over the last two or three years indicating that a great deal of the advantage of wage rises has been temporary and has been absorbed by rising costs and charges for essential goods and services. The tendency to increase prices is not all due to basic wage increases or to the upward development of the marginal structure. Presumably, the reaction after the lifting of price control, together with the all-round lifting of wage standards, has caused a "gather ye rosebuds while ye may" attitude amongst those of the employing class who could be described in the vernacular as "profit happy."

This inquiry has demonstrated that selfishness is not a prerogative vice of any section of the community, and it seems that some employers, whilst decrying the selfish attitude of unions of workers, cannot see the mote in their own eye. Extravagantly high overseas prices have resulted, in some instances, in the export of produce without regard to the necessity of the Australian consumer so that

the resultant shortage on the home market of home produced commodities is reflected in a contribution to the upward spiral of prices. Proof that some internal prices are too high is afforded by price cuts following upon competition or buyer resistance.

I can see no fundamental difference between the case of workers starving the labour market for the sake of gaining a wage increase and producers starving the goods market for the sake of gaining a price increase.

The 40-hour week must have added a substantial quota to internal inflation in the inevitable decline on a comparative basis of total production with a necessary increase in overtime work with its penalty rates, which have themselves increased tremendously. However, the community should by now realise that if it requires greater leisure and a higher all-round standard of living it has to pay for it. Shorter hours and higher wages must result in higher prices, and no financial wizard can wave a magic wand to alter those fundamental facts. Once the highroad to a high wage standard is embarked upon, the days when potatoes were 1s. per stone are gone forever, and the only means of keeping prices down to the wage level (without re-introduction of wage-pegging and price control) is by way of increased output by the workers and honest price dealing by the manufacturers and the producer. If the employers and workers could see the whole picture in its true perspective, and not with a myopic vision, there would be less misunderstanding of the cause of recent developments. If the manufacturers and producers realise that claims for wage increases must follow upon a policy of overseas exports without regard to the requirements of the home market, and if workers realise that the major benefit of wage increases is lost unless the expenditure of their own labour results in an increase of total production, the main industrial parties might eventually look at questions of wages and prices from the national viewpoint.

It is not the function of the Court in basic wage proceedings to make a deliberate attempt to take a proportion of the income of one wealthy constituent part of the community and transfer it to a poorer group, even if such were a practical possibility. This oversimplified operation seems to have appealed to Professor Higgins in that he advocated the taking away of a substantial portion of the profits of primary producers and transferring same to the workers, but outside of such an action being impracticable and unconstitutional, it raises the question of reciprocity in hard times. When prices for primary produce fall does the working class, or some other class, have its wages cut, or income taken away, to be transferred back to the primary producer, and if yes, by what authority?

Before nominating the actual amount of the increase which I think should be granted, I turn to a consideration of the effect of an

increase as illustrated by one estimate which was fully canvassed during the hearing. On one calculation, which was brought to the notice of the Court, a basic wage increase of 10s. per week would result in some £80,000,000 per annum being transferred from employers to workers. This calculation depended upon the whole of the Australian labour force receiving 10s. per week extra in the pay envelope. Accepting this basis, it is then necessary to inquire what would be the impact of such a wage increase upon the price structure. Some of the employers obliged to meet an increased wages bill would be in the marginal class of the "prosperity" line, and others would be able to meet such a claim out of profits, without having to depend upon an increase in their price scale. In general, therefore, the whole of the 10s. increase should not go back into the price structure. As far as the basic wage earner is concerned, his main expenditure is upon food, clothing and rent. The main food necessities are not in short supply in Australia, and, if it were not for high prices overseas, our internal supply would be more than adequate and prices consequently very close to normal. There is no shortage of clothing in Australia at the moment, and evidence during the hearing from employers indicated that, because existing stocks were adequate, production rate good, and decrease in overseas export so pronounced, a buyers' market was likely to develop. Legislative restriction on rent increases are still operative and reasonably efficient. All these circumstances favour the retention by the worker of a substantial portion of an increase in the basic wage, and constitute reasons why such a declaration comes within the description of a just and reasonable wage.

In adopting the amount of 10s. per week for illustrative purposes, I do not wish to be taken to approve of the evidence of Professor Higgins, for if I had to make a choice of reliability amongst the expert economists who gave evidence, I would find less consolation in his testimony than in any other similar evidence.

I turn now to consider what should be the actual amount of increase to be granted. Without retracting from my previously expressed opinion as to the meaning of the term "basic wage" in the strict legal sense, I accept the view of the majority of the Court and treat the basic wage as comprising only the "needs" base with the "prosperity" loading. A number of awards carry loadings additional to the "prosperity" loading, and it is impossible to ignore this circumstance, one reason being that the mere addition of 10s. to the "needs" and "prosperity" would result in little or no real increase in many instances. Loading additions to the "needs" have resulted in recognition that the basic wage is intended to purchase something more than "needs," and, as the price of many commodities, upon which the wage earner may be presumed to spend his money, is uncontrolled, and the loadings are not all adjusted upwards, I consider something more than 10s. should be added to the "needs" and the "prosperity" loading. In times of such rare general prosperity with

no control over many price levels, and when the £1 Australian is not revalued, I think it appropriate that the sum to be added to the needs and prosperity base should be £1 (one pound).

When the Court faces the task of dealing with each individual dispute, it will be necessary to consider a just and reasonable wage assessed without regard to any circumstance pertaining to the work upon which, or the industry in which, the worker is employed. Where it is found in an award that the minimum wage is the "needs" base and "prosperity" loading only, these two items, together with the proposed addition of £1, shall constitute the basic wage hereafter. Where, in another case, it is found upon investigation that the minimum wage is comprised of elements additional to the "needs" base and the "prosperity" loading, the question of what amount, if any, should be added will depend upon a consideration of the reasons for, and the true nature of, the original grant.

FEMALE BASIC WAGE.

It is impossible to reconcile the claim under this heading with the emphatic demand by the Unions that the male basic wage should still be assessed in relation to the requirements of the worker and his family. The anomaly of an unmarried male worker receiving a family wage is striking enough, but whilst society demands and legislates for the principle that the male parent should be primarily responsible for the upkeep of his wife and family, the female worker can hardly expect wage recognition for responsibilities which she can never incur. The claim does not even depend upon acceptance of "the rate for the job" principle, although on this point there seems to be confusion between the demand and some of the evidence.

If the foregoing peculiarities are overlooked and the verbal testimany of female witnesses examined, it will be immediately obvious that without exception their standards did not conform to those accepted as applicable to the fictional male basic wage earner. None of them agree upon essential needs and they all had conflicting views upon matters of quality and quantity. Their evidence could not have been helpful in the slightest if the Court's task had been a straight out inquiry as to the needs of a female basic wage worker, let alone an inquiry into whether the female basic wage worker should have wage equality with the male. I reject this proposition without further comment.

The Court is for the first time empowered to determine a basic wage for females, and whilst we are, in effect, left to our own resources to find material from which to base a decision, there is some precedent established in the field by industrial tribunals throughout the Commonwealth, in particular, the Court of Arbitration of Western Australia, and the Industrial Commission of South Australia. The gravamen of judicial decision has resulted in a fixation of a female basic wage in the vicinity of 54 per cent. of the male basic wage. There have been vital changes in industry in recent times

in regard to the employment of women and perhaps it is time for a revaluation of their base standard. In my view, there should be an upgrading, and I would prescribe the female basic wage on a general limit of 75 per cent. of the male basic wage.

Except with respect to the foregoing matter, I am not prepared to alter any of the Court's existing principles and technique, for the simple reason that no case has been made out which would justify any change. I would therefore reject the whole of what might be described as the "make weight claims."

The Court.]

On 24th October, 1950, *the Court (Foster, Kirby and Dunphy JJ.) made the following pronouncement*:—

When the Court, on 12th instant, announced its opinion, it was not possible to formulate the complete order, and it was thought desirable in those circumstances to give the parties an opportunity of reaching some agreement amongst themselves.

However the Court has now decided to make the following announcement:—

(1) That in cases where applications are already filed, or are filed before 17th November, 1950, the date of the operation of the variations proposed in the male and female basic wage shall be the beginning of the first pay period to commence in December, 1950.

(2) That for the purpose of ascertaining the increases to be paid in the respective cities and for the purposes of future adjustment the following shall apply:—

As from the beginning of the first pay period to commence in December, 1950, the basic wage for adult males shall be the "needs" basic wage (so described) as then existing, plus the sum of twenty six shillings (26s.) per week. This sum of twenty six shillings (26s.) consists of the twenty shillings (20s.) per week already mentioned, plus the "prosperity" loading (so described) raised where necessary to a uniform amount of six shillings (6s.) per week. This 6s. per week shall be applicable to awards relevant to all cities and combinations of cities and towns, etc. where formerly there were differential "prosperity" loadings.

The questions of provincial differentiation and whether particular loadings and margins, other than the prosperity loading, do or do not, in fact, form part of the basic wage within the meaning of section 25 of the Act, are still reserved for special consideration in each case in which they arise as indicated by the Court on 12th October, 1950.

Until otherwise decided by the Court ,the rates of basic wage so ascertained shall be subject to "cost of living" adjustment at such quarterly or other intervals (as accord with present practice and award provisions), by varying such rates by the number of shillings indicated in the Court index

(second series) to be published at quarterly intervals as heretofore by the Industrial Registrar.

In view of the magnitude of the increase in prescribed rates of wages shortly to become operative, and having regard to the present economic situation, the Court has decided that it should observe the secondary effects of its judgment before determining on any alteration in the present "Court series" adjustment scale.

(3) That in those awards where the minimum wage prescribed for adult male employees consists of the basic wage and prosperity loading only, that clause shall be deleted and a new clause inserted prescribing amounts ascertained in the manner indicated in paragraph (2) hereof, and the necessary consequential alterations made to the adjustment clause.

(4) In cases other than those referred to in paragraph (3) hereof, the awards stand as they are at present, but a clause will be inserted therein substantially in the following terms—

(a) Notwithstanding anything elsewhere in this award contained, the basic wage within the meaning of section 25 of the *Commonwealth Conciliation and Arbitration Act* 1904-1949, for adult male employees covered by this award shall be—

(insert amounts ascertained in the manner indicated in paragraph (2) hereof).

(b) (Insert provisions providing for the adjustment of the basic wage set out in (a) hereof).

(5) That in all awards which contain provision for females, a a procedure similar to that mentioned in paragraphs (3) and (4) hereof, as the case may require, will be followed; that is that the basic wage be stated to be 75 per cent of the basic wage payable from time to time to adult male employees.

(6) In cases where there is no award an award will be made giving effect to paragraphs (3), (4) and (5) hereof.

(7) That the orders to be made will be by way of variation of current awards whether the matter before the Court be an application for variation or a new dispute, or if there be no current award then by a new award.

(8) The Court suggests to the parties, and particularly those concerned in cases referred to in paragraph (4) hereof, that they confer with a view to agreeing on what loadings or margins do or do not in fact form part of the basic wage within the meaning of section 25 of the Act. This is a matter of fact in each case, and the parties should be in a position, with their knowledge of the history of awards made in settlement of earlier disputes, to resolve any doubts very speedily and announce their agreement to the Court well in advance of 1st December, 1950. On such announcement being made the Court will at once make the appropriate order.

(9) The Court makes it clear that it will hold itself urgently available to hear and determine any dispute which the

parties in any particular case are unable to settle between themselves as to what loadings or margins do or do not form part of the basic wage.

(10) The term "basic wage" was defined during these proceedings by Kelly C.J., Foster and Dunphy JJ. The majority view of Kelly C.J. and Foster J. is accepted for the purpose of these proceedings by Kirby J., who was not then participating in the case, and also by Dunphy J. who dissented.

On 31st October, 1950, *the Court (Foster, Kirby and Dunphy, JJ.) made the following pronouncement*:—

Some clarification of the statement made by the Court in this matter on 24th October, 1950, has been found necessary following the decision thereon in Court on Friday last. In further elucidation of the matter the Court now indicates the starting date mentioned in the said statement, namely, the beginning of the first pay period to commence in December, 1950, remains.

The basic wage payable as from that date will be as indicated in the statement of 24th October, 1950. However from the beginning of the first pay period to commence in February, 1951, or, in cases of other than quarterly adjustment the first adjustment ordinarily due after December, 1950, the whole basic wage will be adjusted. For the purposes of this adjustment the necessary indexes to give effect to the decision of the Court are being prepared and are expected to be available shortly.

Following disputes in certain industries concerning the effect of the said judgment and pronouncements upon prosperity loadings, war loadings and other similar payments, these matters were listed before the Court (Foster, Kirby and Dunphy JJ.), in Melbourne, on 20th November, 1950.

R. M. Eggleston, K.C. and *D. Corson,* of counsel, for the Transport Workers Union of Australia and others and with *W. O. Harris,* of counsel, for the Clothing and Allied Trades Union of Australia.

G. G. Downe for respondents members of the Federal Council of Flour Mill Owners of Australia.

S. C. G. Wright and *A. P. Aird,* of counsel, for the Victorian Chamber of Manufactures and others.

The Court.]

On 23rd November, 1950, the following further pronouncement was made by the Court:—

After having heard full argument upon the special problems arising in the particular awards discussed, the Court will, for all future cases, regard "war" loadings as not being within its jurisdiction to alter unless in particular cases strong reasons to the contrary are shown. In view of the Court's present decision, the burden of showing these special circumstances will be on the party asserting them.

The "prosperity" loading has been further considered and the Court as now constituted has decided to incorporate it in the new basic wage at a uniform amount throughout Australia of 5s. The whole basic wage will be adjustable in the terms of the Court's statement as from February, 1951, on the basis of "C" series index number 1,000 being equated with 103s., giving a new Court series index to be known as the Court's retail price index (third series).

The form of the order varying each award will be settled by the parties before the Registrar.

SCHEDULE "A".

Applicant.	Date of filing.	Number of application.	Short title and date of award or agreement.	Pamphlet number or C.A.R. reference to award or agreement.
		Part 1.		
Australian Leather and Allied Trades Employees Federation	11.3.49	150/49	Gelatine and Glue Workers award—10.3.48	Serial No. 8251
Australian Leather and Allied Trades Employees Federation	11.3.49	151/49	Saddlery Leather and Canvas Workers award—30.6.47	67 C.A.R., p. 76
Australian Leather and Allied Trades Employees Federation	11.3.49	152/49	Tanning Industry award—18.2.48	Serial No. 8331
Australian Leather and Allied Trades Employees Federation	21.3.49	177/49	Tanning Industry (Furred Skins) award—3.7.47	Serial No. 7573
Seamen's Union of Australia	4.4.49	229/49	Seamen's award—8.11.35	35 C.A.R., p. 397

SCHEDULE "A"—continued

Applicant.	Date of filing.	Number of application.	Short title and date of award or agreement.	Pamphlet number or C.A.R. reference to award or agreement.
		Part 2.		
Plumbers and Gasfitters Employees Union of Australia	15.6.49	417/49	Plumbers award—27.6.41	44 C.A.R., p.837
Plumbers and Gasfitters Employees Union of Australia	15.6.49	418/49	Sprinkler Pipe Fitters agreement—9.5.29	47 C.A.R., p. 686
Operative Painters and Decorators Union of Australia, Victorian Branch;				
Plumbers and Gasfitters Employees Union of Australia, Victorian Branch;				
Victorian Operative Bricklayers Society;				
Slaters Tilers, Shinglers and Roof Fixers Union of Australia, Victorian Branch;	16.6.49	419/49	Building Trades (Victoria) award—18.10.45	55 C.A.R., p. 459
Tile Layers Union of Victoria;				
Tuckpointers Union of Victoria;				
Victorian Plasterers Society;				
Australian Builders Labourers Federation, Victorian Branch				

The Court.]

SCHEDULE "A"—continued.

Part 2. (Continued)

Applicant.	Date of filing.	Number of application.	Short title and date of award or agreement.	Pamphlet number or C.A.R. reference to award or agreement.
Federated Coopers of Australia	21.6.49	437/49	Coopers (New South Wales) award— 17.11.39	49 C.A.R., p. 477
Federated Coopers of Australia	21.6.49	441/49	Coopers (South Australia) award— 19.12.39	41 C.A.R., p. 597

SCHEDULE "B".

Applicant.	Number of dispute.	Industry.
Part 1.		
Amalgamated Engineering Union; Australasian Society of Engineers; Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia; Blacksmiths Society of Australasia; Boilermakers Society of Australia; Federated Moulders (Metals) Union of Australia	11/49	Metal Trades
Federated Ironworkers Association of Australia	24/49	Metal Trades
Part 2.		
Federated Engine Drivers and Firemen's Association of Australasia	271/47 562/47 608/48 164/49	Engine Drivers and Firemen
Vehicle Builders Employees Federation of Australia	318/48	Motor Body and Coachbuilding
Federated Liquor and Allied Trades Employees Union of Australasia	908/48	Liquor Trades (Distilleries)
Federated Liquor and Allied Trades Employees Union of Australasia	909/48	Liquor Trades (Wine and Spirit Stores)
Federated Liquor and Allied Trades Employees Union of Australasia	910/48	Liquor Trades (Hotels and Wine Saloons)
Federated Liquor and Allied Trades Employees Union of Australasia	911/48	Liquor Trades (Breweries)
Federated Liquor and Allied Trades Employees Union of Australasia	912/48	Liquor Trades (Aerated Waters)

SCHEDULE "B"—continued

Part 2 (continued).

Applicant.	Number of dispute.	Industry.
Federated Liquor and Allied Trades Employees Union of Australasia	913/48	Liquor Trades (Maltsters)
Federated Liquor and Allied Trades Employees Union of Australasia	914/48	Liquor Trades (Yeast & Vinegar)
Federated Liquor and Allied Trades Employees Union of Australasia	915/48	Liquor Trades (Clubs)
Federated Liquor and Allied Trades Employees Union of Australasia	916/48	Liquor Trades (Marine Stores)
Australian Railways Union	96/49	Railways
Australian Federated Union of Locomotive Enginemen	147/49	Locomotive Enginemen
Federated Municipal and Shire Council Employees Union of Australia	159/49	Municipal Employees
Food Preservers Union of Australia	186/49	Food Preserving
Federated Marine Stewards and Pantrymen's Association of Australasia	195/49	Marine Stewards
Transport Workers Union of Australia	199/49 239/49 240/49	Transport Workers
Federated Furnishing Trade Society of Australasia	202/49	Furnishing Trade
Federated Felt Hatting Employees Union of Australasia	206/49	Felt Hatting
Australian Boot Trade Employees Federation	220/49	Boot Trade (Wood, Heel and Last)
Australian Boot Trade Employees Federation	221/49	Boot Shoe (Sandal and Slipper Manufacturing)
Federated Rubber and Allied Workers Union of Australia	222/49	Rubber Workers
Australian Timber Workers Union	223/49	Timber Workers
Manufacturing Grocers Employees Federation of Australia	228/49	Manufacturing Grocers
Federated Gas Employees Industrial Union	256/49	Gas Employees
Australian Tramway and Motor Omnibus Employees Association	258/49	Tramways
Hospital Employees Federation of Australasia	259/49	Hospital Employees
Australian Textile Workers Union	267/49	Textile Workers (Carpet, etc., Section)
Australian Textile Workers Union	268/49	Textile Workers (Woollen and Worsted Section)

The Court.]

SCHEDULE "B"—continued

Part 2 (continued).

Applicant.	Number of dispute.	Industry.
Australian Textile Workers Union	269/49	Textile Workers (Cotton, etc. Section)
Australian Textile Workers Union	270/49	Textile Workers (Knitting Section)
Printing Industry Employees Union of Australia	272/49	Printing (Graphic Arts)
Amalgamated Printing Trades Employees Union	278/49	Printing (Graphic Arts)
Federated Ship Painters and Dockers Union of Australia	280/49	Ship Painters and Dockers
Australian Glass Workers Union	283/49	Glass Workers
Wool and Basil Workers Federation of Australia	289/49	Wool and Basil Workers
Federated Artificial Fertilizers and Chemical Workers Union of Australia	292/49	Artificial Fertilizer
Australasian Transport Officers Federation	307/49	Railway Salaried Officers
Federated Shipwrights and Ship Constructors Association of Australia	324/49	Shipwrights
Federated Storemen and Packers Union of Australia	325/49	Storemen and Packers
Australian Builders Labourers Federation	327/49	Builders Labourers (Construction on Site)
Part 3.		
Amalgamated Engineering Union; Australasian Society of Engineers; Blacksmiths Society of Australasia, Boilermakers Society of Australia; Federated Ironworkers Asociation of Australia; Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia	453/49	Railway (Metal Trades Grades)
Australian Builders Labourers Federation	743/49	Builders Labourers (Mixed Industries)