

WALTZING MATILDA

AND THE SUNSHINE HARVESTER FACTORY

The early history of the Arbitration Court, the Australian minimum wage, working hours and paid leave

Australia's national workplace relations tribunal was first established as the Commonwealth Court of Conciliation and Arbitration with the passage of the *Commonwealth Conciliation and Arbitration Act 1904*.

Since that time the institution has evolved in line with substantial legislative, social and economic changes, the most recent development being the passage of the *Fair Work Act 2009* and the subsequent establishment of Fair Work Australia.

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AND THE SUNSHINE HARVESTER FACTORY

The early history of the Arbitration Court, the Australian
minimum wage, working hours and paid leave

A history resource for educational institutions

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Jack Howe, a 15 year old apprentice in Victoria in 1944. He is pictured carrying tools to the tradesmen working on the construction of a 10 000 ton merchant navy ship at the Naval Dockyard, Williamstown, Victoria.

How this book was prepared

This book was written and prepared by the Honourable Reg Hamilton, Deputy President of Fair Work Australia.

Professor Joe Isaac and Professor Stuart Macintyre, both of the University of Melbourne, provided the author with comment and advice on research areas and content.

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Please note

This book may show images of Aboriginal people who have died, which may cause distress to their relatives. Care and discretion should be used if viewing such an image.

Text and illustrations from earlier eras may reflect the attitudes of the time.

FOREWORD

This book is about the establishment and development of Australia's unique industrial relations system. It starts with the story of the Arbitration Court—the Commonwealth Court of Conciliation and Arbitration—why it was established, what it did and the influence it had on Australia's social, economic and political history.

By the 1930s the Australian minimum wage system had been established and covered most of the Australian workforce. Then various types of leave were introduced, giving workers paid leave during sickness, or for holidays.

There were other important changes. Ordinary working hours were reduced from 48 to 44 per week after 1927, from 44 to 40 per week after 1947, and after 1983 from 40 to 38 per week. There were decisions in equal pay cases of 1966 and 1972 which removed differences in award rates for Aboriginal and female employees respectively. Female employees were given the right to take unpaid maternity leave, and this was later complemented by a right for men to take paternity leave.

Through the decades the Arbitration Court and its successors have provided a means for employers, employer associations, trade unions, and employees, to settle disputes, taking into account economic and social developments. These and other issues were the subject of vigorous debate during the hearing of cases.

This is an important and interesting story. I hope that the book will be read and enjoyed not only in schools and other educational institutions but also by all those with an interest in the history of our nation.

Geoffrey Giudice AO
President
Fair Work Australia



Aboriginal family early 1900s.

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INTRODUCTION

Every young man or woman who leaves school and goes to work, goes to work with the entitlement to a minimum wage, annual leave, sick leave, and other conditions.¹

These entitlements were gradually introduced over the last century in awards made by the Commonwealth Court of Conciliation and Arbitration (Arbitration Court) and its successors.

Their gradual introduction was part of the process of modernising Australia. Australia before Federation in 1901 was sometimes called a ‘worker’s paradise’² because of the high level of production and high wages earned by workers compared to other countries. Australia was a leader in developing these new entitlements, which are now common in advanced industrialised nations, the countries of Western democracy.

The Arbitration Court was established by the *Commonwealth Conciliation and Arbitration Act 1904*. This was one of the most important early Acts of parliament after Australia became a nation in 1901.³

Part 1 of this resource deals with the origins of the Arbitration Court. Why did Australia introduce this court? What reasons for it were given at the time?

Part 2 deals with the origins of the minimum wage introduced by the Court. This minimum wage covered most of the workforce of Australia by 1921. How was this minimum wage fixed? How was it adjusted? What other approaches could have been adopted?

Part 3 deals with the special minimum wages set for young people, and the introduction of equal pay for women and for Aboriginal stockmen. Why were lower minimum wages set for these groups? Did attitudes later change?

Part 4 deals with ordinary hours of work and a number of important leave entitlements gradually introduced into awards. What hours did workers have to work each week, and what was the origin of the Australian weekend? How were sick leave, annual leave, and parental leave introduced in Australia?

The Court was to become one of the oldest national Australian institutions after the Commonwealth Parliament, Commonwealth

Mrs Theresia Pless, 23, newly arrived from Germany at work in the Cadbury Chocolate Factory, Claremont, Tasmania, 1958.



Government and High Court. The Court became a commission in 1956, and is now called Fair Work Australia. The different names of the Court and Commission in the last 100 years were:

1904–1956	Commonwealth Court of Conciliation and Arbitration
1956–1973	Commonwealth Conciliation and Arbitration Commission
1973–1988	Australian Conciliation and Arbitration Commission
1988–2009	Australian Industrial Relations Commission
2009–present	Fair Work Australia

The book title explained

The title of the book is ‘Waltzing Matilda and the Sunshine Harvester Factory’. Waltzing Matilda is a song loosely based on some local events in Queensland during the terrible shearers’ strike of 1894. The Great Strikes of the 1890s were key events that led to the establishment of the Arbitration Court. The Sunshine Harvester factory is the place where the Australian minimum wage system began. Justice Higgins of the Arbitration Court found that 7 shillings a day for an unskilled labourer was fair and reasonable wages for the factory to pay. That 7 shillings was the basis of the minimum wage system which applied to most of the Australian workforce by the 1920s.

More information

The full *Harvester Decision*, relevant Court decisions and other materials, can be found in the History section of the Fair Work Australia website.



An armed uniformed escort removing striking shearers during the 1891 'Great Strike', near Hughenden, Queensland.

PART 1

'WALTZING MATILDA' AND THE GREAT STRIKES: THE ORIGINS OF THE COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION

- 1.1 The great strikes of the 1890s
- 1.2 The Australian Constitution and arbitration
- 1.3 Australia's own experiment: The Conciliation and Arbitration Act
- 1.4 Establishment of the Commonwealth Court of Conciliation and Arbitration

Time line

- 1788 Colony of New South Wales begins. Regulations on the work of convicts.
- 1828 *Masters and Servants Act 1828*—master–servant relationship.
- 1855–60 Democratic self-government in New South Wales, Victoria, South Australia, Queensland and Tasmania. Western Australia remains under Colonial Office rule.
- 1873 Victorian *Shops and Factories Act 1873* regulates safety, etc. in factories.
- 1881 New South Wales *Trade Union Act 1881* recognises trade unions, other states follow. Trade union members can still be convicted of criminal conspiracy, and are in the 1891 shearers’ strike.
- 1890s The great strikes—1890 maritime strike, 1891 shearers’ strike, 1894 shearers’ strike, 1892 Broken Hill strike. Trade unions defeated. The memory of the bitter disputes would haunt the colonies, and be remembered in ‘Waltzing Matilda’.
- 1890 Charles Kingston introduces compulsory Conciliation and Arbitration Bill—the later model for Australia.
- 1891 New South Wales Royal Commission on Strikes—strikes ‘the great social problem of the age’. Henry Lawson writes ‘Freedom on the Wallaby’.
- 1892 New South Wales Parliament establishes a system of ‘voluntary conciliation and arbitration’ with the *Trade Disputes Conciliation and Arbitration Act 1892*—defunct in 1894.
- 1895 ‘Waltzing Matilda’ written by Banjo Paterson.
- 1895 George Reid’s New South Wales compulsory conciliation Bill defeated.
- 1896 Arbitrated awards and minimum wages begin in Victoria.
- 1898 The Constitutional Convention resolves to include a conciliation and arbitration power in the proposed Australian Constitution.
- 1901 New South Wales compulsory *Industrial Arbitration Act 1901*.
- 1901 Australian Constitution gives the Australian Parliament the power to legislate on conciliation and arbitration (s.51(35) of the Constitution).
- 1901 First federal election—compulsory arbitration generally supported by most political groups and candidates.
- 1902 26 March 1902 Prime Minister Edmund Barton decides not to introduce the Conciliation and Arbitration Bill due to lack of parliamentary time.
- 1903 7 July 1903 Charles Kingston obtains leave to introduce the Conciliation and Arbitration Bill into Parliament. The Bill is not introduced but is printed in *The Age* newspaper.

WALTZING MATILDA AND THE GREAT STRIKES

- 1903 28 July 1903 Alfred Deakin, Attorney-General, introduces the Conciliation and Arbitration Bill into the Australian Parliament for the first time. The Bill is withdrawn by the government on 8 September after the Labor Party amends it to cover state railway employees.
- 1903 Second federal election—compulsory arbitration generally supported by most political groups and candidates.
- 1904 22 March 1904 Prime Minister Alfred Deakin introduces the second Conciliation and Arbitration Bill.
- 1904 The Conciliation and Arbitration Bill is approved by the Australian Parliament on 9 December 1904 during the George Reid/Allan McLean Government. The Bill is proclaimed and becomes law on 15 December 1904.
- 1905 10 February 1905 Richard O'Connor appointed first president of the Commonwealth Court of Conciliation and Arbitration.
- 1906–07 The Court makes its first two awards. They cover the industries of the great strikes—maritime and shearing.
-

1.1 THE GREAT STRIKES OF THE 1890S

A song about a strike

In 1894 shearers became aware that pastoralists throughout Australia would probably cut the rate they paid shearers from 20 shillings per 100 sheep shorn to 18 shillings in some areas. The rates were a contentious matter, and there had been disputes, particularly a brutal dispute in 1891. Shearers were unable to get a guarantee of the existing rate. They went on strike.

The strikers set up camps supported by the union, and the government responded by sending troopers. Some of the strikers had rifles, but there was little actual violence, although there was some violent talk and arson. In July 1894 the Ayshire Downs woolshed near Winton was burnt, and shots were fired at two station employees trying to save the shed. At Kallaa Station near Bourke, police were sleeping in a hut guarding a woolshed when 50 or 60 strikers stoned the shelter. The police emerged and fired several shots to disperse the shearers. In September, the *Rodney* was steaming along the Darling River carrying non-unionists to Bourke district woolsheds. Union shearers boarded the vessel while it was moored in a swamp for the night, ordered everybody off, and threw the non-union swags into the river. They then burnt the ship to the waterline. The lawlessness and bitterness of the dispute alarmed and astonished the small colonial communities in Queensland, New South Wales, Victoria and South Australia.

The governments of New South Wales and Queensland intervened to help the pastoralists by passing special laws, prosecuting shearers and sending police and troopers. After three months the Queensland shearers had lost the dispute. They were broke, as was their union. The union could not maintain the £500 a week necessary to maintain strike camps, and called off the strike on 10 September. The strikers also lost in Victoria and South Australia, although in New South Wales many pastoralists did not cut shearing rates.⁴

‘Waltzing Matilda’ is probably loosely based on some local events in Queensland during the 1894 strike. A shearer is alone in the bush and is caught by troopers while he is stealing a sheep. He defiantly kills himself rather than give himself up to lawful authority. It is a song of bitterness and defiance, and may tell us something about how shearers felt about their defeat in the 1894 shearers’ strike:

Up rode the squatter, mounted on his thoroughbred,
Down came the troopers, one, two, three,
‘Where’s that jolly jumbuck you’ve got in your tucker bag?’
‘You’ll come a-Waltzing Matilda, with me’.

Waltzing Matilda, Waltzing Matilda
‘You’ll come a-Waltzing Matilda, with me’
‘Where’s that jolly jumbuck you’ve got in your tucker bag?’
‘You’ll come a-Waltzing Matilda, with me’.

Up jumped the swagman and sprang into the billabong,
‘You’ll never take me alive’, said he,
And his ghost may be heard as you pass by that billabong,
‘You’ll come a-Waltzing Matilda, with me’.

Waltzing Matilda, Waltzing Matilda
‘You’ll come a-Waltzing Matilda, with me’
And his ghost may be heard as you pass by that billabong,
‘You’ll come a-Waltzing Matilda, with me.’
‘Oh, You’ll come a-Waltzing Matilda, with me.’

[Note: ‘Waltzing matilda’ refers to carrying the ‘matilda’ or ‘swag’, a swag or bag being a travelling shearer’s sleeping partner; a ‘swagman’ was a travelling shearer or farm labourer; a ‘jumbuck’ is a sheep; ‘troopers’ refers to mounted police and the army; ‘coolibah tree’ is a type of gum tree; a ‘billy’ is a tin can in which water was boiled on the fire; ‘tucker bag’ is a bag in which tucker or food was carried; a ‘billabong’ is a pond or body of water; a ‘squatter’ is a grazier or pastoralist, running sheep or cattle on a property. This version includes the ‘You’ll never catch me alive said he’ variation introduced by the Billy Tea company and written by Marie Cowan. Banjo Paterson’s original lyrics referred directly to ‘drowning’, which the tea company felt was too negative.]

What were the local events that led to ‘Waltzing Matilda’? During the strike eight shearing sheds were burnt in one district of Queensland, including the woolshed at Dagworth. On 2 September about a dozen armed men crept up to Dagworth woolshed, which was defended by station hands. They opened fire and the station hands shot back. Over 100 shots were fired but no-one was hit.



A postcard from the early 1900s.

During the fighting one of the shearers crept up and threw a bottle of kerosene at the shed, and it burnt to the ground. Later that month a swagman and shearer who had taken part in the dispute was found dead at a camp by the Four Mile Billabong near Kynuna. This was Samuel 'Frenchy' Hoffmeister, whose body was recovered from the billabong. He had been shot.

Hoffmeister was suspected of lighting the match that burnt down the Dagworth woolshed, owned by the Macpherson family. Some believe that he was murdered because of it, others that he shot himself. Banjo Paterson enjoyed riding around Dagworth station with friends Christina and Bob Macpherson, and knew the story.⁵

'Waltzing Matilda' is a local story of Queensland, but it also reminds us of the lawlessness of the great strikes in the shearing industry in 1891 and 1894, and the maritime industry. The way that the strikes ended in the 1890s divided the colonies in a way not seen since the 1840s divisions between convicts and free people in New South Wales (South Australia did not have convicts). Would Australia become a nation of more or less permanent class warfare between a large group of working-class union members and the rest of the community?

Middle-class reformers such as Charles Kingston of South Australia and Alfred Deakin of Victoria were horrified by the bitterness and social and economic damage. They spent an important part of their political careers in the new Australian Parliament after Federation in 1901 arguing for the establishment of a court to deal with such conflict. Most important political groupings supported them in the first two federal elections held in 1901 and 1903.

The strikes left the Australian colonies with a great social problem, which was to be answered in the early days of the new nation.

The six colonies federated and became a nation in 1901.

One of the first things that the new Australian Parliament did was to debate the problem of how collective industrial conflict should be resolved. It was a long and difficult debate, but the Arbitration Court was established by the *Commonwealth Conciliation and Arbitration Act 1904*.

The first two awards made by the new court covered the industries of the great strikes. In 1906 the first award made covered

the maritime industry⁶, and the second award made in 1907 covered the shearing industry.⁷ Under the award shearers were required to be paid 24 shillings per 100 sheep shorn in most cases, and most claims apart from rates had been agreed between the pastoralists and the union. In 1907 the Court handed down the *Harvester Decision*.⁸ In *Harvester* the Court decided that 7 shillings a day for an unskilled labourer was fair and reasonable wages. The 7 shillings became the basis of the Australian minimum wage system.

How the great strikes came about

In the early Australian colonies the main relationship in workplaces was between an individual master and servant. Businesses became larger and more complex as the economy developed, and collective relations between organised groups of employees and employers also developed.

Trade unions had existed in Australia since the 1820s, but in the last part of the nineteenth century a number of new and more powerful unions were formed representing agricultural, shipping and other workers. These unions combined into metropolitan councils, and even developed inter-colonial links, forcing employers to respond in the same way.

Industrial conflict was not a matter of particular importance to the small colonial towns and settlements of Australia until the 1890s, when economic conditions deteriorated, and trade unions became assertive. As businesses found it difficult to make a profit, they responded by seeking to cut the wages and conditions of workers in order to continue in business:

The long economic boom which began with the gold rushes of the 1850s and which had greatly increased local manufacturing and fed speculation in the 1880s, began to collapse, beginning with Victorian property collapses and a British banking crisis. Overseas investment dried up; prices for wool and wheat fell dramatically. Most local banks collapsed costing many depositors their funds. Unemployment and poverty soared, government tax revenues collapsed and public works projects were abandoned. To

Norman Lindsay painting depicting a dispute on a ship.



make matters even worse a long drought began, further damaging the rural industries on which most colonies depended.⁹

Trade union activities were not always regarded as legitimate, and many employers resisted trade unionism. Trade unions resisted the reductions by going on strike. The strikes of the 1890s were remarkable for their size and for their social and economic damage.

What is a strike?

A strike involves one or more employees stopping work as a means of placing pressure on their employer to agree to a demand, such as improved pay and conditions.

What is a lock-out?

A lock-out involves an employer refusing to allow employees to enter their workplace. The tactic is used to place pressure on employees to modify their demands or to accept a demand by the employer.

What were the strikes about?

As in many industrial disputes today, the employees involved in the strikes in the 1890s were concerned about their pay and conditions. It was also a time when there was great disagreement and conflict about the rights of unions and union members and over what employers saw as their right to manage and to employ non-unionists.

The main disputes during this period included the 1890 maritime strike, the pastoral disputes of 1890, 1891 and 1894 and the 1892 Broken Hill strike.

Since the strikes occurred in a time of great economic difficulty and high unemployment, the employers had little trouble replacing those on strike and the unions were generally defeated. This caused great bitterness and suffering amongst the defeated workers. The arson and armed groups of strike-breakers, and strikers' camps, quite naturally alarmed many. There was something approaching

general lawlessness. The *Brisbane Courier* said on 19 June 1891 that the people of Queensland did not know ‘how narrow an escape they have had from what might have been a most disastrous civil war’.¹⁰

Case study 1: The 1890 maritime strike

Who were the main players?

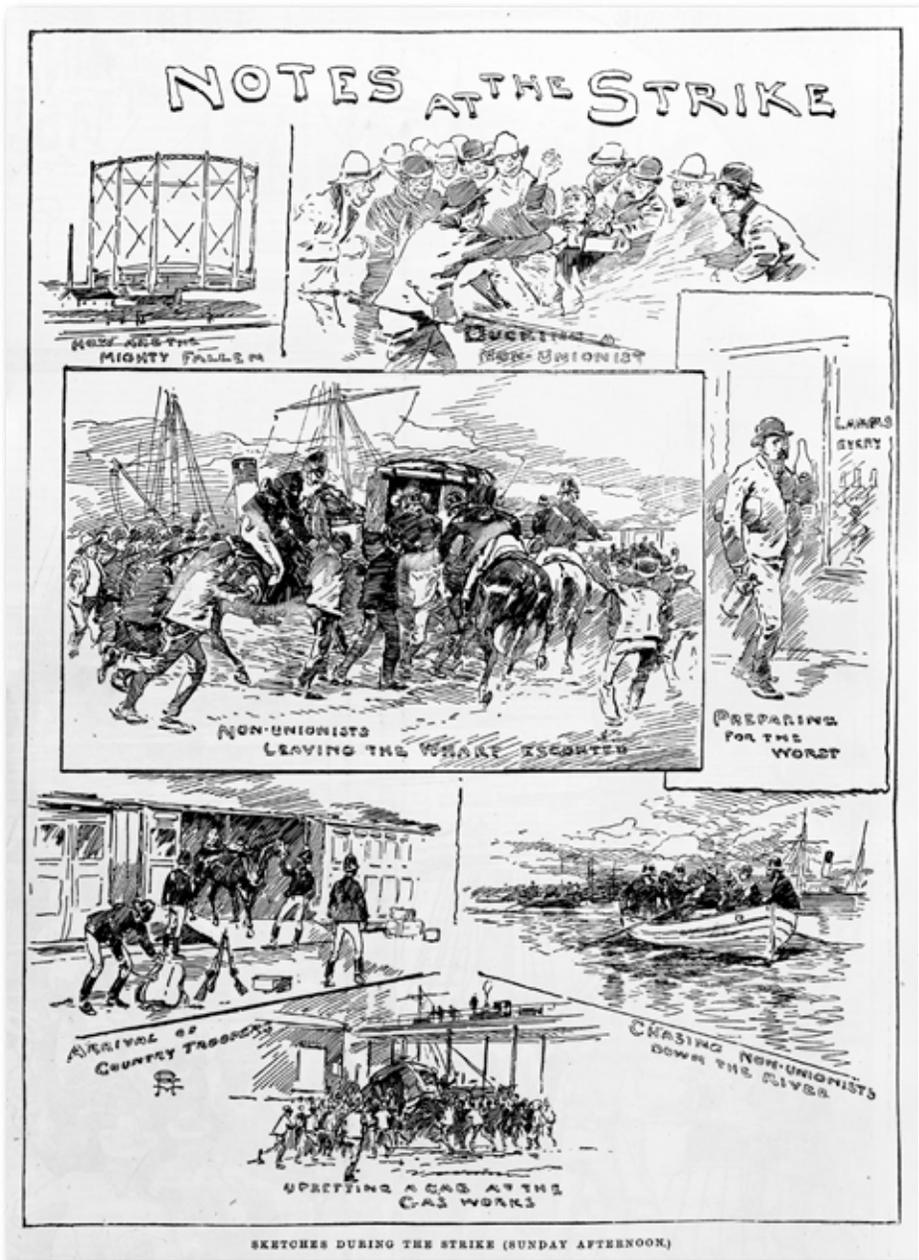
The dispute involved the Mercantile Marine Officers’ Association (the union) and the Steamship Owners’ Association of Victoria (the employers). It was not confined to marine officers, but also waterside workers, shearers, gas stokers and coal miners. Coal miners from Newcastle, Broken Hill and New Zealand refused to dig coal for non-union-operated vessels and consequently by September 1890 50 000 workers were on strike.¹¹

What was it about?

The marine officers were seeking improved pay and working conditions and also defending union rights. In August 1890 the shipowners told the Mercantile Marine Officers’ Association that before its wage claims could be discussed the association’s Victorian members had to end their affiliation with the Melbourne Trades Hall Council. The marine officers walked off their ships, the waterside workers refused to load them and the coal miners refused to supply coal for the ships. The dispute spread across industries and the colonies.¹²

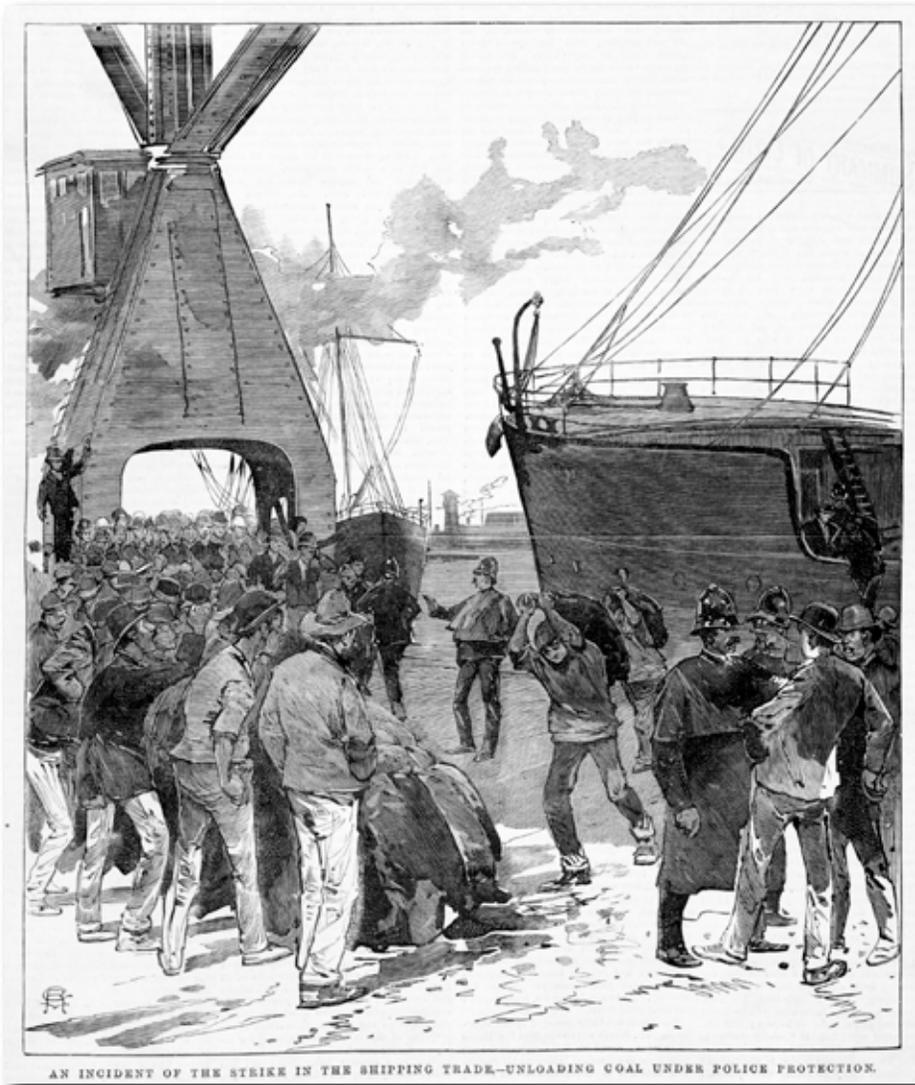
What was the outcome?

The strike came to an end when the marine officers could no longer sustain strike action. They returned to work on the conditions set by employers from November 1890, which included wage cuts of up to 30 per cent for everyone in the industry. They also had to acknowledge their error and beg for their jobs back.



The Illustrated Newspaper collection, 1 September 1890.

The drawings are titled: 'How are the mighty fallen; Ducking a non-unionist; Non-unionists leaving the wharf escorted; Preparing for the worst; Arrival of country troopers; Chasing non-unionists down the river; Upsetting a cab at the gas works'.



The Illustrated Newspaper collection, 1 September 1890.

The drawing is titled: '*An incident of the strike in the shipping trade—unloading coal under police protection.*'

Volunteers are working at the docks under police protection because the striking dock workers believed the volunteers were stealing their jobs.

Why was it significant?

The impact of the strike was far-reaching and the industrial action was met with a harsh response from the colonial governments. Alfred Deakin (chief secretary in Victoria at the time) called out part-time soldiers of the local defence force, who confronted union pickets at the port of Melbourne. In New South Wales, Premier Henry Parkes sent special police with firearms to Circular Quay and in Queensland Premier Samuel Griffith mobilised the defence forces.¹³

Case study 2: The 1891 shearers' strike

Who were the main players?

The dispute involved the Australian Shearers' Union and the Pastoralists' Federal Council (the employers).

What was it about?

The shearers were concerned their rates of pay would be reduced as employers began to employ non-union labour at lower cost. Their demands included the continuation of their existing rates of pay, protection of their rights and privileges, fair agreements and the exclusion of Chinese labour.

What was the outcome?

After striking for many months, it was clear that shearers were unable to maintain strike action. In August 1891, the Pastoralists' Federal Council and the Australian Shearers' Union reached agreement, albeit in favour of the pastoralists. It was agreed that employers could choose and employ union or non-union labour as they pleased.

Why was it significant?

There was little actual violence except for arson, but striking shearers formed camps, and were armed. In Queensland over 2000 soldiers and police were deployed, and 1099 special constables had been sworn in.¹⁴ As the strike ended some of the union leaders were

arrested and charged with conspiracy and some were sent to jail. A view formed amongst labour leaders that industrial action of this sort had its limitations and that a political party that represented the needs and interests of the workers might be more effective. The 1891 shearers' strike is now considered one of the factors that led to the formation of what we now refer to as the Australian Labor Party (ALP).

Colonial legislation on strikes

The colony of New South Wales had special regulations regarding the employment of convicts. Later the laws regarding the relationship of master and servant known in Britain came to apply in the Australian colonies. The most influential early Act was the New South Wales *Masters and Servants Act 1828*. This Act was based on disciplining employees. In one case a shoemaker disobeyed a farm superintendent's order to cut grass on a Sunday. The shoemaker was prosecuted under the Act and was sentenced to six months imprisonment.¹⁵

However, this legislation was developed before democracy. What sort of legislation would apply when democracy came to the Australian colonies, and ordinary people could vote and influence legislation? After 1860 the Australian colonies (except Western Australia) had democratic self-government, with a premier answerable to an elected parliament.¹⁶

In 1873 Victoria passed the *Shops and Factories Act 1873*, which gave some protection to workers. In 1881 the New South Wales Parliament passed the *Trade Union Act 1881*, which recognised the right of workers to combine into trade unions, and other states followed. Trade unions and claims for improved wages or conditions had sometimes led, and sometimes would still lead to criminal conviction. The Tolpuddle Martyrs were transported as convicts to Australia in 1834 for making secret oaths together at the cross roads near a small village in England, when what they sought was improved wages and conditions. More than 129 shearers were sentenced to one or more months hard labour after being convicted of various forms of crimes, such as criminal conspiracy, following

the 1891 shearers' strike. Two were sentenced to seven years, and several others to three years or more jail.¹⁷

In 1882 the Victorian Parliament set up a Factories and Shops Commission to inquire into 'the alleged evil arising from the protracted hours of labour of employees in connection with retail shops and trading establishments'.

However, laws in the Australian colonies did not attempt to provide for settling disputes, or claims made by trade unions, until the 1890 strikes. Disputes were largely unregulated, except for the criminal law.

After the 1890s strikes began, a special royal commission was set up in New South Wales. Its 1891 report claimed that the problem of strikes was 'undeniably the great social problem of the age'.¹⁸

The royal commission said that industrial conflict was no longer simply a matter of workers seeking to increase their wages and conditions, or to resist employer reduction of wages and conditions. The employment of non-unionists was becoming 'the chief ground of contention'. It was the cause of the maritime strike, and elsewhere there were allegations of union officials being dismissed because of their union activities. Trade unions argued for 'recognition of unionism', while employers argued for 'freedom of contract'.¹⁹ In some industries 'recognition of unionism' meant that unions insisted that only trade union members be employed, and 'freedom of contract' meant that employers would not employ union members or allow union activities. Both approaches are now unlawful.

Mr WC Willis, Chairman of the Steamship Owners' Association during the 1890 maritime strike, told the 1891 Royal Commission on Strikes:

If the Unions would only be reasonable we would be willing to employ Union men, but the time has come when we must insist on the freedom of contract clause.²⁰

Mr Beaton, the president of the Trades and Labour Council, told the royal commission that the maritime strike began when the master of the *Corinna* sacked Peter Morgan, the Seamen's Union delegate. He said:

It is the place of only one man to be the mouthpiece of the whole crew. The Seamen's Union puts a man in the position, and then that man is generally the person who, in fighting the cause of his fellow-men, is victimised. It generally happens that the man who has advocated the cause of his fellow-men in any ship has to suffer.²¹

After the royal commission reported, the New South Wales Parliament established a system of 'voluntary conciliation and arbitration' with the *Trade Disputes Conciliation and Arbitration Act 1892*. Under this Act strikes or disputes were not dealt with unless both the employees and employers agreed. In its first year of operation eight applications by employees to take matters to arbitration were rejected by employers, one was settled by conciliation and one was settled by arbitration. The 1890s depression and competition for jobs meant that employers, in the view of Thomas Clegg, the New South Wales clerk of awards, had vastly increased power. The system did not last long, and it was effectively defunct after December 1894 when the New South Wales Legislative Assembly voted to reduce the funds of the tribunals.²² The Victorian Parliament introduced a voluntary conciliation and arbitration system, the *Councils of Conciliation Act 1891*, which was also unsuccessful.

George Reid introduced a Bill into the New South Wales Parliament providing for compulsory conferences in 1895, but it was defeated by 30 votes to one. The only compulsion in the Bill was that of compulsory investigation of industrial disputes, with no power to make binding awards unless both sides, employer and union, agreed. Nevertheless, it was called by the *Sydney Morning Herald* 'extreme and one-sided legislation calling new and highly unfair powers into existence'. However, opinion in New South Wales began to change with growing industrial trouble in the Newcastle coal fields.²³

The Kingston Bill (1890)

What was apparently considered by some to be a failure of the existing laws led to greater interest in compulsory procedures for settling disputes, and to forcing employers and trade unions into arbitration even if they did not agree.

Charles Kingston of South Australia developed a Bill for compulsory conciliation and arbitration. The key elements of Kingston's 1890 Bill were:

1. The establishment of permanent state bodies for the settlement of disputes.
2. The existence of compulsion at both phases of the dispute settlement process (that is, submission of the dispute to the process, and the enforcement of the outcomes of that process).
3. The registration and regulation of trade unions for the purposes of implementing and enforcing the arbitration process.
4. The abolition or restriction of strikes and lock-outs.²⁴

What is conciliation?

Conciliation is a process where an independent third party assists two sides in a dispute to reach an agreed resolution.²⁵

What is arbitration?

Arbitration is a formal process where an independent third party hears both sides in a dispute and then makes a binding decision.

Charles Cameron Kingston (1850–1908). He proposed to the Constitutional Convention in Adelaide that the Australian Parliament should have a power to legislate regarding a court of conciliation and arbitration. He developed a Conciliation and Arbitration Bill in 1890 which was the model adopted in Australia. He was elected to the first Australian Parliament and drafted the first Commonwealth Conciliation and Arbitration Bill.



Kingston explained to the 1890 Royal Commission on Strikes that he had looked at a Canadian statute, and at an incomplete Victorian Bill²⁶, but it appears that he essentially drafted the Bill himself. South Australia had been a main ‘democratic laboratory’ for the Australian colonies in developing the democratic self-governing colonial parliaments of the 1850s²⁷, and was also something of a leader in developing the Australian model of labour laws.

His Bill was the model that became the standard Australian compulsory conciliation and arbitration system. The Kingston model was adopted in New Zealand in 1894, in New South Wales in 1901, South Australia in 1920, Western Australia in 1906, and by the Australian Parliament in 1904. The Victorian system of 1896 was based not on the Kingston model but on measures to avoid what was called ‘sweating’, or exploitation of workers by failing to pay wages or fair wages. The Victorian *Factories and Shops Act 1896* provided for the formation of special boards empowered to fix a minimum rate of remuneration in certain specified industries: men’s and boys’ clothing, shirts, underclothing, boots, furniture and bread. These rates when fixed were enforced by the minister for labour through the chief inspector of factories. However, there continued to be real problems with ensuring that minimum wages were actually paid.²⁸

In New South Wales, opinion was much influenced by the leading employer, the chairman of the Union Steamship Company, James Mills. He told the *Sydney Daily Telegraph* of 3 July 1899 that the Kingston and New Zealand models should be adopted:

I think this method of settling disputes is, on the whole, satisfactory. Under the operation of the Act the parties can meet together and after a little discussion the strength of each case can be pretty well judged.²⁹

Other arbitration systems

There were some variations on the Kingston model. The colonies of Victoria in 1896 and South Australia in 1900 and Tasmania introduced ‘wages board’ systems. Under ‘wages board’ systems disputes were settled by many separate wages boards set up for

various industries. These wages boards consisted of representatives of labour, of employers, and an independent chairman who had the casting vote. Under the Kingston Bill, and federally, and in New South Wales, one permanent tribunal operated like a court, with judges who made the decisions.

Kingston's evidence

Kingston's evidence to the 1890 royal commission is of some interest, given his influence. He did not justify his model on the basis of general theories or radical statements, but more on a pragmatic assessment of the problems as he saw them, rightly or wrongly. This was typical of the colonial liberals of the day. He was for example only 'hopeful' that his system would prevent 'quarrels' between employers and trade unions. He saw strikes and lock-outs as 'barbarous expedients' and said that it was worth sacrificing something to avoid them. On the issue of the refusal of union members to work with non-union workers (which had become a common thing), he said that the arbitration body would be able to make an order on that and he would not tie its hands in any way. He thought that most workers obeyed the law and would end strikes if ordered, but accepted that this would not always be the case.

He was willing to take sides over the terrible maritime strike of 1890. He said that the strike was 'provoked by the masters [employers], and continued by the masters', and that employees took strike action to avoid a lock-out.³⁰

How would the Kingston model operate?

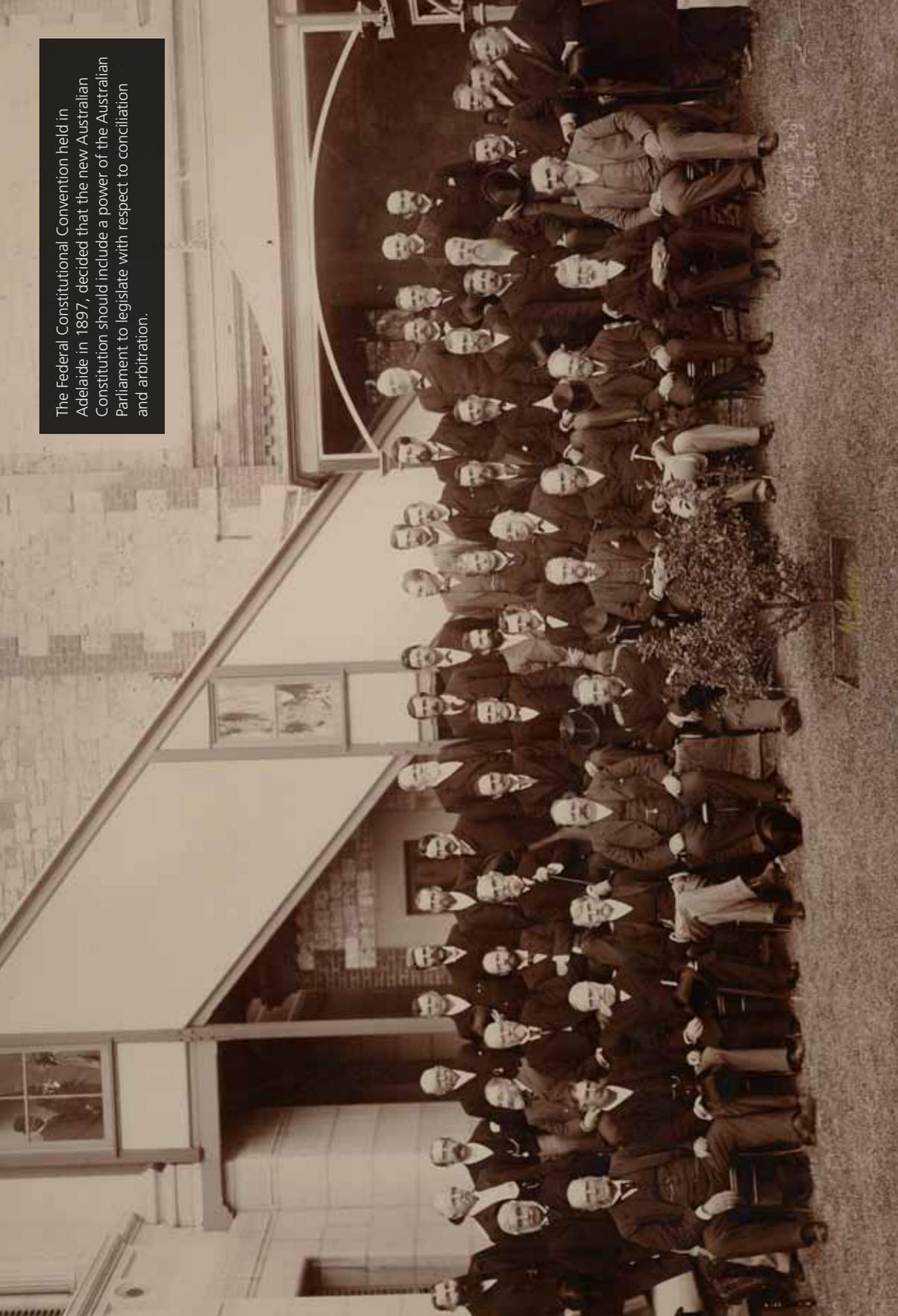
Kingston's model provided that, in order to avoid strikes and lock-outs, industrial tribunals could impose awards on the employers and trade unions engaged in a dispute if they did not reach agreement during conciliation. Kingston, Alfred Deakin and all the other supporters of this model never tried to predict what these awards would contain. They simply referred to just and equitable wages, hours and conditions, or outcomes not obtained by brute force.

What would be the level of the wages, or other conditions in awards imposed on employers and unions? What types of matters would be dealt with in these awards? How would these award provisions be varied later on? These were not issues determined by the Acts that established the tribunals, but were left to the tribunals to determine themselves. As we will see in subsequent chapters, they would be the subject of major controversy for decades. They are still the subject of major controversy.

The Australian experiment and other countries

The United States of America, Canada and Britain did not adopt compulsory conciliation and arbitration systems. They adopted collective bargaining systems, which despite varying in many respects also provided for various types of compulsion. Like collective bargaining systems, arbitration relied on collective representation of groups of employees by trade unions. However, Foenander says that Britain and the US also drew substantially from the Australian experiments, for example in the British Trade Boards Acts of 1909 and 1918, the *Wages Councils Act 1945* and the Kansas *Industrial Court Act 1920*, and the general theory underlying the New Deal legislation of the United States. The British legislation was founded on a 1908 report prepared by Ernest Aves, an English public servant, who visited Australia and New Zealand and was particularly impressed by the wages boards in Victoria. British legislation followed the Victorian model, and some US states, for example Kansas, followed the British model for the fixation of minimum wages.³¹ However, in the United States of America minimum wage laws passed by state parliaments were until 1938 sometimes overridden as an unconstitutional violation of liberty of contract.³²

The Federal Constitutional Convention held in Adelaide in 1897, decided that the new Australian Constitution should include a power of the Australian Parliament to legislate with respect to conciliation and arbitration.



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1.2 THE AUSTRALIAN CONSTITUTION AND ARBITRATION

The great strikes were important events of the 1890s. It was not surprising that the need for a federal role in industrial relations was debated extensively in the constitutional conventions held over the course of the 1890s. These conventions were organised by the governments of each of the British colonies of New South Wales, Victoria, South Australia, Queensland, Western Australia, and Tasmania. New Zealand and Fiji also attended the first of them. The purpose of the conventions was to discuss the development of an Australian constitution, which would combine the British colonies on the Australian continent into one nation.

South Australian politician Charles Kingston proposed to the first convention, held in Sydney in 1891, that the federal parliament should be given legislative power for:

the establishment of courts of conciliation and arbitration, having jurisdiction throughout the commonwealth, for the settlement of industrial disputes.

Debate on the issue was postponed to a later time.³³

A second convention was held in 1897–98 in Adelaide, Sydney and Melbourne and the delegates were directly elected.

In 1897 Henry Bournes Higgins, a Victorian delegate, said that a new Australian constitution should include a power to make laws with respect to ‘conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State’. This was rejected in 1897, but was eventually accepted in 1898. The final wording of the clause—requiring that disputes involve more than one state—was a compromise. Those seeking a broader power accepted less than they initially sought.

In moving for the inclusion of what is now known as the conciliation and arbitration power, Higgins said:

What I wish is that the Federal Parliament shall have power to make such regulations as it thinks fit for the termination and prevention of widespread industrial disputes. I do not ask the committee to say that courts of

conciliation and arbitration shall or shall not be created. I simply desire that the Federal Parliament shall be empowered to create such courts if it thinks fit.³⁴

Kingston, then premier of South Australia and a delegate to the 1898 convention, agreed:

The leading feature of this Constitution is that the Federal Parliament should have power to legislate for the peace, order, and good government of the Commonwealth. By what means are the peace and order of the various colonies most disturbed, and their good government threatened, at the present time? By strikes and lock-outs. Shall we not then be wanting in our duty if we do not give to the Federal Parliament power to legislate in such a way as will prevent strikes and lockouts, and enable industrial questions of the greatest difficulty to be amicably settled between the parties, upon considerations of right and wrong rather than because of the relative strength of the disputants.³⁵

In opposition, New South Wales premier George Reid argued that the introduction of a federal conciliation and arbitration system, in addition to those already present in a number of states, could lead to increased disputation:

Just consider the temptation under those circumstances to shift the venue of a particular trade dispute from a particular state. If the employers in the trade dispute in a particular state think that the federal law and its administration are more likely to suit them, look at the incentive there is to extend the mischief and evil into another state, or more than one other state, in order to shift the venue of the tribunal which will try the dispute.³⁶

South Australian delegate Josiah Symons believed the responsibility for resolving industrial disputes was properly held by the states and the prospect of any federal intervention would be hotly contested:

I think that the insertion of this power in our Constitution is unnecessary, and will be absolutely mischievous. In fact, if this is to be carried out, it will create the greatest possible difficulty and complication, notwithstanding which all it does is simply to embody an expression of the sentiment of kindness and good-will ... supposing a firm has branches in different cities, and there is a strike in the branch in South Australia, and an air of discontent in the branch in Victoria, would that be sufficient to call down

the interference of the federal authorities? What I say is that it will not be in your Bill; it will not be in this Constitution; it will not be for the Executive; but it will be for the Federal Parliament to decide that, and you will hand over to the Federal Parliament one of the most pregnant sources of heat and passion that ever was invented.³⁷

Higgins persuaded the convention to include the conciliation and arbitration power (s.51(35)) in the Australian Constitution, but it was agreed to by a narrow margin of just three votes: 22 to 19. Section 51(35) of the Constitution provides that Parliament can legislate with respect to:

Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;

The power was subsequently used by the Australian Parliament to pass the *Commonwealth Conciliation and Arbitration Act 1904*.

The power of the Australian Parliament was to make laws of a certain kind. If the parliament was to make any laws at all regarding collective conflict or labour relations, it would make a law similar to the Kingston Bill of 1890. This is not surprising, because it was Charles Kingston who first proposed to the constitutional conventions that the Australian Parliament have such a power.

It was not, for example, a power to make laws with respect to 'collective bargaining', a term which was invented in 1891.³⁸ Collective bargaining is the term often used to describe the labour systems in the United States of America, Canada, the United Kingdom and other industrialised nations. Collective bargaining systems leave the determination of wages and conditions to be determined by agreement between employers and employees.

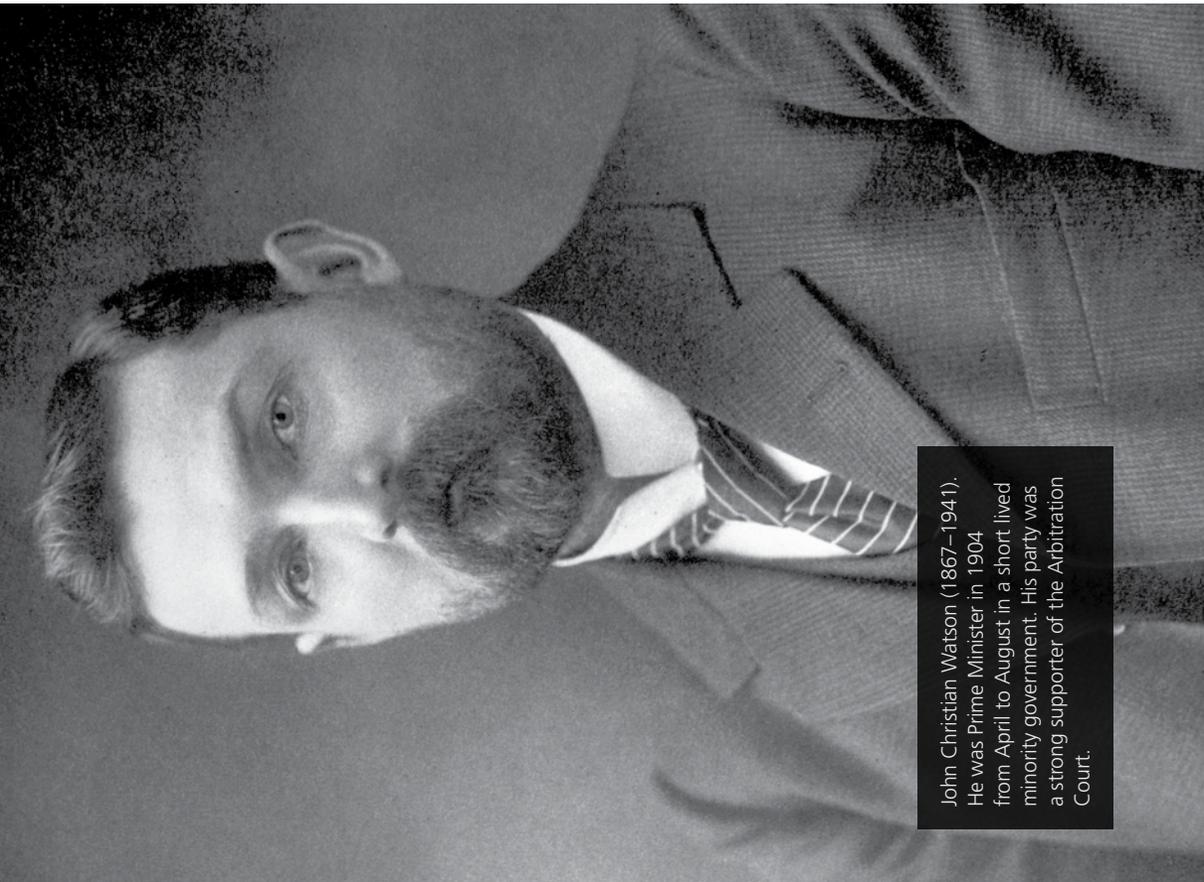
The conciliation and arbitration systems were different. Those systems provided for a court or wages board to impose an arbitrated set of wages and conditions if employers and employees, or employers and trade unions, did not agree.

Summary

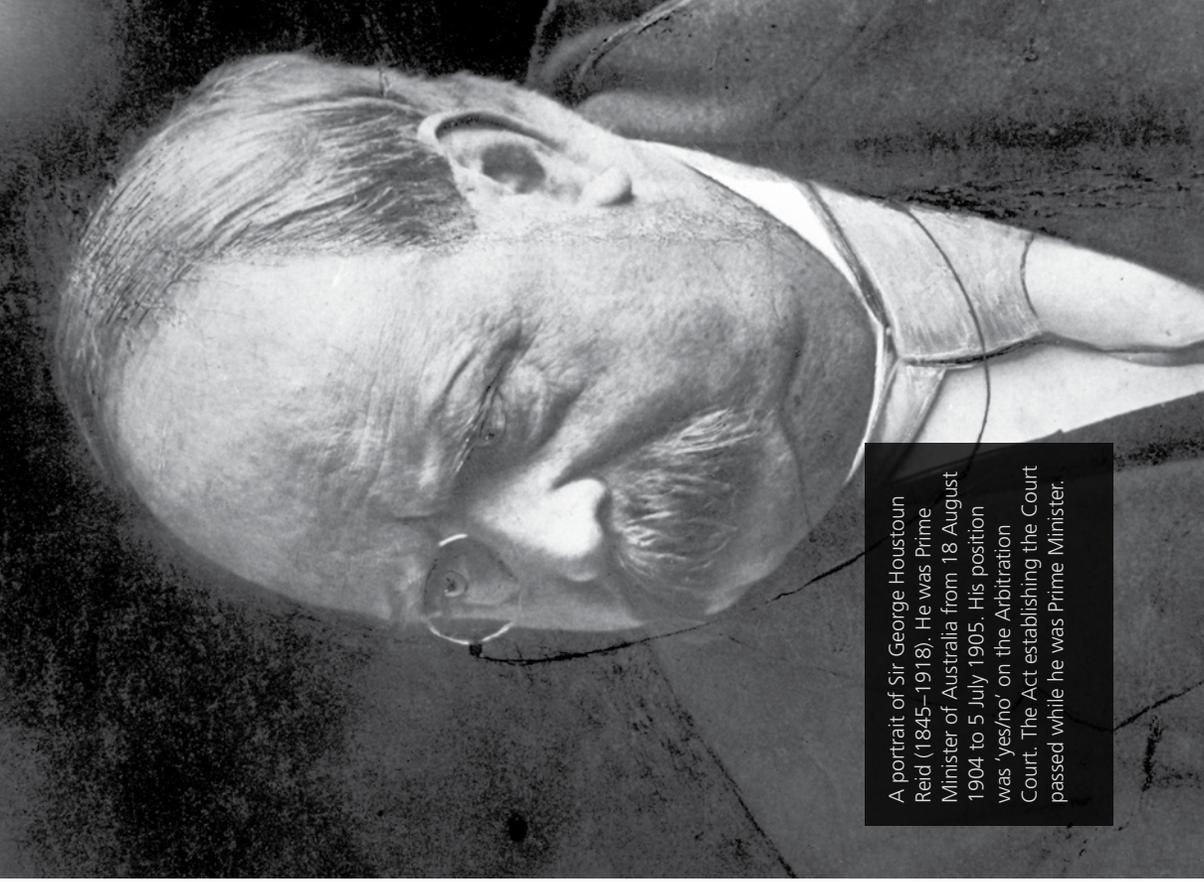
1. The great strikes of the 1890s led to a widespread view that industrial disputes were a serious problem in the Australian colonies, and that existing laws were not sufficient to deal with them.
2. Issues of the time included whether or not employers should have freedom of contract, and be able to employ only non-unionists, or whether they should only be allowed to employ members of trade unions.
3. There was discussion about various types of labour system that might address the serious problem of industrial disputes. Charles Kingston's Bill, which provided for compulsory conciliation and arbitration, became the model applied nationally in Australia and New Zealand. A second model was the Victorian wages board system of 1896, which was also influential.
4. There was a long and difficult debate during the constitutional conventions about whether or not the parliament of the new Australian nation should have the power to make laws about industrial disputes. It was eventually agreed that the Australian Constitution should contain the conciliation and arbitration power. This decision also had the effect of largely determining that if the Australian Parliament made laws they would be based on the 1890 Kingston model, because the power only authorised that sort of law.



The Hon Alfred Deakin (1856–1919). He was Prime Minister of Australia three times, for a brief period in 1903 and then from July 1905 to November 1908 and from June 1909 to April 1910. He was the most influential political supporter of the establishment of the Arbitration Court.



John Christian Watson (1867–1941). He was Prime Minister in 1904 from April to August in a short lived minority government. His party was a strong supporter of the Arbitration Court.



A portrait of Sir George Houston Reid (1845–1918). He was Prime Minister of Australia from 18 August 1904 to 5 July 1905. His position was 'yes/no' on the Arbitration Court. The Act establishing the Court passed while he was Prime Minister.

1.3 AUSTRALIA'S OWN EXPERIMENT: THE CONCILIATION AND ARBITRATION ACT

The Conciliation and Arbitration Bill

A Conciliation and Arbitration Bill was supported by the most important political leaders in the Australian Parliament in the period 1901–04.

During the debates on the Bill there were four governments, and four Prime Ministers. They were the first four Prime Ministers of Australia: Edmund Barton (1901–03), Alfred Deakin (1903–04), John Christian Watson (1904), and George Reid (1904–05).

Each of the first four Prime Ministers of Australia supported the Bill, although they disagreed on many details of the Bill. These disagreements included whether or not it should cover seamen and state government employees such as railway workers, and whether or not the Bill should provide preference to union members. Because of these disagreements the passage of the Bill into law took several years and involved many difficult debates. During this time, the government changed four times and twice because of the Bill.

The Act was not copied from the United States of America or from Britain as many others were at the time. It was a uniquely Australian Act based on a Bill developed by Charles Kingston of South Australia. Alfred Deakin, the second Prime Minister of Australia, was perhaps its most influential political supporter, although the Bill eventually passed parliament in 1904 while George Reid was Prime Minister.

Henry Bournes Higgins, an important contributor to the debates at the constitutional conventions that gave the Australian Parliament power to legislate over industrial relations, was one of the Bill's key supporters in the parliament.

Higgins was to become the second president of the Commonwealth Court of Conciliation and Arbitration, and the main influence on the Court in its first 20 years of operation. He

handed down the *Harvester Decision*, which established a ‘living’ or ‘family’ wage of 7 shillings a day for an unskilled labourer. The 7 shillings became the basis of the Australian minimum wage, which has lasted until today. It became known as the ‘basic wage’. Additional amounts were paid to more skilled employees. These amounts became known as ‘margins’.

The first parliament after the election of 1901

After Australia’s first federal election in 1901, it became apparent that three groups dominated parliament. The Liberal Protectionists, led by Edmund Barton and Alfred Deakin, had supported a compulsory Conciliation and Arbitration Bill during the 1901 election³⁹, and after. There was no fixed policy amongst George Reid’s Free Traders, and Reid could only speak confidently on behalf of his followers on the free trade issue.⁴⁰ His supporters were sometimes equivocal about the Bill but generally in support of arbitration, while the federal Labor Party, led by John Christian Watson, supported it. The ALP caucus adopted compulsory arbitration as a binding decision after the 1901 election.⁴¹

Deakin, Watson and others wanted a court to be established that would deal with any industrial disputes that occurred and were not confined to one state. The court would attempt to settle the dispute by agreement, and if that failed would impose a settlement by arbitration. Thus, using this system, it was hoped that some of the terrible dislocation resulting from the 1890s strikes would be avoided.

The Labor Party enforced compliance with caucus decisions. However, the Liberal Protectionists and Free Traders were different. Members of these two groups decided what approach to take on each issue for themselves, while influenced by the general direction of their leaders. This led to unpredictable decision making and unstable governments. A Prime Minister could not guarantee that members of his government would support his government’s policies.

The first Conciliation and Arbitration Bill

Charles Kingston prepared the first federal Conciliation and Arbitration Bill. It was, however, never introduced into parliament. Australia's first Prime Minister, Edmund Barton (leader of the Liberal Protectionists), decided on 26 March 1902 not to proceed with its introduction after running out of parliamentary time. He was not a fierce supporter, as Kingston and Deakin were.

The following year Kingston gave a copy of his Bill to *The Age* newspaper before introducing it into parliament. He then sought and gained leave on 7 July 1903 to introduce the Bill into parliament, but not before a considerable amount of criticism and mirth at his expense from leading figures from other parties including Billy Hughes from the federal Labor Party, and George Reid from the Free Traders. George Reid joked that perhaps the government should take newspaper editors into the Cabinet before giving them confidential Bills.⁴² The Bill was never actually introduced—only *The Age* and its readers ever saw it. Again the government decided that it did not have enough time to debate it.

Kingston later resigned after differences emerged between him and the government. He wanted to extend the scope of the Bill to include all shipping along the Australian coast, while his colleagues did not. As Kingston later explained with some emotion, he had given his word to the seamen that they would be protected against a reduction of their wages to 'an equality with those paid to the cheapest competitors in the Australian seas'.⁴³

Most of the government considered that the Bill would probably have a very limited application, and that the inter-state disputes that the Bill would apply to would not occur very often. Despite the Barton government's disagreement with Kingston, the Bill when passed in 1904 by the Reid/McLean government, did include coastal shipping. Shipping unions and employers registered some of the first unions of employees and employers, and the first award made covered the officers on steamships.

The second Conciliation and Arbitration Bill

On 28 July 1903 Alfred Deakin (then Attorney-General and later Prime Minister), introduced a Conciliation and Arbitration Bill into parliament for the first time. In his second reading speech on 30 July he said:

We now substitute a new regime for the reign of violence by endowing the State—which in itself possesses a strength greater than that of either or both of the contestants—with power to impose within the limits of reason, justice and constitutional government, its deliberate will upon the parties to industrial disputes. At the present time we have unions of employers upon the one side and of employe[e]s upon the other ... It marks the beginning of a new era in industrial matters, not only because of its main object, the prohibition of strikes and lock-outs, but because it brings into play a new force—the force of an impartial tribunal with the State behind it ...⁴⁴

This Bill marks ... the beginning of a new phase of civilisation. It begins the establishment of the People's Peace, under which the conduct of industrial affairs in the future may be guided ... The object of this measure is to prevent strikes ... Lock-outs and strikes equally involve destruction—destruction of labour, of machinery, of capital, of social relations and of social peace. The Bill makes a gallant effort to cope with these great evils of modern industrialism.⁴⁵

The legislation was designed to promote the making of enforceable collective agreements. In the event that the parties involved in a dispute failed to reach agreement or settle their differences, the state (by way of an independent tribunal) could act as the independent third party to encourage agreement by conciliation. Should this not be possible, an equitable and enforceable award could be made:

The main purpose of the Bill is to adopt methods of conciliation as far as possible ... [The] tribunal intervenes simply for the purpose of bringing the parties together, pronouncing no judgement, but, by clarifying the issue, and enabling it to be considered in a temperate fashion, it facilitates the coming together of the opposing forces and assists them to make, as between themselves, an amicable agreement, which is then registered by the court ... Then those who cannot by conciliation settle their disputes between themselves are required ... to allow the terms of a settlement to be

laid down by an impartial tribunal, which hears both parties to a matter in dispute and delivers a decision which is binding.⁴⁶

Deakin had hoped to make clear that the role of the Court was to consider each case and dispute according to its merits and to deal with it according to equity and good conscience. However, in order to protect the public interest, strikes and lock-outs would be prohibited. He argued:

Under the new system—and here is the revolution—a different aim will operate. Might is not to make right. But, as soon as it can be discerned and determined, right is to make might. The thought which has hitherto been set aside is now to be made the determining factor of the situation. It will not be asked which side commands the greatest capital, the greatest number of hands, or the greatest number of sympathizers, or can strike the community the most deadly blow to force its opponent into surrender.⁴⁷

What would the awards provide?

The new Court was to make awards that contained some of the most important labour standards ever introduced into Australia.

Deakin partly predicted this and even spoke of ‘social justice’:

The measure aims at a gradual, slow, but sure achievement of fair hours, fair wages, and fair conditions of labour. It seeks to accomplish this by steps taken in consonance with the circumstances of the country, and with its industrial advance. Its object is to place employers on the same footing one with another so that the most scrupulous and the most generous—as many of them are—shall not be hampered by such qualities in the struggle to maintain themselves against the competition of less worthy men. It aims at placing employees under obligations and control that will prevent the rebellious breaking away of unruly unionists, in consequence of their dislike of any award. It seeks to bring both employer and employees into line, and to connect them by amicable agreements or equitable awards ...

Social justice is a lofty aim. It has not been sought to enforce it in any special form upon any special class, or in the interests of any one class. The Bill has been drawn from first to last, looking upon the employer and employee with perfectly equal eyes, with a view to bringing them before the Bar of a tribunal where in consonance with the principles clear to all British people, they shall have meted out to them even-handed justice ...⁴⁸

Then federal opposition leader George Reid supported the Bill. He said: 'I am quite hopeful that the result of this experiment will show that even in the field of social economics, Australia can win victories and set examples which will teach the rest of the world'.⁴⁹

Even as he said that he admired Deakin's speech, Reid could not resist the opportunity to make jokes at his expense. He marvelled that Deakin had so easily settled matters that had 'profoundly agitated the most acute intellects of Great Britain and the United States'.⁵⁰ Neither country had a system of compulsory conciliation and arbitration. Reid jokingly expressed '... infinite regret that there are not other editions of my honourable friend [Alfred Deakin] available, and also that we could not possibly spare him even for the benefit of mankind at large'.⁵¹

Leaving the jokes aside, and despite his seeming support for the Bill, most of his speech detailed a list of objections and alleged problems. He never proposed a different scheme. These alleged problems included:

- the expense⁵²
- whether another justice of the High Court would be appointed⁵³
- the possibility of the standing of judges being undermined by the work⁵⁴
- difficulties in interpreting the Constitution⁵⁵
- state tribunals⁵⁶
- Abraham Lincoln's statement in support of the right to strike, as opposed to the prohibition on strikes in the Bill⁵⁷
- the lack of compulsory arbitration bodies in the United States⁵⁸
- the alleged success of voluntary arbitration in the United Kingdom⁵⁹
- the injustice of common rule awards, which applied to all employers in an industry⁶⁰
- the right of employees to join registered trade unions⁶¹
- other matters.

Despite these concerns, Reid supported the Bill but expressed his disappointment that it was necessary. He said:

In no sense is this a triumph for humanity. It is a confession that the ordinary rules have failed, and that we have to grope about for some method which is clumsy, and perhaps, inequitable ... trusting that the time will come when, under a more rational and voluntary arrangement of intelligent men representing these great interests, a method will be found of settling their disputes without any recourse to legal machinery.⁶²

Reid too had been shocked by the terrible suffering of the 1890s strikes. He saw the imposition of a settlement on parties across an industry as an affront to ordinary rights, but also saw it as a necessary evil:

But, just as in martial law, all the sanctions and usages of civilized life disappear, is it not better that, in this case, they should disappear for a time in order to prevent the destruction, bloodshed, and hatred which these quarrels engender?⁶³

Despite George Reid's apparent concerns with 'common rule' awards, the Act introduced by his government in 1904 in fact provided for them. Such 'common rule' awards were later held to be invalid. Awards would only be forced on the parties that were parties to an industrial dispute, not an industry as a whole. 'Common rule' awards were awards that applied across an industry or other stated group, not to particular named employers.

Kingston was the person most responsible for developing the Bill. He had drafted the first Bill in 1890, and had drafted most of the second Bill before parliament. He addressed many of the questions that Reid had asked. On the question of the almost unprecedented nature of the Bill, namely that it was not based on any model from the United States of America or Britain, he said:

Any legislation of this kind is of an experimental character. I have yet to learn that Australia fears to embark upon a course of legislation for which

there is no established precedent. She is content to make her own laws for cases as they arise.⁶⁴

He discussed the operations of similar legislation in New Zealand and New South Wales. In New Zealand the conciliation function was done by a separate body, conciliation boards, which delayed finalising matters. In New South Wales there was no mention of conciliation. Both were problems that were rectified in the Bill before parliament. In relation to the cost and expense of the measure, he said that the avoidance of the disaster of the shearers' strike, or the maritime strike, would more than pay for any cost of the measure.⁶⁵ He said that state arbitration courts could not deal with strikes that covered many states:

We feel that they [major strikes] are less likely to occur if we provide for tribunals which will satisfactorily deal with them when they arise, and will endeavour to nip in the bud troubles which may, if they are allowed to develop, cause the utmost difficulty.⁶⁶

Kingston quoted from the evidence he gave to the 1891 New South Wales Royal Commission on Strikes on a number of key issues, including the conciliation function. He said that he had consulted with such persons as the leader of the opposition George Reid had suggested.⁶⁷ Finally, he explained at length why he had resigned from his position as a minister with the government. He said:

I believe in protecting our local industries against cruel and unfair competition. I believe in the importance of the ship-owning industry. I believe in the preservation for Australia of the Australian coastal trade. I do not propose anything to the extent of preventing competitors who subscribe to the same conditions and pay the same wages from sharing in that trade. But I know the competition to which the Australian ship-owners are at the present moment subjected ... They have to pay their seamen £6 10s. per month, and to compete with others who pay only from £3 to £4 per month.⁶⁸

John Christian Watson (federal Labor Party) pointed out that no speaker had yet opposed the Bill, but said that Mr FT Derham of the Victorian Chamber of Manufactures, and Mr Walpole of the

Employers' Federation in Melbourne, were campaigning against the Bill. He rejected their views, firstly, because most members of parliament had been elected on the basis of support for the Bill, and secondly because the system of voluntary conciliation and arbitration they supported had 'universally failed'. He said that Australia was not free of terrible strikes:

What about the coal strike at Outtrim, which has been in progress for the past six months. That was not brought about by the initiative of the men? In that case an attempt was made by the employers to reduce the wages of the men by nearly one-third. They were engaged upon piece-work at so much per ton. Naturally the men objected to such a sweeping reduction. They offered to submit their case to arbitration, but the employers—as is too frequently the case—refused to be conciliatory, and declined to accept anything short of absolute submission to their terms. The men have repeatedly offered to submit their case to arbitration. That strike has now continued for six months, and has undoubtedly inflicted a great injury upon the people who are chiefly concerned, as well as upon the State of Victoria. It cannot be a good thing for Victoria that these mines should remain idle all the time ... The men who were originally locked out are still insisting upon their right to work at reasonable wages.⁶⁹

Watson considered that there was currently real industrial conflict in Australia and overseas, and workers were experiencing 'sweating' and harsh conditions such as to justify a new Act of this kind.⁷⁰

The shipping magnate Sir Malcolm McEacharn supported the Bill, although he said:

There was a time when I was utterly opposed, not only to unionism, but to conciliation and arbitration in any form ... The unionism to which I had been accustomed during the great strikes of 1890 to 1894 was of a more arrogant and 'stand and deliver' type than the unionism of today. I hope that the newer unionism ... which has enabled those of us who are employers to meet our men with pleasure and discuss matters in a conciliatory spirit, may continue.⁷¹

One commentator says that this was typical of the attitude of employers of the time. He also comments that unions took a similar view. They were willing to give arbitration a trial to see what the results would be.⁷²

The Bill was abandoned on 8 September when the Labor Party successfully amended it to cover state railway employees. The Labor Party insisted that the Bill cover state railway employees because the Irvine government in Victoria had insisted that its railway workers should disaffiliate from the Trades Hall. Workers protested and went on strike and the government then introduced legislation banning such strikes. Deakin, however, saw the amendment as violating the federal balance by overriding the states' powers of self-government.⁷³

Another federal election was then held. In the 1903 election campaign again all parties supported a Conciliation and Arbitration Bill in some form. Again the parliament was made up of three groupings: Alfred Deakin's Liberal Protectionists, George Reid's Free Traders, and the Labor Party. Alfred Deakin retained office, and remained Prime Minister.⁷⁴

The third Conciliation and Arbitration Bill

A new Bill was introduced on 22 March 1904 by Alfred Deakin, Prime Minister (Liberal Protectionist). Again, Alfred Deakin spoke at length about the contents of the Bill.

The Bill was opposed by some. This was a parliament of individuals, not of disciplined political parties who enforced party policy, which is the position today. The debate was wide-ranging, and many different issues were raised.

For example, Mr Glynn (a Free Trader) reviewed developments in Great Britain, including the Midland Iron and Steel Wages Board and the Durham Miners' Association, both of which showed he said '... that, by being temperate and bringing common sense and honesty to bear, all disputes may be settled on the voluntary principle'.⁷⁵

Mr Robinson (a Free Trader) said that a wages board system should apply, not a court:

If a dispute is to be settled by force of law, I think it far better that those who settle it shall be men elected, as under the Victorian Factories Act,

by the employers and employees concerned, and shall choose their own chairman, than that it shall be dealt with by a Court.⁷⁶

Neither of these two approaches had much support in parliament or in the electorate. The Act was to provide for a court.

Deakin was unable to secure the Bill's passage and resigned. The government of John Christian Watson (Labor Party) pursued the Bill. It was defeated in an attempt to amend the Bill to provide for preference for trade union members, and accordingly Watson also resigned on 17 August 1904, thus ending the first national labour government in the world.

The Bill finally passed the Senate on 9 December 1904, during the period of the George Reid/Allan McLean (Free Trade, Protectionist) government. This was perhaps surprising, because although Reid supported the Bill, of the first four Prime Ministers he was the least enthusiastic. It was Alfred Deakin's Bill, and there was some degree of personal enmity between Deakin and 'Yes/No Reid', given that name by his enemies because he seemed to both support and oppose Federation. Deakin was willing to describe Reid as untrustworthy, lazy, a brilliant tactician and platform orator, physically repulsive, and with no consistent principles other than free trade.⁷⁷ Reid's views on Deakin are perhaps best recorded in the way in which he systematically undermined most of Deakin's endeavours.

Reid's position was also partly 'yes/no' on the Conciliation and Arbitration Bill, although more yes than no, perhaps because of political calculation.

The Bill was popular, and Reid's government depended on Labor and Deakin's support. Alfred Deakin and John Christian Watson, the other main leaders, supported the Bill because they were convinced it was in the interests of Australia.

Tariffs and arbitration

It is sometimes said that there was a link between the introduction of tariffs, taxes on imports of goods into Australia, and the introduction of conciliation and arbitration. However, tariffs were introduced in 1902, and conciliation and arbitration in 1904. There was no

direct link between the two Bills, although tariff legislation was amended and later debates had regard to arbitration. Tariffs divided the parliament. The largest group in parliament, the Barton/Deakin protectionists were elected on a platform of introducing tariffs, while the second largest, George Reid's free traders were elected on a platform of opposing tariffs. The smallest group, the Labor Party, contained both free traders and protectionists.

Conciliation and arbitration, on the other hand, was supported in principle by the Barton/Deakin group, the Labor Party, and some of Reid's Free Traders. Despite this general support, parliament was divided over particular details of the Bill (e.g. whether the Act should cover state railways, or allow the Court to order preference to union members).

There was no link between tariffs and conciliation and arbitration until the introduction of Deakin's policy of New Protection⁷⁸ in 1906 with the *Excise Tariffs Act 1906*. This Act made tariff protection conditional on wages and conditions being paid, which were declared by the president of the Commonwealth Conciliation and Arbitration Court to be 'fair and reasonable'. This Act led to the *Harvester Decision*, which set the first Australian minimum wage. The Excise Tariffs Act was almost immediately found by the High Court to be invalid, and this removed the direct link between protection for industry, and protection of workers' wages through a minimum wage.

George Reid, Prime Minister when the *Commonwealth Conciliation and Arbitration Act 1904* passed parliament, was also parliament's most influential opponent of tariffs.

It is true, however, that the tariff system established in 1902 and amended by later parliaments, coexisted with the arbitration systems as they developed, just as it coexisted with other policies. It might be argued, for example, that the continued existence of a high award wage would have been threatened at times if employers had been able to use cheaper labour overseas rather than Australian labour, and to import goods rather than making them in Australia. Tariffs prevented this occurring to some extent. By 1928 the Tariff Board claimed that the level of tariffs in the iron and steel sector was largely determined by the gap between Australian wages and that paid by competing overseas employers.⁷⁹ The removal of tariffs late

in the twentieth century was justified on the basis of the benefits of free trade, which included cheaper goods for Australians.

The *Commonwealth Conciliation and Arbitration Act 1904*

The Bill was assented to and became law on 15 December 1904. The 'chief objects' of the Act provide a convenient summary of the Act's provisions:

- i. To prevent lock-outs and strikes in relation to industrial disputes;
- ii. To constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes;
- iii. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties;
- iv. In default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award;
- v. To enable States to refer industrial disputes to the Court, and to permit the working of the Court and of State Industrial Authorities in aid of each other;
- vi. To facilitate and encourage the organization of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organizations, and to permit representative bodies of employers and of employees to be declared organizations for the purposes of this Act;
- vii. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

The record of the Act in achieving these objects, particularly object (i) relating to preventing strikes and lock-outs, object (iv) relating to awards, and object (vi) relating to encouragement of registered organisations is discussed later. However, in summary strikes continued to occur, while the Court was slow to make

awards. Six unions were registered in 1905, including one employer union, the Commonwealth Steamship Owners' Association, and there were many more registered in the coming decades.

Table 1: First six organisations registered under the Act

	Registered	State	Name
1	15 May 1905	NSW	The Merchant Service Guild of Australasia (current name: The Australian Maritime Officers' Union)
2	16 May 1905	NSW	The Australian Workers' Union
3	15 June 1905	Vic	The Federated Saw Mill, Timber Yard, and General Wood Workers Employees Association, Victorian Branch
4	6 July 1905	Vic	Bakery Employees' and Salesmen's Federation of Australia
5	11 July 1905	Vic	Commonwealth Steamship Owners' Association
6	7 Aug 1905	NSW	The Federated Stewards and Cooks Union of Australasia

The *Commonwealth Conciliation and Arbitration Act 1904* was not repealed until 1988.⁸⁰

1.4 ESTABLISHMENT OF THE COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION

The Commonwealth Court of Conciliation and Arbitration consisted initially of just a president, a judge of the High Court, who worked part-time as president of the Court. Richard O'Connor was the first president, appointed on 10 February 1905, and the second president was Henry Bournes Higgins, who was appointed in 1907.⁸¹ In 1913 another member of the Court was appointed, a deputy president, Mr Charles Powers.

Justice Henry Higgins was the most important influence on the early Court. His decisions, and unusual personality and intellect, set the pattern for the Court during its first 20 years of operation.

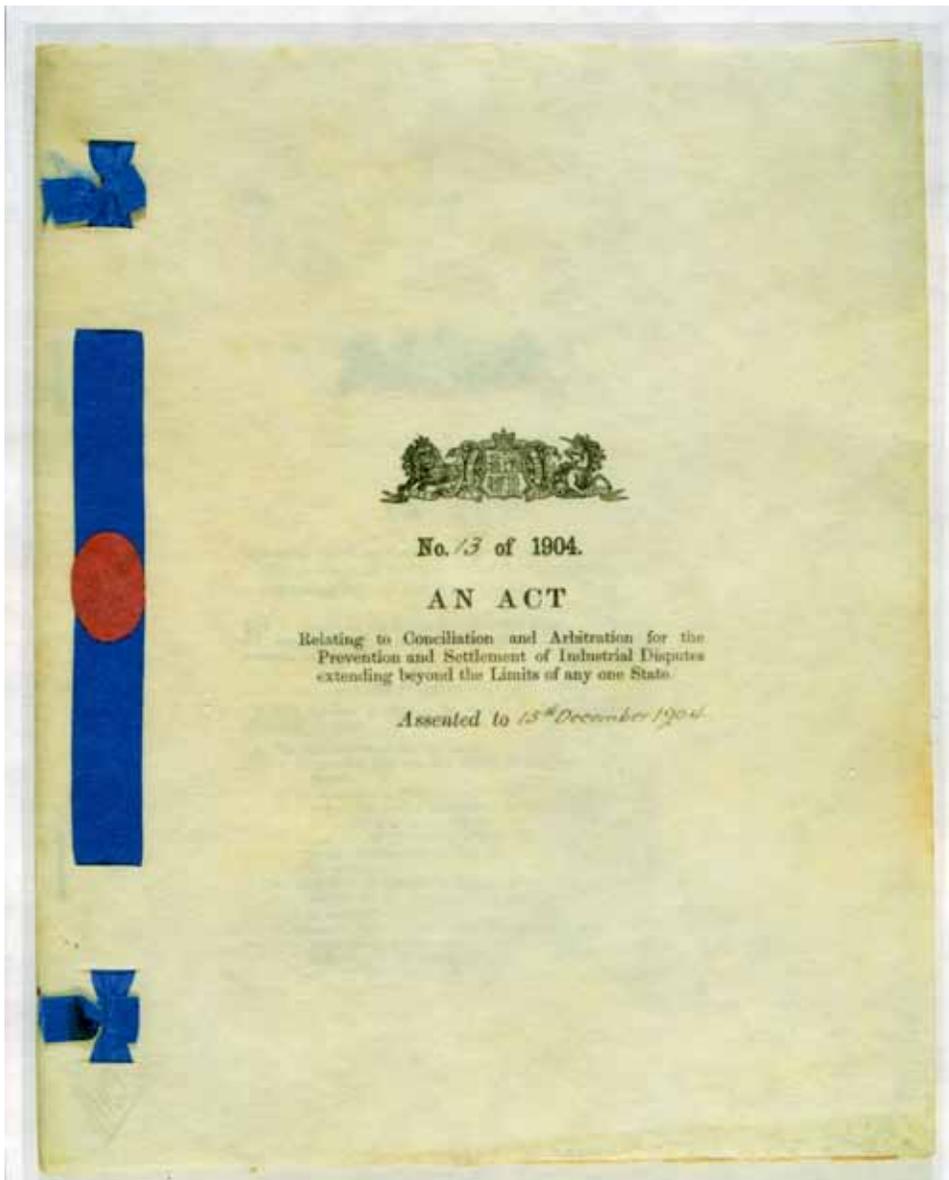
The Court was set up with the following administrative procedures being implemented:

Commonwealth of Australia
Attorney-General's Department,
Melbourne, 26th January, 1905.

APPOINTMENT OF INDUSTRIAL REGISTRAR, UNDER THE
COMMONWEALTH CONCILIATION AND ARBITRATION ACT
1904.

His Excellency the Governor-General, with the advice of the Federal Executive Council, has been pleased to approve of the appointment of GORDON HARWOOD CASTLE, Chief Clerk and Assistant Parliamentary Draftsman in the Attorney-General's Department of the Commonwealth, as Industrial Registrar under the *Commonwealth Conciliation and Arbitration Act 1904*, during pleasure and without salary.

J. H. SYMON,
Attorney-General.



The front cover of the Conciliation and Arbitration Act of 1904. This Act was Australia's own experiment. It was not based on models in the United States nor Great Britain.

While the need for a Commonwealth Court of Conciliation and Arbitration was accepted by the Australian Parliament with the passage of the *Commonwealth Conciliation and Arbitration Act 1904*, few politicians expected that the Court's workload would be anything but modest.

In a minute paper dated 19 January 1905 the secretary of the Attorney-General's Department, Robert Garran, proposed administrative arrangements for the new court, including:

- the appointment of High Court Justice Richard Edward O'Connor as the first president of the Court
- Melbourne to be the principal registry with a district registry in the capital of each state
- the then registrar of the High Court, Mr Gordon Harwood Castle, to be the industrial registrar of the Court.

Both Justice O'Connor and Mr Castle were expected to take on the duties of the Commonwealth Conciliation and Arbitration Court in addition to their High Court duties. As the work was expected to be nominal, they received no additional salary. Similarly, the Commonwealth asked the states to provide an appropriate officer to act in a part-time and unsalaried capacity in each of the district registries.

In March 1907 Gordon Castle asked to be relieved of the position of industrial registrar, quoting the heavy workload as the reason:

When the Act was passed into law, it was considered that for some time the work of the Industrial Registrar under it would be little more than nominal and, in order to save expense, I was asked to accept the office without salary. I did so, and have held the office since 1905.

The work under the Act has grown considerably, and I now find that it is impossible for me to satisfactorily carry on the work in addition to my work as Chief Clerk and Assistant Parliamentary Draftsman in the Attorney-General's Department.⁸²

Six months later, Justice O'Connor also stepped down from his position on the Court to spend more time on his High Court commitments.

The successors of these two men were to play formative roles in the development of the Court. Justice Henry Higgins led the Court as president from 1907 to 1921 and Alexander Murdoch Stewart served as industrial registrar from 1907 to 1929 when he was appointed a conciliation commissioner.

Early work of the Court

In its first five years the Court made only six awards. A lack of official forms delayed the first registration of an industrial organisation and the first hearing did not take place until November 1905 in Sydney.

First registration of an industrial association

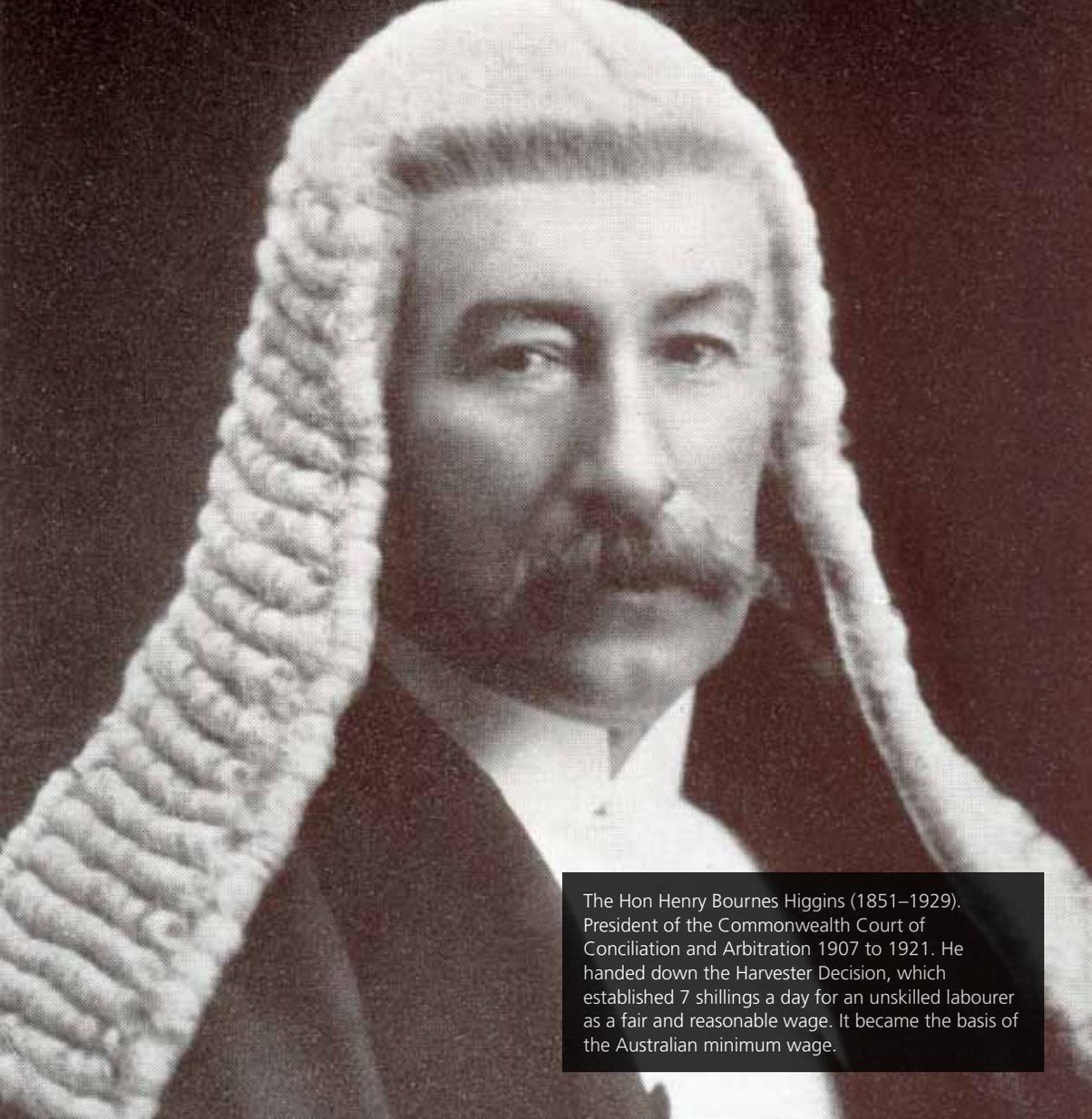
The registration of an industrial association was one of the first items of business for the Court's registrar Gordon Castle.

On 27 January 1905 the Merchant Service Guild, an organisation representing maritime officers, notified the registrar of its desire for registration under the *Commonwealth Conciliation and Arbitration Act 1904*.

The registration was delayed due to the unavailability of associated regulations and forms, but the process was completed on 15 May 1905 when a certificate of registration was issued. The guild was required to pay a £2 registration fee.

Summary

1. Despite the general support for a compulsory Conciliation and Arbitration Bill the progress of the Bill through parliament was difficult, and took several years. It led to the resignation of two governments, and long debates.
2. The Bill passed with the support of the three groupings in the parliament: Alfred Deakin's Liberal Protectionists, George Reid's Free Traders, and the federal Labor Party.
3. The speeches in parliament show that a range of arguments were considered. These included avoiding a repetition of the bitter labour disputes of the 1890s, replacing the crude mechanism of strikes and lock-outs with reason and argument, and amelioration of the position of workers and protection of their wages and conditions.



The Hon Henry Bournes Higgins (1851–1929). President of the Commonwealth Court of Conciliation and Arbitration 1907 to 1921. He handed down the Harvester Decision, which established 7 shillings a day for an unskilled labourer as a fair and reasonable wage. It became the basis of the Australian minimum wage.

PART 2
ESTABLISHING AN AUSTRALIAN
MINIMUM WAGE

2.1 The Harvester minimum wage

Time line

- 1907 The *Harvester Decision* establishes 7 shillings a day, or 42 shillings a week, minimum wage for an unskilled labourer. A 'family' or 'living' wage is established on the basis of 'needs' of a worker to support a family of five. This applies only to one company and the decision is overturned by the High Court.
- 1908 The Commonwealth Court of Conciliation and Arbitration adopts the Harvester 7 shillings and applies it in awards for the first time. Additional amounts are paid to more skilled employees. These additional amounts become known as 'margins'. Only 20 awards are made between 1905 and 1914 by the Court so the 7 shillings has very limited coverage. Most awards are state awards with a lower minimum wage of 36 shillings a week.
- 1912–19 The Commonwealth Statistician establishes the first statistics on inflation, the 'A' Series.
- 1912 A minimum wage for some jobs performed mainly or exclusively by women, such as a fruit packer or milliner, set at 54 per cent of the male minimum wage in the *Fruit Pickers Case* and other cases. The wage is set on the basis of needs of a woman, not the need to support a family. Most women are not in the formal workforce.
- 1913 The Harvester 7 shillings is increased by the 'A' series estimate of inflation, to maintain the buying power of the minimum wage.
- 1919 Royal Commission on the Basic Wage estimates a higher minimum wage needed to meet the 'needs' of working men.
- 1920s The Harvester minimum wage of 7 shillings a day, or 42 shillings a week, as increased, is adopted by state industrial tribunals in place of lower minimum wages, often 36 shillings a week. The Harvester minimum wage is now the national minimum wage covering most Australian employees.
- 1921 *Gas Employees Case*: The Court rejects the royal commission estimated amount as unsustainable. Maintains the lower Harvester minimum wage. End of a needs-based wage?
- 1923 The Court includes a clause in awards automatically adjusting the Harvester minimum wage by amounts of inflation each three months.
- 1953 Quarterly indexation abandoned.
- 1966 *Aboriginal Stockmen's Case* removes the exemption from awards for Aboriginal stockmen. One award wage now applies to both Aboriginal and non-Aboriginal stockmen.
- 1969 *Equal Pay Case* continues separate minimum wage for women.
- 1972 *Equal Pay Case* removes separate minimum wage for women. One award wage now applies to both men and women.
- 1974 In the *National Wage Case* the Commission formally abandons a 'family wage'.
-

2.1 THE HARVESTER MINIMUM WAGE

By the 1920s the minimum wage set by the Commonwealth Court of Conciliation and Arbitration applied to most of the Australian workforce. This was the minimum wage⁸³ first set in the *Harvester Decision* in 1907.

It provided the minimum that an employer could pay an employee in wages for work in the area that the minimum wage operated.

The minimum wage system provided the following:

- A minimum wage for men of 7 shillings a day or 42 shillings a week for an unskilled labourer, increased by the amount of inflation. This was the ‘basic wage’. More skilled employees received an additional amount, perhaps 3 shillings. This was called the ‘margin’.
- Women received the male basic wage if they worked in jobs in competition with men (such as a fruit picker or blacksmith). They received a lower basic wage of 54 per cent of the male wage if they worked in jobs mainly performed by women (such as a fruit packer or milliner).
- Adolescents in a job might receive the adult rate, or lower wages if they were employed as apprentices being trained, or junior employees without being trained.

How did this minimum wage system develop? It all began with a case dealing with the wages paid at HV McKay, which manufactured combine harvesters in Sunshine, then outside Melbourne. Harvesters are machines which harvest wheat and similar crops. Australia had led the way in developing agricultural machines such as these. This case became known as the *Harvester Decision*.

The *Harvester Decision*

The *Excise Tariff Act 1906* provided that the excise duties imposed by the Act on agricultural implements shall not apply to goods manufactured in Australia under conditions as to the remuneration



Factory workers at the main entrance of the Sunshine Harvester Works, 1950. The most influential early decision of the Arbitration Court was made regarding the Harvester factory.

of labour which are declared by the president of the Court to be ‘fair and reasonable’.

This was an example of Alfred Deakin’s policy of New Protection⁸⁴, under which industry would receive protection from overseas competition by way of tariffs, taxes that made imports more expensive, if workers were also protected.

Businesses could apply for an order that they paid ‘fair and reasonable wages’ under s.2. Some did. One application was made by HV McKay. The application made by HV McKay led to the most influential of the early arbitrated decisions, *ex parte H. V. McKay*⁸⁵, which became known as the *Harvester Decision*. Justice Higgins complained that the Act gave him little guidance about the level of the minimum wage, but he decided to fix fair and reasonable wages on the following basis:

I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community ... I cannot think that an employer and a workman contract on an equal footing, or make a “fair” agreement as to wages, when the workman submits to work for a low wage to avoid starvation or pauperism (or something like it) for himself and his family; or that the agreement is “reasonable” if it does not carry a wage sufficient to ensure the workman food, shelter, clothing, frugal comfort, provision for evil days, &c., as well as reward for the special skill of an artisan if he is one.⁸⁶

Labourers at Harvester received 6 shillings a day. Justice Higgins decided that 7 shillings a day for a labourer, and 10 shillings a day for skilled tradesmen such as fitters, turners, moulders and blacksmiths, were 'fair and reasonable' wages. In his view labourers did not receive a 'fair and reasonable wage' at Harvester.

The Harvester wage was sometimes referred to as the 'living wage' or 'family wage' because the method of fixing it was an attempt at assessing the 'cost of living' of a labouring family. Justice Higgins used a family of a husband, wife, and three children for these purposes. He assessed the weekly expenditure of a labourer's home of 'about five persons' at £1 12s 5d.⁸⁷ Perhaps it was a 'myth'⁸⁸, but references to a family wage and living wage were to continue throughout the century.

It was not a new concept. In 1888 the president of the New South Wales Court of Arbitration had said that every worker should receive sufficient to enable him to lead a human life, marry, and bring up and maintain a family, and in 1890 Samuel Griffith said that workers should receive a wage adequate to maintain a reasonable standard of life. In 1891 *Rerum Novarum*, a papal encyclical, said that remuneration must be enough to support a wage earner in reasonable and frugal comfort.⁸⁹

Analysis of the *Harvester Decision*

There were difficulties with the *Harvester Decision* method, which are discussed below.

Household budgets

Firstly, it was not actually a calculation based on the observed budgets of labouring households, but of 11 tradesmen's budgets.⁹⁰ Justice Higgins had no evidence before him of labourers' budgets, although they would presumably be similar or the same. The budgets before him are summarised in Table 2.

Table 2: Household budgets presented to the *Harvester Case*, 1907 (income and expenditure in shillings)

Household	Breadwinner's expenditure					
	Ages	Occupation	Wages	Sum given to wife	Rent	Food
Bayliss, William & Mary	41/35	Baker	45–48	-	8	22.78
Bennett, Christopher & Emily	41/41	Blacksmith	54	-	12.5	22
Hannan, Joseph & Agnes	31/26	Pipe moulder	63	53	12.5	29
Keating, William & Mary	31/28	Blacksmith	54	-	7	31
Kent, Frederick & Christina	28/26	Blacksmith	54	-	10	19.5
Russell, Ted & Kate	41/34	Union secretary	-	50	12.5	27.5
Skidmore, David & Alice	50/45	Iron moulder	66	60	Home owner	34
Smith, Joseph & Fanny	39/36	Fitter	54	-	Home buyer	23.58
Smith, Charles & Mary	-	Engine driver	-	60	12.5	40.5
Tatham, George & Louisa	26/24	Iron moulder	54	-	10	20
Wilkinson, Ernest & Flora	-	Union secretary	54	-	8.5	19.75

Notes: Wages and expenditure from the *Harvester Case* transcript. 'Other' includes newspapers (six families) and in other cases school requisites, sewing machine hire, medicine, tobacco, union fees, house repairs and (Skidmore) repayments. Fred Kent went to the football 'pretty regularly'. 'Other' for Joseph and Fanny Smith includes weekly house interest payment of 11.92s.

ESTABLISHING AN AUSTRALIAN MINIMUM WAGE

Fuel and light	Boots/clothes	Fares	Insurance	Other	Total	Children earnings	Number [1907]	Ultimate number	Child-bearing years
2.33	9.5	1	2	0.5	48	7.5	2	2	1890–1893
3.75	5	3	-	2.5	49.75	-	4	4	1888–1904
2.5	-	-	1.25	0.5	45.75	-	2	4	1903–1913
3	-	8	0.42	5.42	52.83	-	5	11	1900–1918
2.33	6	-	2.25	2.5	42.58	-	1	4	1906–1916
3.5	4	-	1.25	6	49.75	6	6	6	1891–1906
4.75	0.5	-	-	-	40.5	-	3	3	1887–1903
2.75	6.75	-	-	14.59	48	-	3	5	1899–1916
3.33	-	-	1.5	0.75	58.58	15	7	-	-
2.33	-	1.5	1.67	2.5	38	-	1	2	1906–1908
1.5	10	2	1.83	0.5	44.5	-	1	-	1898

Source: J Lack & C Fahey, 'The Industrialist, the Trade Unionist and the Judge: The Harvester Judgement of 1907 Revisited', *Victorian Historical Journal*, vol. 79, no. 1, June 2008.

1500 farmers visit HV McKay Sunshine Harvester Works at the invitation of Mr McKay, September 1911.



W. H. V. M. KAL.
ARVESTER WORKS
K IMPLEMENT WORKS.
OFFICE





Working class family in their 'Sunday best', Richmond, Victoria early 1900s.

Family size

The measure Higgins used, of a family with three children, seems to have been a guess or rough estimate not substantiated by statistical evidence. This led to some confusion. As the Court complained in 1931, while the state courts and wages boards had adopted the Harvester living wage, they used different family sizes. In some states it was a man, wife and two children; federally it was a man wife and three children; in New South Wales it was a man, wife and one child plus some provision for child endowment; and in Queensland the Court used productivity.⁹¹ Justice Powers in the *Gas Employees Case* of 1921 said that 1.6 children for each family was more accurate on the available statistics.⁹²

Women and single men

If the male wage was calculated on the basis of the cost of a husband supporting a wife and children, how would the wage for the husband's wife be set? Would she also receive an amount to support a husband and three children? This issue was not dealt with until the 1912 *Fruit Pickers Case*.⁹³ Women would not be paid to support a family, but would receive only a lower 'living' wage. This decision has been widely criticised. It was also inconsistent with the approach taken to single men. Would single men be paid an amount to support a wife and family which they did not have? Single men would be paid the full 'family' wage.

The market

What would be the relationship between a living wage and average wages or market rates, or the capacity of industry or a business to pay? HV McKay conceded that it had the capacity to pay fair and reasonable wages (p. 15 of transcript). Justice Higgins refused to simply adopt the average wage paid by 'reputable employers', which was then the test in Victorian state legislation for a wages board to fix wage rates. His reasons for refusing included that the lower 36 shillings set using that test did not enable sustaining food to be paid for. He did not look to the market value of the labour or the profitability of the industry, or what he called the 'higgling of the market'.⁹⁴ Higgling of the market was a phrase used by Adam

Smith and most of the early economists to refer to the constant adjustments made to prices in response to supply and demand.⁹⁵

He had regard to the fact that many public bodies paid a minimum of 7 shillings a day, including the Metropolitan Board, the Melbourne City Council, 13 municipal councils, and other similar bodies. He had regard to the 10 shillings rate paid by some employers for a fitter, such as the Victorian Railways. As Justice Higgins explained:

As will be seen from my preceding remarks, I have generally solid precedents for my standard in the actual practice of experienced employers in great undertakings; and sometimes precedents in awards and Wages Board determinations. In cases where I had not the benefit of such guidance, I have freely availed myself of the applicant's own practice, as to the proportion which he maintains between the labourer's wage and that of the several classes of artisans. I make use of this practice as a kind of check or regulator of my conclusions.

Nor would the rate increase or decrease depending on the profit level of the employer, because of the terms of the *Excise Tariff Act 1906*:

The *Customs Tariff Act 1906* imposes a heavy import duty as to stripper harvesters—£12 each. Then the Excise Tariff imposes on Australian harvesters an Excise duty of £6 each; but even this Excise duty is not to apply if the goods are manufactured under conditions as to remuneration which I (or some other of the authorities mentioned in the Act) declare to be fair and reasonable. That is all. Fair and reasonable remuneration is a condition precedent to exemption from the duty; and the remuneration of the employee is not made to depend on the profits of the employer. If the profits are nil, the fair and reasonable remuneration must be paid; and if the profits are 100 per cent, it must be paid. There is far more ground for the view that, under this section, the fair and reasonable remuneration has to be paid before profits are ascertained—that it stands on the same level as the cost of the raw material of the manufacture.⁹⁶

No social welfare system

The decision was handed down having regard to the circumstances of the time. At the time there was no government funded unemployment benefit, sickness benefit, or financial assistance to families with children. The labourer's 7 shillings a day minimum wage included 'provision for evil days, &c.', which refers to sickness and unemployment.

Origins of the 7 shillings amount

The 7 shillings a day, or 42 shillings a week, as a minimum to meet needs was not a new amount. It was a 'generous' amount for a labourer in 1907, but was the amount earned by many labourers during the boom years of the 1880s before the great depression of the 1890s reduced wages to 5 or 6 shillings a day.⁹⁷ It was higher than the average wage for unskilled men in 1907, which was probably about 33 shillings a week, although the Harvester factory was no ordinary or average employer. It was higher than the amounts usually set by wages boards, often 36 shillings or less. One wages board set 25 shillings a week for carters and drivers working a 56-hour week.⁹⁸

The daily and weekly wage

The Harvester minimum wage was 42 shillings a week, or 7 shillings a day for a 48-hour week for a labourer, usually up to 8¾ hours per day on five days, and 4¼ hours on Saturday. This was the amount that began the Australian minimum wage system. It became the 'basic wage'.

The food of a working-class family

A working-class family of five in 1907 with a household income of the unskilled labourer's full-time minimum wage of 7 shillings a day might be able to spend about 2 shillings (24 pence) a day on food if later statistics are any guide. Rent might be 16.3 per cent of income, food 28.4 per cent, clothing 12.3 per cent, fuel and light 3.4 per cent, other items 39.6 per cent.⁹⁹

What food could 2 shillings (24 pence) buy in 1907? The following table is a guide:

Table 3: Price of food, 1907

Food	Price	Food	Price
Bread	2½ pence per kilo	Butter	3 pence per 100 grams
Flour	2½ pence per kilo	Cheese	2 pence per 100 grams
Tea	3½ pence per 100 grams	Eggs	1 penny per egg
Coffee	4 pence per 100 grams	Beef (shin)	8.37 pence per kilo
Sugar	½ pence per 100 grams	Mutton (shoulder)	7.93 pence per kilo
Rice	½ pence per 100 grams	Beef (corned brisket without bone)	9.26 pence per kilo
Sago	1 penny per 100 grams	Fruit (eating)*	1½ pence per 500 grams
Jam	1 penny per 100 grams	Fruit (cooking)*	1 penny per 500 grams
Oatmeal	2½ pence per 500 grams	Cabbage or cauliflower*	2 pence each
Raisins	1½ pence per 100 grams	Marrow or pumpkin*	1 penny per 500 grams
Currants	1½ pence per 100 grams	Tomatoes or beetroot*	1½ pence per 500 grams
Potatoes	1 penny per kilo	Beans or peas*	1½ pence per 500 grams
Onions	1½ pence per kilo	Carrots, parsnips or turnips*	1½ pence per bunch
Milk	2 pence per pint	Golden syrup*	½ penny per 100 grams

Assuming an employee was continually employed, and not seasonally employed, this would enable a working man's family to maintain a sufficiently nourishing diet. Each day they could buy, for example: 1 kilo of bread, 10 grams of tea, 10 grams of sugar, 10 grams of jam, 500 grams of oatmeal, 1 kilogram of potatoes, 1 pint of milk, 100 grams of cheese, 500 grams of mutton, and 1 cabbage, and possibly have enough for some beer or a sweet suet pudding.

* The 1907 price for this food is derived from 1920 prices recorded in the Royal Commission on the Basic Wage, 23 November 1920, Professor Osborne's report, p. 68. These prices were adjusted to 1907 prices using the Retail Price Indexes by Commodity Group, Australia, 1901–1938, food and groceries, p. 213 of *Australians, Historical Statistics*, (ed.) Vamplew, Fairfax, Syme & Weldon Associates, 1987, p. 214. Pence have been rounded to single or half pence in the case of the smallest amounts, others rounded to two places.

Source: Labour and Industrial Branch Report No 1—Prices, Indexes and Cost of Living in Australia by GH Knibbs, December 1912, Appendix III. Melbourne 1907 prices used.

What sort of food would they eat? The diet included oats and porridge for breakfast, and a lot of tea, bread, potatoes, cabbage, cauliflower, dripping from roasted meat (eaten as a spread on bread), and mutton. Mrs Beeton's cookbook of 1905¹⁰⁰, published jointly in Melbourne and London, was mainly for the middle classes, but includes some recipes that would have been widely used, particularly roast mutton. It also includes:

Suet Pudding (to serve with Roast Meat): Ingredients for pudding for 6 persons—1 lb of flour, 6 oz of finely chopped suet, ½ saltspoonful of salt, ½ saltspoonful of pepper, ½ pint of water. Average cost, 5d.

Chop the suet very finely after freeing it from skin, and mix it well with the flour; add the salt and pepper (this latter ingredient may be omitted if the flavour is not liked), and make the whole into a smooth paste with the above proportion of water. Tie the pudding in a floured cloth, or put it into a buttered basin, and boil from 2½ to 3 hours. To enrich it, substitute 2 beaten eggs for some of the water, and increase the proportion of suet.

Time: 2½ to 3 hours

Seasonable at any time.

Note: When there is a joint roasting or baking, this pudding may be boiled in a long shape then cut into slices a few minutes before dinner is served; these slices should be laid in the dripping-pan for a minute or two, and then browned before the fire. Most children like this accompaniment to roast meat.¹⁰¹

Finely chopped meat and breadcrumbs, currants and eggs could also be added to make a meat suet pudding. Sweet suet puddings were also made with a cup of golden syrup and 2 ounces of raisins. Suet is raw sheep or beef fat from around the kidneys.

A civilised community

Finally, should a labourer be able to support a wife and family on a labouring wage in reasonable standards of comfort? The Harvester answer was that he should be able, and that this was the answer of a 'civilised community'. This was perhaps the only real lasting contribution made by Harvester.

The Court adopts Harvester

In 1908 the new Court applied the *Harvester Decision* for the first time in making awards. It fixed the wage rates in an award on the basis of the methodology of a living wage.¹⁰² It did this although *Harvester* was decided by the Court under the *Excise Tariff Act 1906*, which had been declared invalid by the High Court.

In 1908 there were, however, few federal awards, so the 7 shillings had very limited application to the Australian workforce. In its first five years the Court made only six awards, three merchant shipping awards, one pastoral, one for employees of the BHP Company at Broken Hill and Port Pirie, and one for boot trade employees.¹⁰³ Between 1905 and 1914 the Court made only 20 awards, which covered the pastoral and maritime industries, journalists, theatre workers, builders' labourers, meat workers, and boot and shoemakers.¹⁰⁴ There were few federal awards, but many more state awards.

The Harvester minimum wage becomes the national minimum wage

At the time most awards were state awards. The minimum wage set by state wages boards was at first usually lower than the Harvester 7 shillings a day or 42 shillings a week for a labourer, often 36 shillings a week. However, by the 1920s state wages boards had adopted the higher Harvester minimum wage.¹⁰⁵

There was a federal conciliation and arbitration system, and six state conciliation and arbitration systems. New South Wales and Queensland had a system similar to the Federal Court, while Victoria, South Australia and Tasmania had established wages boards. Instead of a court dealing with all industries, a wages board was set up for each different industry, composed of a representative each of trade unions, and employers, with an independent chairman with the casting vote.

The number of awards made increased because trade unions applied for them to protect their members, although employers were not necessarily hostile. In Victoria, of the 38 wages boards established prior to 1906, 11 had been applied for by employers.¹⁰⁶

By 31 December 1915, some 663 awards or determinations were in force and 546 industrial agreements. By 31 December 1921 some 1047 awards or determinations were in force, and 1222 industrial agreements.¹⁰⁷

Most of these were state awards. It was much easier to have a state award made, because the scope for a legal challenge by employers was much less. Federally there was greater scope for legal challenges based on arguments about whether or not the ‘conciliation and arbitration’ power of the Constitution had been exceeded. Many employer challenges were successful. In 1910 Justice Higgins, driven to despair by the technicalities of the conciliation and arbitration power in the Australian Constitution, s.51(35), described the law as a bog.

The exact percentage of the Australian workforce that was covered by these awards is somewhat uncertain. One estimate is that by the 1920s this was the ‘majority of the workforce’.¹⁰⁸ Another estimate is that between 1913 and 1929 award coverage of the workforce increased from 6.7 to 58.9 per cent.¹⁰⁹

The main effect of the awards was to apply a minimum wage to most of the Australian workforce for the first time. At first awards applied the lower 36 shillings a week at the labourer level. By the 1920s these awards applied the higher Harvester minimum wage of 42 shillings a week, as increased by consumer price index adjustments.

A different minimum wage for women

The question of whether women would receive the full family wage was not decided in the *Harvester Decision*, but in the *Fruit Pickers Case* of 1912 (*The Rural Workers’ Union v. The Employers*¹¹⁰). In the *Fruit Pickers Decision* Justice Higgins established an award rate of pay of 1 shilling an hour for male and female fruit pickers. He set a separate and lower minimum wage for fruit packers of ninepence per hour, which was 75 per cent of the picker rate. All fruit packers were women.

This decision led to the setting of special lower minimum wages for women working in occupations mainly performed by women.



Grape pickers, including children, working in a South Australian vineyard in 1919.

This system of unequal pay lasted until 1972. In the *National Wage Case 1972* the Commission decided that separate award classifications for males and females should be removed.¹¹¹

The *Fruit Pickers Case* has often been discussed or criticised. For example Marilyn Lake and Farley Kelly said in *Double time: women in Victoria—150 years*:

Recognition of the role of male desertion in the spread of poverty and the abandonment of children makes efforts to establish the family wage more comprehensible. When Justice Higgins in 1907 stated that the basic wage should be sufficient to meet the needs of a man, his dependent wife and three children in ‘frugal comfort’, he meant to lock the man into the protective breadwinner role just as surely as he meant to keep the woman

in the role of housewife. Yet many men, it is clear, did not find it easy to abide by these directives to responsibility. When World War I broke out, Victorian men rushed to enlist, often without their wives' knowledge. As the Third Military District records for Victoria noted: 'As can be imagined, matrimonial troubles have caused considerable work in the Pay Office. The cases of married men enlisting as single, and enlisting under assumed names, and those making charges against their wives with the view of the escaping from the obligation to allot portion of their pay, have been many.'¹¹²

Beverley Kingston said in *My wife, my daughter and poor Mary Ann* that:

For their part, women were infected deeply by the opportunities for escape available to all female employees in Australia. The first was the ever-present hope of marriage amongst those who were unmarried. One suspects a relatively low level of employment for married women in Australia at least up until the 1930s. The high wages paid to men, the emphasis on the family in the wage structure and on children in the national value system, the suburban sprawl, and the lack of child care facilities all combined to keep married women with children at home. Married women without children were almost as anti-social as unmarried ones, especially if they preferred to work instead of trying to manage on their husbands' wages. Some employers had a definite policy of discouraging them. Only real improvidence, misfortune, or deliberate non-conformity forced married women with children back into the factory after the graduation to full-time housekeeping.¹¹³

Justice Higgins described the decision in the following terms:

The principle of the living wage has been applied to women, but with a difference, as women are not usually legally responsible for the maintenance of a family. A woman's minimum is based on the average cost of her own living to one who supports herself by her own exertions. A woman or girl with a comfortable home cannot be left to underbid in wages other women or girls who are less fortunate.¹¹⁴

What did the decision itself say about the reasoning process used to introduce a different and lower basic wage for women?

Fruit picking work

Fruit picking work was seasonal, lasting about five to seven weeks, and started at different times depending on the fruit ripening.¹¹⁵ For example, apricot picking in Mildura would begin in late November and cease in late December. Grape picking would normally take place from February to the end of March.

Justice Higgins saw the work as unskilled, light, not permanent, but temporary and seasonal in nature, and paid by the hour.¹¹⁶ He said that the cost of living was greater in Mildura and in Renmark compared with larger, less isolated cities such as Melbourne or in Adelaide, or in places not so isolated; and the cost of living was increasing. He also considered the short periods of employment, the amount of money and time needed to travel to the work, and the time employees are paid for actual work. He concluded that the award wage should be fixed at a lower unskilled rate:

I have no hesitation in saying that the minimum wage should, as to all or nearly all the operations in question, be fixed on the level of the mere living or basic wage, without any addition for skill or other exceptional qualities; but I think that regard should be had to the short periods of employment, to the expenditure of money and of time in getting to the work, to the “broken time” of the employees, to the fact that they are paid by the hours of actual work, and to the general rise of wages in the community whether affected by wages boards or awards or not.¹¹⁷

Should men and women receive the same award rate? The union submitted that there should be ‘equal pay for equal work’. Justice Higgins said that this was the first time that the Court had had to deal directly with the issue of female labour. He said that a man was under a legal obligation to support his family while a woman was not.

He started his consideration of the issue by restating the test used in the *Harvester Decision*:

Now, in fixing the minimum wage for a man, I have been forced to fix it by considerations other than those of mere earning power. I have based it, in the first instance—so far as regards the living or basic wage—on “the normal needs of the average employee regarded as a human being living in a civilized community” (see *Harvester Judgment* ...). No one has since urged that this is not a correct basis; some employers have expressly



Top: Children picking hops, Tasmania 1911–1915. **Above:** Henry Zerbe, Tilly Aumann, Rupe Zerbe (young boy) and Ted Holloway picking apples at Zerbe's Orchards in Doncaster, Victoria in 1917.

admitted that this is. I fixed the minimum in 1907 at 7s. per day by finding the sum which would meet the normal needs of an average employee, one of his normal needs being the need for domestic life. If he has a wife and children, he is under an obligation—even a legal obligation—to maintain them.¹¹⁸

He then asked how the Harvester test would be applied to a woman:

How is such a minimum applicable to the case of a woman picker? She is not, unless perhaps in very exceptional circumstances, under any such obligation. The minimum cannot be based on exceptional cases. The employer cannot be told to pay a particular employee more because she happens to have parents and brothers and sisters dependent on her; nor can he be allowed to pay her less, because she has a legacy from her grand parents, or because she boards and lodges free with her parents, and merely wants some money for dress. The State cannot ask that an employer shall, in addition to all his other anxieties, make himself familiar with the domestic necessities of every employee; nor can it afford to let a girl with a comfortable home pull down the standard of wages to be paid to less fortunate girls who have to maintain themselves. Nothing is clearer than that the “minimum rate” referred to in section 40 means the minimum rate for a class of workers, those who do work of a certain character. If blacksmiths are the class of workers, the minimum rate must be such as recognises that blacksmiths are usually men. If fruit-pickers are the class of workers, the minimum rate must be such as recognises that, up to the present at least, most of the pickers are men (although women have been usually paid less), and that men and women are fairly in competition as to that class of work. If milliners are the class of workers, the minimum rate must, I think, be such as recognises that all or nearly all milliners are women, and that men are not usually in competition with them. There has been observed for a long time a tendency to substitute women for men in industries, even in occupations which are more suited for men; and in such occupations it is often the result of women being paid lower wages than men. Fortunately for society, however, the greater number of bread winners still are men. The women are not all dragged from the homes to work while the men loaf at home; and in this case the majority even of the fruit-pickers are men.¹¹⁹

He came to the conclusion of the same minimum wage for men and women working on the same job, but a different minimum wage if the work is work performed by women:

As a result, I come to the conclusion that in the case of the pickers, men and women, being on a substantial level, should be paid on the same level of wages; and the employer will then be at liberty freely to select whichever sex and whichever person he prefers for the work. All this tends to greater efficiency in work, and to true and healthy competition—not competition as in a Dutch auction by taking lower remuneration, but competition by

making oneself more useful to the employer. But in the case of the women in the packing sheds, the position is different. I have had the advantage of seeing the women performing the lighter operations of packing at a factory; and I have no doubt that the work is essentially adapted for women with their superior deftness and suppleness of fingers. The best test is, I suppose, that if the employers had to pay the same wages to women as to men, they would always, or nearly always, employ the women; and in such work as this, even if the wages for men and for women were the same, women would be employed in preference. The position is similar as to apricot cutting (or “pitting”). I must, therefore, endeavour to find a fair minimum wage for these women, assuming that they have to find their own food, shelter, and clothing.¹²⁰

Fruit packing work

Fruit packing work included:

- wrapping fruit in paper
- trimming and laying paper in boxes
- packing fruit in cartons
- giving a neat presentation to the boxes that were to be exposed in shop windows.

This work was done almost entirely by women. What would be the minimum wage for these workers? Justice Higgins said that there was little or no evidence directly on the subject, but that most of the women were resident in the town; lodging was 17–18 shillings; there was considerable difference between males and females in the expense of dress; the work is not constant during the year (with usually big breaks from September to December, and other breaks). Pay was by the hour, so that when the women have nothing to do; they are not paid. He reviewed existing pay and concluded:

I have come to the conclusion that, under the circumstances, as the minimum for men and women pickers in competition is to be fixed at 1s. per hour, the minimum for women workers in these processes, in which men are hardly ever employed, should be fixed at 9d. per hour.¹²¹

In the *Clothing Trades Case*¹²² of 1919 Justice Higgins fixed the basic wage for women at 35 shillings a week, or 54 per cent of the male basic wage of 65 shillings. This percentage was to continue

Seasonal workers packing pineapples at the Northgate Cannery Brisbane, March 1959. Unskilled men earn 31 pounds, unskilled women 21 pounds per week.



Women putting rubber lining in helmets and moulding rubber faces for gas masks.

During WW2 women went to work in manufacturing and heavy industries. Their pay rate was set at 75% of the male rate. Prior to WW2 the female basic wage was 54% of the male rate.

until 1948–49. The additional amounts paid to more skilled employees known as ‘margins’ were also often lower for women.

The attitudes and labour force of the time

In Australia and comparable countries married women were often expected and required to resign their employment on marriage, and many women never worked outside the home. In 1911 only about 20 per cent of working age women and about 5 per cent of married women were in the formal Australian labour force.¹²³ The workforce consisted of 1 521 000 males and 373 000 females. In 1921 the labour force consisted of 1 765 000 males and 438 000 females.¹²⁴

Many in Australia and in comparable countries considered that the main work of married women should be at home supporting a family, although 9 per cent of women never married, and 19 per cent of women were childless, according to statistics for the period 1908 to 1913. The modern smaller family had already emerged, with 2.6 children being the average number of children per married woman.¹²⁵ It may be also that household tasks such as washing and cooking required more time than they do today.

The Report of the Royal Commission into the Hours and General Conditions of Female and Juvenile Labour in NSW (1911)¹²⁶ explained why married women should not work in terms that are difficult to understand today:

1. It encouraged the practice of prevention (contraception).
2. Women risked miscarriage.
3. Women had to stop breast-feeding and this led to infant mortality.
4. Their day’s energy was given up to making money to the neglect of the home.
5. It encouraged idle and extravagant men.
6. Often married women had a bad influence on single girls.

Men were expected to work. They had to work simply to eat or sustain themselves or their family. There was little support to be had from the government or anyone else during periods of

Sheep shearers working in a shed at Yandilla Station, Queensland in 1894, pictured with their manager in a hat, vest, shirt and trousers, and a tarboy in rough clothes.



unemployment or sickness, and men were often required by law to support a family. These laws were relied on by Justice Higgins in the *Fruit Pickers Decision*.

How would these attitudes be applied to award wages as the system of awards developed and gradually covered most of the workforce?

Awards provided that women who worked would receive the full family wage if they worked in jobs in competition with men. However, women often worked in female-dominated occupations, and therefore received the lower rate.¹²⁷ The award system therefore developed as a system of unequal pay.

The approach of the Court was inconsistent. Single men without a family to support received the full family wage, but single women usually did not. Most families might be supported by a man on the full family wage, but some women had to support families on their own. In 1911, 109 261 women were classified as breadwinners in the industrial class but mostly did not receive equal pay.¹²⁸



Shearers outside Canowie Station shearing shed in South Australia, around 1870. The shearers in the front row are holding partly shorn sheep and their 'shears'.

Adjusting the Harvester minimum wage by movements in the consumer price index

By 1913 Justice Higgins had decided to increase the Harvester minimum wage by movements in the consumer price index, a measure introduced by the Commonwealth Statistician in 1910–11 to estimate changes in the cost of purchasing key items such as food and clothing. Using the new index, in 1913 Higgins fixed 8 shillings and sixpence per day as the new minimum wage for three years.¹²⁹

A minimum wage for shearers of 24 shillings for each 100 sheep shorn was also introduced. This was not a weekly or daily rate, but a 'piecework' rate (i.e. payment by pieces of work), which increased with the number of sheep shorn. The Court also set minimum rates for the officers of passenger and cargo steamships.

The Court eventually acknowledged that the methodology used to set the basic wage of 7 shillings per day was not entirely satisfactory. It said that the Harvester method was 'rough'.¹³⁰ The

Court suggested that the whole issue should be examined again, with the assistance of the Commonwealth Statistician.¹³¹

The Court nevertheless continued to use the Harvester minimum wage, and sometimes adjusted it by movements in the price index, although Hancock commented that the basic wage failed to keep pace with inflation.¹³² As Justice Higgins commented in *AWU v. Adelaide Milling Company*:

It will be noticed that in taking 11s. 6d. as the basic wage for the 30 towns of the Statistician, I have followed my usual practice of starting from my finding of 7s. per day in 1907 in the Harvester case, and of applying thereto the Statistician's scientific estimate of the subsequent changes in the purchasing power of money. I still follow this practice, for no better materials for ascertaining the cost of living have yet been provided.¹³³

In 1923 the Court decided that the award wage rate set for an unskilled labourer would be increased each quarter on the basis of the Commonwealth Statistician's estimates of changes in purchasing power.¹³⁴ The Harvester 7 shillings was the original minimum wage for unskilled labourers, and it became known as the 'basic wage'. The practice of increasing the Harvester basic wage each quarter by the amount of movements in the consumer price index lasted until 1953. Awards included a clause that provided as follows:

From the 1st day of November, 1923, and from the 1st day of each succeeding three months the rates of pay shall be increased or decreased according to the change shown in the index numbers of the Commonwealth Statistician (food, groceries and rent for six capital towns) for the quarter immediately preceding each adjustment ...¹³⁵

It is worth noting that indexation meant that award wages were adjusted up or down according to whether inflation went up or down. It was not simply upwards adjustment.

Employees with recognised additional skills received the basic wage, plus an additional amount known as a 'margin'. The margin was not adjusted every quarter by inflation. The Court adjusted margins separately based on an assessment of the value of the work. Margins are discussed later.

The Royal Commission on the Basic Wage

Billy Hughes, Prime Minister from 1915–22, had strong views on industrial relations, and was willing to involve himself and impose those views. He cut across Higgins to resolve several wartime disputes and, in 1920, introduced legislation that enabled him to set up special industrial tribunals to settle particular disputes. These industrial tribunals were supposed to operate in conjunction with the Arbitration Court, but were in fact an attack on the Court and on Higgins. Higgins decided to resign in 1921 in protest.

In 1919 the Hughes Government took another important step. The government established the Royal Commission on the Basic Wage, chaired by Commissioner Albert Piddington.¹³⁶ The royal commission concluded that the actual cost of living for a man, wife and three children under 14 in November 1920 was as follows:

Table 4: Cost of living, 1920

Town	Cost of living (Piddington Finding) ¹	Basic wage ² (4th quarter)	Average adult male employees' wage ³ (3rd quarter, 4th not available)
Melbourne	£5 16s 6d	£4 11s 0d	£4 3s 1d
Sydney	£5 17s 0d		
Brisbane	£5 6s 2d		
Newcastle	£5 15s 6d		
Adelaide	£5 16s 1d		
Perth	£5 13s 11d		
Hobart	£5 16s 11d		

Source: **1.** Australia, Royal Commission on the Basic Wage, *Report of the Royal Commission on the Basic Wage together with evidence*, p. 58; **2.** *ibid.*, Table F p. 105; **3.** *ibid.*

The royal commission also recommended that the basic wage be automatically adjusted on the basis of a Bureau of Labour Statistics estimate of changes in purchasing power reported to the Commonwealth Arbitration Court.

The royal commission report was a more thorough exercise than the *Harvester Case* had been. The commission began by asking how ‘reasonable standards of comfort’ might be ascertained. Three approaches were discussed:

1. The pauper or poverty level.
2. The minimum of subsistence level.
3. The minimum of health and comfort level.

It decided to adopt the third approach.¹³⁷ The royal commission examined evidence about rent, clothing, food, and miscellaneous items to ascertain:

1. What are reasonable standards of comfort in each of the sections—rent, clothing, food and miscellaneous.
2. What is the present cost of those standards.

The commission said that the elements of reasonable comfort in **housing** for the typical family were an allotment of sufficient size, fairly good locality, suitable arrangement and size of rooms, a sufficient number of rooms, and elementary conveniences such as a bath, copper and tubs fixed to the house. The commission decided that a five room house was necessary. Rental was for Melbourne 20s 6d per week, for Sydney 22 shillings, and so on for other capital cities.

With respect to **clothing** the commission said it had to be a good wearing quality in fabric and workmanship; fashion was ignored; it saw a need for a good standard of appearance and fit; and the articles had to be actually needed. Some common articles of women’s clothing were therefore disregarded. It was found that clothing would cost in Melbourne 29 shillings, and in Sydney 27 shillings per week.

With respect to **food**, the commission adopted 3500 calories per man per day as a requirement, and called for further research. Food should be sufficient in calories to provide warmth, energy, renew tissue and maintain weight, and to satisfy the requirements

of growing children. It adopted a list of food items ranging from bread to eggs, milk, meat, potatoes, vegetables. The cost of food in Melbourne was 46s 1½d per week, and in Sydney 46s 8¾d per week, and so on.

Finally on **miscellaneous** items the commission looked at a limited range of items including fuel and light, groceries (not food), renewals of household utensils, drapery, crockery, union and lodge dues, medicine, dentist, domestic assistance, newspapers, stationery and stamps, recreation, amusements, library, smoking, barber, fares and school requisites. The weekly amounts for Melbourne were 20s 10½d and Sydney 21s 4d, with different amounts in other capital cities.¹³⁸

The Court rejects the royal commission amounts as unsustainable

Would these amounts become the new basic wage? The Commonwealth Statistician, Mr GH Knibbs, prepared a memorandum for the Prime Minister which advised that the whole produced wealth of the country, including the profits paid to employers, would not if divided up equally, amount to the wages recommended by the royal commission. The Prime Minister requested advice from Mr Piddington on 22 November 1920. Mr Piddington advised that if his recommended level of needs were to become the level of the minimum wage, labour costs would rise about 62 per cent, export manufacturers would be ruined, and primary production would be hard hit. All secondary industries would face ruin unless there was a very large increase in tariff protection.¹³⁹

In *Federated Gas Employees Industrial Union v. Metropolitan Gas Company*¹⁴⁰ Justice Powers of the Commonwealth Conciliation and Arbitration Court refused to increase the minimum wage to the level of needs found by the royal commission. Rather than using the royal commission levels, he decided to continue the minimum wage at the level set in Harvester, as increased by the amounts of increase in the Commonwealth estimates of the cost of living.

The Court is not the steam engine that gives the necessary power to carry on the industries. It can only act as between employees and employers and the community as a governor on an engine ...¹⁴¹

For the reasons mentioned I propose to continue the fair and practicable minimum wage the Court has adopted for so many years, instead of adopting the higher standard fixed by the Royal Commission, which is not practicable at the present time as a flat rate.¹⁴²

The Arbitration Court examined the report in detail and concluded that the commission did not fix the standard of living it used on the normal current standard of living in Australia, but at a higher standard than had ever been enjoyed in Australia. To depart from the Harvester standard, the Court would need to be persuaded that the method of assessing the standard of living it adopted in earlier decisions was wrong, and that the judgments did not give a fair basic wage to unskilled workers, based on current human standards, taking into consideration the interests of employees, employer and the community. Justice Powers expressed concern that such a large increase might be inflationary and lead to unemployment. He said that he did not have a 'fairy wand' to compel employment at much higher wages or to generate the wealth to support that.¹⁴³ The Court could not, he said, order more than industries could pay, and too large an increase would cause further unemployment and misery to workers, especially those on the basic wage.¹⁴⁴ The Court therefore decided to continue the fair and practical minimum wage fixed by tribunals.

Justice Powers fixed the new Harvester minimum wage for a labourer at £4 5s, or 85 shillings.¹⁴⁵ This included an amount that became known as the 'Powers 3 shillings'. The Harvester wage adjusted for inflation came to £4 1s 6d, although Justice Powers fixed it at £4 2s. Justice Powers added 3 shillings to that amount in order to maintain the real value of the Harvester minimum wage over the next three months ('quarter') before it could be increased in line with inflation at the regular quarterly hearings of the Court. In so doing he wanted to ensure that a worker never received less than the true Harvester amount.¹⁴⁶ Thereafter the Powers 3 shillings was nearly always added to the award rate, but it was not adjusted in line with inflation.¹⁴⁷

The end of a needs-based wage

After the 1921 *Gas Employees Case*, the Court accepted that the capacity of the economy to pay, productivity, and economic measures such as Gross Domestic Product should determine the level, or the upper level, of the minimum wage, and not family needs.¹⁴⁸ As the Court said in the 1934 *Basic Wage Inquiry*:

Neither the Legislature nor this Court can effectively prescribe a general level of wages above the capacity of the country's aggregate industry.¹⁴⁹

The concept and language of a 'family wage' and 'needs' remained. The Court often suggested that child endowment should be addressed by the government, perhaps a reference to the difficulties of compensating families for the additional costs associated with children through the minimum wage. In the 1931 *Basic Wage and Wage Reduction Inquiry* the Court said:

If the basic wage system is to persist, national consideration of a system of child endowment appears to be the only method by which the wage can be equitably fixed.¹⁵⁰

It should be remembered that the social welfare 'safety net' we have today had not yet developed. There was no national system of social security support for families and children. It was not surprising therefore that the minimum wage would be used to help families with children, because this was central to the need for income for most employees, in both Australia and comparable countries. In the United States of America, Justice Brandeis of the US Supreme Court, said that he wanted the American 'standard of living' to be protected by a 'living wage'. He thought it necessary to include in the minimum wage provision for unemployment, sickness, accidents, premature death, and retirement.¹⁵¹ These are now all matters dealt with by legislation, not by the level of the minimum wage.

However, the notion of a family wage to be paid to a male having regard to his obligations to support a family could not survive the introduction of equal pay in 1972. If men and women were to receive identical award wages, how could both men and

women receive amounts calculated having regard to their need to support the same family? In the *National Wage Case Decision 1974* the Australian Conciliation and Arbitration Commission finally abandoned the old concept of a 'family wage':

The Commission has pointed out in the past that it is an industrial arbitration tribunal, not a social welfare agency. We believe that the care of family needs is principally a task for governments. For the reasons mentioned we have decided that the family component should be discarded from the minimum wage concept.¹⁵²

Margins and skilled employees

The *Harvester Decision* had determined a fair and reasonable wage for both unskilled labourers and for skilled tradespeople, or journeymen or tradesmen as they were then called. Justice Higgins fixed the rate of 7 shillings a day for an unskilled labourer and 10 shillings a day for most types of journeymen, including fitters, turners, moulders, blacksmiths, carpenters, wheelwrights, painters and engine drivers. He fixed the 10 shilling rate having regard to what these occupations were paid by a number of employers. He also fixed rates for some occupations at higher than the unskilled labourer rate of 7 shillings, but less than the journeyman rate of 10 shillings. These were skilled labourers, strikers, timber yardsmen, drillers and dressers. Pattern makers were paid more than the 10 shilling journeymen rate.

The Harvester 7 shillings for an unskilled labourer was applied in awards, and became the basic award rate. The 10 shillings for a skilled tradesperson was also influential to some extent, although it was not applied in awards as a fixed sum as the 7 shillings was. The additional rate set in awards for more skilled employees varied to some extent.

The most influential 'margin' was that for the metals fitter, which was set in 1907 as 3 shillings in the *Harvester Decision*, or three-sevenths of the basic wage. It was not adjusted and declined as a proportion until it was increased to about three-sevenths of the basic wage again in 1921¹⁵³, in 1937¹⁵⁴, and again in 1947.¹⁵⁵ This metal trades margin was often applied in factory trades and

occupations. In 1921 for example, the rate for an unskilled labourer was 14 shillings a day, or 84 shillings a week, and the rate for a skilled tradesperson accordingly became 20 shillings a day or 120 shillings a week.

The Australian minimum wage had several levels in most awards, which made it different to the minimum wage that developed in many other countries. The Australian minimum wage began with the base level, or basic wage, of 7 shillings for an unskilled labourer, adjusted in line with inflation. Above that were higher rates for higher skilled employees, known as ‘margins’. These margins were not adjusted for inflation, but for changes in the value of the skill. These changes were less systematic, and less predictable, than changes to the basic wage.

One description of this additional wage is:

I have given the name of the “secondary wage” to that portion of a man’s wages which remunerates him for such skill or other exceptional necessary qualifications as are required for his occupation, and as lift him above the level of the unskilled labourer.¹⁵⁶

Justice Higgins and others tried to rely on the practice and experience of employers and employees regarding these higher skilled rates of pay, but these often differed. The Court continually complained about the difficulties of fixing rates for higher skilled employees:

employers differ, employees differ, awards and determinations differ ...¹⁵⁷

to attempt to assess the value of an actor’s skill would be a hopeless task ...¹⁵⁸

No one could exactly weigh the value of this or any man’s skill, and I could have no reason for saying that any one of the sums I have named [2s, 4s, 5s a week named in other awards] is more correct than another. They are all very near each other.¹⁵⁹

There was no one formula by which the margins were fixed in awards. The Court usually looked at the rates already paid by employers, the rates fixed in various other awards, comparable rates, market value, the period of apprenticeship required to attain

the extra skill, whether the extra skill was real and substantial, and whether it was a skill or simply a 'knack', and any other factor brought to its attention.¹⁶⁰ All were an attempt to assess the value of the extra skill of an occupation. They were often unique rates for one award, not the same rate applied across all awards and derived from one rate, as the basic wage was derived from the Harvester 7 shillings.

The margins for female workers were usually much lower, but did not have a consistent pattern to them. For example, in the 1928 *Textile Workers Case* the Court fixed margins for females operating a manual screw press at 6s 6d; linkers, menders, hand knitters on flat machines, and cutting with electric cutters 4s 6d; operating steam presses, hand cutters, seamers, welters, overlockers, flatlockers, etc. other than on hand flat machine 3s; and examiners, folders, graders, sorters, winders, parcellers, ironers, sewing on buttons, making buttonholes and eyelets 2s. Male mechanics and cutting with electric cutters received a 10s margin, hand cutters 7s 6d; hand knitters and flat machines and steam pressers 6s 6d, machine knitters 5s; millmen, scourers, bleachers and shrinkers 4s; dye house labourers, operators of finishing machines and storeman or packer 3s.¹⁶¹

Unlike the basic wage, margins might be reduced or not increased if it was necessary to keep a worker in his job. The basic wage was 'sacrosanct' in the view of Justice Higgins, but the margin was not, as he said in the 1909 *Broken Hill Case*:

So long as every employee gets a living wage, I can well understand that workmen of skill might consent to work in such a case for less than their proper wages, not only to get present employment, but in order to assist an enterprise which will afford them and their comrades more opportunities for employment hereafter.¹⁶²

Statistics

Table 5: Early minimum wage rates

Year	Citation	Amount	Description
1906	(1906) 1 CAR 4	£8–£34 per month	Master of a Ship: between £21–£34 per month (varying by ship type) Chief Officers: between £10–17 per month (varying by ship type) Fourth and Fifth Officers: £8 per month
1907	(1907) 1 CAR 62	24s per 100 sheep shorn	Shearers: 24 shillings for each 100 sheep shorn
1907	(1907) 1 CAR 122	7s 6d per day	Agricultural Implement Maker Adelaide—by consent
1907	(1907) 2 CAR 1	£2.2.0 a week (7s a day)	£2.2.0 fixed as the minimum wage for a labourer. <i>The Harvester Minimum Wage</i>
1908	(1908) 2 CAR 55	£2.2.0	First minimum wage in an award— <i>The Maritime Cooks, Bakers and Butchers Award</i>
1913	(1913) 7 CAR 58	£2.10.0	Increased by applying 'A' Series Price Index to 1907 figure
1914	WWF v. CSOA—27 April	£2.11.0	Harvester and Commonwealth Statistician (4th quarter)
1914	ATTU v. PS Commissioner—1 May	£2.13.0	Harvester and Commonwealth Statistician (4th quarter)
1915	ALCA v. PS Commissioner—8 April	£3.3.6	Harvester and Commonwealth Statistician (4th quarter)
1915–16	FAMTCWU—30 July, 18 May, 12 October, 24 November	£3.1.6	Harvester and Commonwealth Statistician (4th quarter)
1917	FGFA—9 March, 8 May, 7 June, 26 June, 30 June	£3.3.0	Harvester and Commonwealth Statistician (4th quarter)
1918	APEU v. The Postmaster-General—16 October	£3.6.0	Harvester and Commonwealth Statistician (4th quarter)
1919	FTLDEU—21 March, 24 May, 10 September, 21 October, 3 October, 5 November, 25 November	£3.15.0	Harvester and Commonwealth Statistician (4th quarter)

Table 5: Early minimum wage rates (continued)

Year	Citation	Amount	Description
1920 ¹	A range of rates	£3.17.0– £4.2.0 ²	Harvester and Commonwealth Statistician (4th Quarter)
1921	(1921) 15 CAR 829	£4.5.0	Application for the £5.16.5 of the Piddington commission to be the basic wage rejected; Harvester continued
1922	(1922) 16 CAR 829	£4.10.0	3 shillings loading added, not adjustable; Automatic quarterly adjustments by the 'A' Series Price Index adopted
1931	(1931) 30 CAR 2	£3.1.1	10% cut

Note: £1 = 20 shillings. 1 shilling = 12 pence. £1, 10 shillings, and 1 pence, could be written as £1.10.1, or £1/10/1. The Australian dollar was not introduced until 1966.

Source: **1.** For the adjustments 1914–1920, *Report of the Royal Commission on the Basic Wage together with evidence*, Table F, p. 105; **2.** *ibid.*, p. 93.

Special minimum wage rates were established for steamship crews, shearers and agricultural implement makers, before the first general minimum wage provision was established in the 1907 *Harvester Decision*. The Act provided that the Court did not have the power to make awards with respect to agricultural, viticultural, horticultural, or dairying industries, but the pastoral industry was not excluded.¹⁶³

Table 6 (pp. 94–5) shows that for the period 1922 to 1930 the Harvester wage was no longer that, but was a larger amount. The Court had intended to maintain the real value buying power of the Harvester 7 shillings, but its adoption of the Commonwealth Statistician's estimates of movements in consumer prices had not achieved that result. Why is unclear, but there was continuing discussion about the accuracy of these statistics, which had only just commenced.

Harvester wage too high?

Was the Harvester minimum wage as adjusted too high? All the Western countries experienced economic difficulties in the 1920s. After a brief boom at the end of World War I, as a backlog of demand



A Sunshine 'modern' harvester.

was met, there was a worldwide recession in 1921, exacerbated by increasing restrictions on international trade. The United States of America was almost alone in having an economic boom during the 1920s. Australia had relatively strong average gross national product (GNP) growth between 1919–20 and 1928–29 of 2.7 per cent or 0.7 per cent per person, which suggests a capacity of the economy to sustain any award cost increases, although there was little growth after 1925 and unemployment increased. Australia experienced a massive decline in the 1920s in the price it could get overseas for its wool and other agricultural products.¹⁶⁴ There was an international recession in 1921, and Australia was vulnerable to the international economy, but was not the worst hit economy. Norway for example had a reduction in gross domestic product (GDP) of 11 per cent in 1921, which was only exceeded by the United Kingdom.¹⁶⁵

Table 6: Key economic data and indicators, 1901–1939

Year	Real basic wage ¹ %	Minimum weekly wage of male adults ² \$	Retail price indices ³ %	GDP ⁴ £m	Unemployment ⁵ %	Strikes: working days lost ⁶	Population ⁷	Workforce ⁸
1901	-	4.34	88.0	189.8	-	-	3 773 801	-
1902	-	-	92.9	199.4	-	-	-	-
1903	-	-	91.0	195.8	-	-	-	-
1904	-	-	85.8	222.0	-	-	-	1 613 000
1905	-	-	90.1	224.1	-	-	-	-
1906	-	-	90.2	239.7	-	-	-	-
1907	100.0	-	89.7	269.1	5.20	-	-	-
1908	94.3	-	95.1	272.7	3.40	-	-	-
1909	98.5	-	94.8	280.0	3.30	-	-	1 763 000
1910	100.4	4.89	97.0	313.4	3.30	-	-	-
1911	98.2	-	100.0	330.8	2.86	-	4 455 005	-
1912	93.5	-	110.1	347.3	2.44	-	-	-
1913	93.2	-	110.4	376.5	5.04	622 500	-	-
1914	95.9	-	114.0	412.1	3.27	993 200	-	2 112 000
1915	85.9	5.65	127.8	372.4	5.92	683 000	-	-
1916	88.4	-	132.4	414.1	3.49	1 644 800	-	-
1917	88.7	-	131.8	475.1	3.30	4 689 300	-	-
1918	86.6	-	136.2	491.9	3.39	539 600	-	-
1919	81.2	-	151.0	528.5	3.62	4 303 700	-	2 167 000
1920	77.4	8.98	178.5	576.9	3.39	3 587 300	-	-
1921	98.3	-	169.7	684.8	5.77	1 286 200	5 435 734	-
1922	106.4	-	160.0	659.0	6.11	858 700	-	-
1923	112.3	-	170.0	699.8	5.01	1 146 000	-	-

Table 6: Key economic data and indicators, 1901–1939 (continued)

Year	Real basic wage ¹ %	Minimum weekly wage of male adults ² \$	Retail price indices ³ %	GDP ⁴ £m	Unemployment ⁵ %	Strikes: working days lost ⁶	Population ⁷	Workforce ⁸
1924	108.2	-	168.2	726.3	4.73	918 600	-	2 346 000
1925	111.0	9.67	172.2	822.3	6.25	1 128 600	-	-
1926	112.7	-	178.6	780.3	4.93	1 310 300	-	-
1927	113.0	-	176.0	795.6	4.19	1 713 600	-	-
1928	111.0	-	179.0	798.5	6.18	777 300	-	-
1929	112.8	-	182.2	794.9	6.73	4 461 500	-	2 573 000
1930	109.6	9.67	168.3	720.5	9.78	1 511 200	-	-
1931	96.0	-	147.9	598.9	16.41	246 000	-	-
1932	97.7	-	140.3	553.4	19.74	212 300	-	-
1933	-	-	134.5	577.0	18.93	112 000	6 629 839	-
1934	-	-	138.5	619.0	15.99	370 400	-	2 700 000
1935	-	8.28	142.0	652.5	13.97	495 100	-	-
1936	-	-	146.1	712.9	10.98	497 200	-	-
1937	-	-	-	788.6	8.83	557 100	-	-
1938	-	-	-	850.1	7.46	1 338 000	-	-
1939	-	-	-	840.5	8.76	459 200	-	2 907 000

Source: I. J. Isaac, 'The economic consequences of Harvester', *Australian Economic History Review*, Vol. 48, No. 3, p. 288, Table 1 Real basic wage, [cited as K Hancock unpublished paper. He has warned that the figures before 1920 may not be accurate. Further, different awards were varied at different times it would be misleading to regard the above figures as representing movements in 'the' basic wage]; 2. W Vamplew (ed), *Australians, historical statistics*, Fairfax, Syme & Weldon Associates, 1987, p. 156—Minimum Weekly Wage of Male Adults, by Industry, Australia 1891–1980; 3. *ibid.*, p. 213—Retail Price Indexes by Commodity Group, Australia, 1901–1938; 4. *ibid.*, p. 133—Gross Domestic Product by Industry, Current Prices, Australia 1861–1939; 5. *ibid.*, p. 152–3—Unemployment, Australia 1891–1974 [cited as Average unemployed per year as a percentage of the workforce]; 6. *ibid.*, p. 165; 7. *ibid.*, p. 26; 8. *ibid.*, p. 149—Employment, private and government, and self employed, Australia.

The economist Boris Schedvin does not claim that the level of the minimum wage was a main cause of Australia's economic problems in the 1920s, which were probably to be found in the falling value of Australian agricultural exports, and other international problems. He does, however, discuss a 'widespread' view that the Australian minimum wage system operated to prevent downward moves in wages in response to economic conditions.¹⁶⁶ This may be partly a misunderstanding, because the adjustment of wages in line with inflation included adjustments downwards if inflation dropped rather than increased. Nor did Australia experience the economic and social damage of the British general strike of 1926, which began when coal mining employers sought to address their economic predicament by lowering wages. Schedvin describes the role of the Arbitration Court in the 1920s as 'maintaining a traditional standard of living'.¹⁶⁷ He also agrees with the decision of the Commonwealth Conciliation and Arbitration Court in 1931 to reduce award wages by 10 per cent in response to the Great Depression¹⁶⁸, while others disagree with the decision. Overall the question is one of some complexity, and there will always be some differences of view.

Table 7: Indicators of economic growth

	Real GNP growth %	Population growth %	Real GNP growth per person %
1861–1870	5.3	3.9	1.4
1871–1880	5.7	3.1	2.6
1881–1890	4.4	3.6	0.8
1904–05 to 1913–14	4.6	2.3	2.3
1919–20 to 1928–29	2.7	2.0	0.7
1948–49 to 1962–63	4.0	2.3	1.7

Source: CB Schedvin, *Australia and The Great Depression*, Sydney University Press, Sydney, 1970, p. 48, [cited as NG Butlin, *Australian domestic product, investment and foreign borrowing*, Cambridge University Press, Cambridge, 1962, Table 269; Report of the Committee of Economic Inquiry, May 1965, vol. II, Canberra 1966, p. 467; Demography bulletins].

Table 7 shows that substantial economic growth together with substantial population growth has been a constant feature of Australian history. The period of the 1920s was the period of the lowest economic growth, similar to other Western countries except for the United States of America.¹⁶⁹ The introduction of the Harvester minimum wage coexisted with substantial average economic growth in the 1920s, but the 1930s saw slower growth.

Harvester wage too low?

Was the Harvester minimum wage too low? Trade unions relied on the Royal Commission on the Basic Wage to argue that substantial increases in the minimum wage were necessary to enable a proper standard of living to be enjoyed by employees. The answer given in the 1921 *Gas Employees Case* by Justice Powers was to reject the royal commission findings, on the basis that the Harvester minimum wage was as high as the economy could sustain without the adverse effects of unemployment and inflation, and that the royal commission was wrong to ignore the normal standard of living of Australians in making its assessment.¹⁷⁰ Rightly or wrongly they were not entirely convinced by his conclusions.

Harvester and the economy

If Harvester had never happened, would the long-term course of the economy and the labour market have been significantly different? Isaac suggests that such arrangements are not 'capable of going against the fundamental forces in the labour market'¹⁷¹, and much of the history of arbitration includes attempts to accommodate and adjust to economic and social conditions. This is a complex issue, and different views can be taken.

A new province for law and order?

Colonial Australia was occasionally described as a 'workers' paradise', in which ordinary people were remarkably prosperous by world standards. Rank and privilege, the old phrase used to describe the

curious etiquette of deference shown by farm labourers to squires or lairds in England, Scotland and Ireland, were partly absent. Australia was less of a class-based society.

Employment in the first colony on the Australian continent, New South Wales, began with an unusual system of employment of convicts, and of soldiers. Later the more usual master/servant relationship known to Britain became the normal system. This was a direct relationship between a master and his or her servant. The relationship gradually became more complex with the development of large, complex businesses, and trade unions representing groups of workers. Collective labour disputes began to occur. Then came a recession, and the 1890s strikes.

The 1890 strikes

The small colonial societies woke up on some mornings to read news of armed groups of strikers and strike-breakers, and the colonial governments called in troops to crush strikes. There were terrible secondary effects of these disputes as supplies ran out and businesses stopped. The unions and strikers were almost completely defeated. There was alarming and lasting bitterness and humiliation amongst workers and their families. Wages were substantially reduced. Unemployment was high, not as high as in the Great Depression of the 1930s, but it was still a 'massive dislocation'.¹⁷² Many working people had lost a great deal.

Australian workers were affluent by world standards, but not by the standard of today, and it could be difficult to feed, house and clothe a family on the wages of the time. It was harder if the wages were reduced. A strong working class labour movement, with ideals and objectives had developed, and what workers considered legitimate trade union aspirations had also been defeated. Not all of them were persuaded that employers had been responding to what they considered to be economic necessity. Henry Lawson in his radical period had this comment on the 1891 shearers' strike in his poem 'Freedom on the Wallaby'¹⁷³, which includes the following lines:

Our parents toil'd to make a home,
Hard grubbin 'twas an' clearin';

They wasn't crowded much with lords
When they was pioneering,
But now that we have made the land
A garden full of promise,
Old greed must crook 'is dirty hand
And come ter take it from us.
So we must fly a rebel flag,
As others did before us,
And we must sing a rebel song
And join in rebel chorus.
We'll make the tyrants feel the sting
O' those that they would throttle;
They needn't say the fault is ours
If blood should stain the wattle.

[Note: 'Freedom on the Wallaby' means the freedom of the open road and bush, as shearers and others wandered through the Australian outback. The rebel flag refers to the Eureka flag, which contains the Southern Cross. The flag was raised at the Ballarat diggings in 1854 in a stockade set up by the diggers who were opposed to government taxing their mining operations. The Eureka Stockade was stormed by British troopers.]

Labour relations had become a great social problem. Colonial parliaments occasionally responded by providing some limited and apparently unsuccessful voluntary conciliation and arbitration of industrial disputes. The criminal law sought to protect the physical safety of people, and also applied to many trade union activities during disputes which did not affect personal safety. There was no obligation to meet and negotiate or argue about claims about wages and conditions. Strikes and lock-outs could simply continue until workers and their families could not go on, or until the employer went bankrupt. High unemployment meant that strike-breakers could be and were found. Despite the threat of punishment through the criminal law there was some violence and threats of violence.

The reformers respond to the great strikes

Reformers such as Charles Kingston and Alfred Deakin found a lot of support in the 1901 and 1903 elections when they said that they wanted a future without this new type of social and economic division and damage. They thought that the 'barbarous expedient' of strikes and lock-outs should be ended or discouraged. They said that they wanted some rough justice in the workplace, so that it was

not entirely the victor from a brutal strike or lock-out, union or employer, who imposed terms and conditions of employment. They were supported by most major political groups.

Their ideas led to one of the most important early Acts of the new Australian Parliament after Federation in 1901. This was the *Commonwealth Conciliation and Arbitration Act 1904*, which provided for:

- compulsory conciliation and arbitration of inter-state industrial disputes by the Commonwealth Court of Conciliation and Arbitration
- a limited prohibition of industrial action
- encouragement of trade unions.

The Court makes awards

The new Court settled disputes between employers and trade unions, in part by handing down binding awards. These awards developed into a national minimum wage system by the 1920s, beginning with the Harvester 7 shillings a day for an unskilled labourer in 1907. Leave entitlements and other conditions gradually developed as society became more sophisticated and recognised the needs of workers balanced by the capacity of the economy to pay, and in the case of maternity leave and equal pay, as social attitudes changed.

Arbitrated decisions of the Court provided a standard on key issues such as the amount of the minimum wage, the amount of annual leave, and hours of work. Sick leave was only rarely the subject of arbitration. Most provisions of awards were agreed in conciliation, but arbitration was always available if conciliation failed. Both employers and unions were aware of this, and acted accordingly.

Conciliation is an often informal process under which the employer and union concerned discuss and exchange their views on wages and conditions, and other issues, and reach full agreement, part agreement, or no agreement at all. The result depends often on the attitudes, policies or values of the individual people involved, the state of the general economy and the market, and other matters. Conciliation discussions on a new award can be a long and involved process. The many successful conciliation discussions are nearly

always lost to history, because they were not even partly recorded beyond the results in an award, and the participants are now dead.

Many of the early important cases were very hard fought, and the union and employer were in considerable disagreement. Some of the most important early decisions of the Court were challenged in the High Court by employers, on the basis that the Court erred in law or on some other ground. Employers were successful in challenging the *Harvester Decision* of 1907¹⁷⁴, which established the 7 shillings a day minimum wage for unskilled labourers, and partly successful in challenging the *Boot Trades Decision*¹⁷⁵, which set wage rates for factory hands in the boot manufacturing industry. However, Foenander says that after 1910 this hostility began to lessen as employers began to find the Court to be of assistance, and sometimes even contrived an inter-state dispute to get a hearing.¹⁷⁶ For example in 1910 the South Australian fruit growers pleaded with the Court for a compulsory conference to prevent a strike that was about to spread from Renmark to Mildura¹⁷⁷, and a similar application in 1910 led to a settlement when negotiations had broken down in the inter-state shipping sector.¹⁷⁸

Women often had the protection of a minimum wage, unlike some of their sisters in the United States or the United Kingdom, and benefitted from a husband's 'family' wage, but they did not receive the same minimum wage as men until 1972. There were early campaigns for equal pay, but these were unsuccessful.

The Court limits industrial action

Kingston, Deakin and others wanted to limit the effects of industrial action by providing another means for trade unions to achieve legitimate claims in the workplace. Employers could be brought to the bar of the Court to answer trade union claims, because the settlement procedures were compulsory. However, industrial action continued to occur. While there was never a repeat of the extreme divisions of the 1890s, there were periods of severe industrial action. For example, the strike waves of 1916–20 and of 1928–30 saw the highest number of days lost to industrial action recorded in Australia. In 1916 some workers on the waterfront had become radicalised and rejected the arbitration system, their own union

leaders, the political system, and the objectives of their employers. There was a general strike in New South Wales in 1917.

Justice Higgins refused to hear applications if the union was on strike, but the prohibitions in the Act on strikes were limited. The prohibition on strikes under the Act only applied to those extending beyond the limits of any one state. Justice Higgins refused to impose a penalty on the 1916 waterfront strikers, because the strike did not extend beyond Victoria, and the men had not breached the award.¹⁷⁹

Later in the 1920s the new Attorney-General in the Nationalist Government, John Latham, was determined to enforce the requirement to pursue claims by arbitration rather than by strikes and lock-outs and introduced a range of prohibitions on strikes. A disastrous six week waterside workers' strike that began on 10 September 1928 led to four summonses being issued against the Waterside Workers' Federation under the new laws. On 22 September the police magistrate found the federation guilty, and fined it the maximum penalty of £1000 for breaching the Act and repudiating an arbitrated award of the Court. The federation also had to pay costs of £31 10s.¹⁸⁰

The new Scullin Labor Government removed penalties against strikes in 1930. Since that time penalties against strikes in the Act have often been a matter of considerable disagreement between employers and unions, and between political parties. The Act now provides for a limited ability of trade unions and employers to take 'protected action', that is, to initiate a strike or a lock-out in support of a claim for a new enterprise agreement without a penalty being imposed.¹⁸¹ Awards provide a minimum safety net, and procedures require the tribunal to direct that strikes or lock-outs that are not protected stop or not occur.

The Act encourages trade unions

One of the most significant changes introduced by the new province was in relation to trade unions. Trade unions became legitimate bodies, recognised and encouraged by law, and they were established, developed and were registered under the Act. In the 1890s unionism itself could be discouraged by an employer, and the action of a union in representing its members could be challenged,

often successfully. After the 1904 Act both would be difficult or not be possible. Between 1912 and 1930 trade union membership rose from 433 220 to 855 800 men and women¹⁸², from under a quarter to about a third of the workforce. Most accounts see the relatively favourable legislative environment for trade unions as assisting this growth.

The overall effect of the Act

Finally, what did the new province for law and order amount to? One not unrepresentative view is that the Court ameliorated class conflict by giving trade union concerns about the wages and conditions of workers some official standing and recognition¹⁸³, although there was always criticism of the extent to which this was done. Employers understandably wanted fewer trade union claims granted, and trade unions understandably wanted more. Another assessment seems relevant to many periods of Australian history:

This [Act] was to have profound effects on the social structure, because of the encouragement it gave to trade union development on a national scale; on the economic structure, because of its consequences for wages and hours fixation; and on politics, because of the periodical party crises caused by attempts to alter the system.¹⁸⁴

*The new province for law and order*¹⁸⁵ is an assessment of the first 100 years of operation of the conciliation and arbitration system introduced by the 1904 Act. It discusses these issues more extensively.

Conclusion

Until 1921 the Commonwealth Court of Conciliation and Arbitration set the level of the minimum wage by assessing the cost of living for a labourer and his family, not the value of work or of the production of industry and the capacity of industry to pay award increases. After 1921 the Court was concerned with maintaining the modern ‘steam engine’ of Australian industry.¹⁸⁶ However, references to a ‘family wage’, a ‘living wage’, and to the needs of ordinary workers and their families persisted, a reminder that award adjustments were made for a purpose.

Summary

1. A 'fair and reasonable wage' of 7 shillings a day at the unskilled labourer level was fixed in *ex parte H.V. McKay*, the *Harvester Decision*, mainly on the basis of a 'rough' estimate of the needs of a man, his wife and three children.
2. The Harvester 7 shillings a day was adopted by the Commonwealth Court of Conciliation and Arbitration as the first minimum wage in 1908.
3. The minimum wage became known as the 'basic wage', and additional amounts known as 'margins' were paid to more skilled employees.
4. In 1912 the government instituted the first measure of inflation, the 'A' Series, which covered only groceries, dairy products, meat and house rents, to enable the Court to adjust the Harvester minimum wage to maintain its buying power. The *Harvester Decision* thus led to the development of basic statistical measures by the Australian Government.
5. Between 1923 and 1953 the Harvester unskilled labourer's wage was adjusted every quarter by the Court by the amount of the Commonwealth Statistician's estimate of inflation. Margins were adjusted having regard to the value of the work.
6. The minimum wage, or basic wage, applied to most of the Australian workforce by the 1920s.
7. In 1919 the Royal Commission on the Basic Wage examined again the question of the needs of a man, his wife and family.
8. In 1921 the Commonwealth Court of Conciliation and Arbitration rejected an application to adopt the level of needs assessed by the royal commission as the new minimum wage, stating that it was not 'practicable'.
9. The Court was set up to prevent and settle a very limited range of disputes, inter-state disputes. By the 1930s it had become a central part of Australian social and economic life, varying the minimum wage in a coordinated manner, and having regard to national economic developments, as well as settling disputes.



Demonstrators for equal pay outside the Trades Hall Building, Carlton, Victoria, in 1969 with Mr Robert Hawke (centre) who was later to become Prime Minister of Australia.

PART 3
THE CAMPAIGNS FOR EQUAL PAY
FOR WOMEN AND ABORIGINAL
STOCKMEN AND MINIMUM WAGES FOR
ADOLESCENTS

- 3.1 Minimum wages for adult women
- 3.2 Minimum wages for Aboriginal stockmen
- 3.3 Minimum wages for adolescents

Time line

- 1907 *Harvester Decision* includes rates of pay for young people and apprentices which are less than adult rates.
- 1907–30s The Court prefers to set special apprenticeship rates rather than junior rates in federal awards without obligation to train young people, acts to protect adult jobs from lower junior rates by a ratio of apprentices to tradespeople. The Court sometimes regulates the form of the training contract.
- 1912–19 *Fruit Pickers Case* and *Clothing Trades Case*: The Court sets rates of pay for women under federal awards at 54 per cent of male rates (i.e. the 'basic wage'). If women work in competition with males (e.g. as a fruit picker or blacksmith) the female rate is the same as the male rate. If women work in jobs mainly performed by women (e.g. fruit packer or milliner), then they receive the lower 54 per cent of the male minimum wage. Females usually receive lower extra payments for skill (i.e. 'margins').
- World War II Special regulations set female rates at 75 per cent of the male rate.
- 1949–50 The 75 per cent rate adopted for federal awards.
- 1966 *Aboriginal Stockmen's Case*: Aboriginal stockmen gain the same federal award rates as non-Aboriginal stockmen.
- 1969 *Equal Pay Case*: Special female award rates maintained in federal awards.
- 1972 *Equal Pay Case*: Special female award rates abandoned in federal awards. There is to be only one award rate, applying to both males and females.
-

The minimum wage system which developed after the *Harvester Decision* of 1907 provided the following:

- A minimum wage for men of 7 shillings a day or 42 shillings a week for an unskilled labourer, increased by the amount of inflation. This was called the 'basic wage', and it was increased each quarter in line with inflation. More skilled employees received an additional 3 shillings a day. This was called the 'margin'. There was also the 'Powers 3 shillings' added to this, which was an amount to compensate for future inflation before the award rate could be adjusted.
- Women received the male minimum wage if they worked in jobs in competition with men (such as a fruit picker or blacksmith), but received a lower minimum wage of 54 per cent of the male wage if they worked in jobs mainly performed by women (such as a fruit packer or milliner).
- Many indigenous workers (referred to as Aboriginal) did not receive ordinary award rates, but were paid under special government regulations.
- Adolescents in a job might receive the adult rate, or a percentage of the adult rate if they were employed as apprentices being trained, or junior employees without being trained.

There was always some dissatisfaction with the lack of equal pay for women and Indigenous workers such as Aboriginal stockmen. In the 1960s and 1970s equal pay campaigns were to end the system of unequal pay that had been introduced after the *Harvester Decision* of 1907.

March for equal pay during the May Day parade, Fremantle, 1965.



3.1 MINIMUM WAGES FOR ADULT WOMEN

The Harvester method involved some form of assessment of the level of expenditure needed to feed, clothe and house a family of five. It was a 'family' or 'living' wage, not what the 1919 Royal Commission into the Basic Wage called a pauper's or subsistence wage. The minimum wage was also probably as high as could be sustained by the Australian economy of the time, which was a developing economy.

Would single men receive the full 'family' or 'living' wage, although they did not have to support a family? Single men always received the full family wage, with the result that many were being paid for non-existent children and wives, as Chief Justice Dethridge noted in the *Glass Workers Case* of 1927.¹⁸⁷ A different approach was, however, to be taken with women.

After the 1912 *Fruit Pickers Decision* and later decisions, awards set a basic wage for adult females at 54 per cent of male wages, and margins for female employees were also lower. Females did not receive the full 'family' wage unless they worked in jobs in competition with men. The rates of pay for female apprentices were usually set as a percentage of the relevant female award rate, and therefore female apprentices also received a lower wage rate.

Trade unions, however, usually sought equal pay when making applications to the Court, including in the 1912 *Fruit Pickers Case*. These applications were rejected. However, many campaigned for greater equality of treatment of men and women, and the campaigns increased. Attitudes gradually changed. By the end of the 1930s the Council of Action for Equal Pay had been formed, and it attempted to present submissions to the 1940 *Basic Wage Inquiry*. It was refused permission to appear. The council wanted to increase women's award rates (the basic wage) from 54 to 80 per cent of the male rate.

The women's minimum wage increases to 75 per cent of male wages

During World War II the National Security (Female Minimum Wages) Regulations set women's rates at a minimum of 75 per cent of male wages, and in the 1949–50 *Basic Wage Case* this was adopted as the new standard for women. This rate remained despite various attempts to lessen the amount.¹⁸⁸ It was still common for married women to be required to resign on becoming married, whether in Australia or elsewhere in the Western world, for example Northern Ireland:

Female officers will, on marriage, be required to tender their resignations to the Board. (Provision in Conditions of service of Northern Ireland General Health Services Board, quoted in [1957] 1 WLR 597.)¹⁸⁹

The workforce participation of women, both married and unmarried gradually increased, particularly after 1961. By the time of the 1972 *Equal Pay Case*, the participation of married women in the labour market had increased from around 17 per cent in 1961 to 33 per cent in 1971.¹⁹⁰ The traditional approaches became discredited and unpopular at the level of commonly held ideas, and untenable because of the way in which women were actively participating in the labour market.

The end of a separate minimum wage for women

All special award rates for women were removed following the 1972 *Equal Pay Case* decision of the Conciliation and Arbitration Commission.¹⁹¹ However, before that test case, the 1969 *Equal Pay Case*¹⁹² considered the same issues, with a different result. In the 1969 case the Commission recognised the principle of 'equal pay for equal work'. This was arguably something of a repetition or reiteration of the 1912 *Fruit Pickers Decision* of Justice Higgins, rather than something new. The principle of equal pay for equal work was to be implemented under the following guidelines:

- the male and female employees concerned must be adults and should be working under the same terms of the determination or award

- it should be established that certain work covered by the determination or award is undertaken by both males and females
- the work performed by both males and females should be similar in nature and of equal value
- for the purposes of determining whether female employees are performing work of the same or like nature, the range and volume of work should be considered
- consideration should be limited to work undertaken under the determination or award
- there may be no appropriate classifications for the work undertaken by both males and females, however if there is a need to establish classifications, they should not be of a generic nature covering a wide variety of work
- in considering whether males and females are performing work of the same or like nature and of equal value, consideration should not be restricted to the situation in one establishment but should extend to the general situation under the award
- the expression of 'equal value' does not mean 'of equal value to the employer' but as of equal value from the point of view of wages or salaries, and
- equal pay should not be provided where the work in question is essentially work undertaken by females.¹⁹³

In the 1972 case the Commission decided to remove all distinctions between men and women in minimum wage provisions in awards, thus completely rejecting both the *Fruit Pickers Decision* of 1912 and the 1969 principles. Instead of award wage rates continuing to have different levels for males and females there would be only one rate, applying to both males and females:

in light of present circumstances ... we consider that it is better for us to state positively a new principle. In our view the concept of 'equal pay for equal work' is too narrow in today's world and we think the time has come to enlarge the concept of 'equal pay for equal work value'. This means that award rates for all work should be considered without regard to the sex of the employee.¹⁹⁴

The Commission said that awards would now contain ‘a single rate for an occupational group or classification ... whether the employee be male or female’.¹⁹⁵

The Commission found that there had been many significant changes since the 1969 decision:

- Convention No. 100 of the International Labour Organization (ILO), which dealt with equal remuneration for work of equal value. This convention was said to reflect international opinion on the issue of equal pay for equal work, although it had been considered by the Commission in 1969, and in 1972 was still not ratified by Australia.
- A number of Australian states had passed legislation regarding equal pay for equal work, which suggested there was acceptance of this idea in the community.¹⁹⁶
- The Commission said that there was a trend in other nations towards equal pay for women.

Women’s weekly minimum wages increased from 73 to 93 per cent of men’s during the 1970s, as the new equal pay principles were gradually implemented.¹⁹⁷

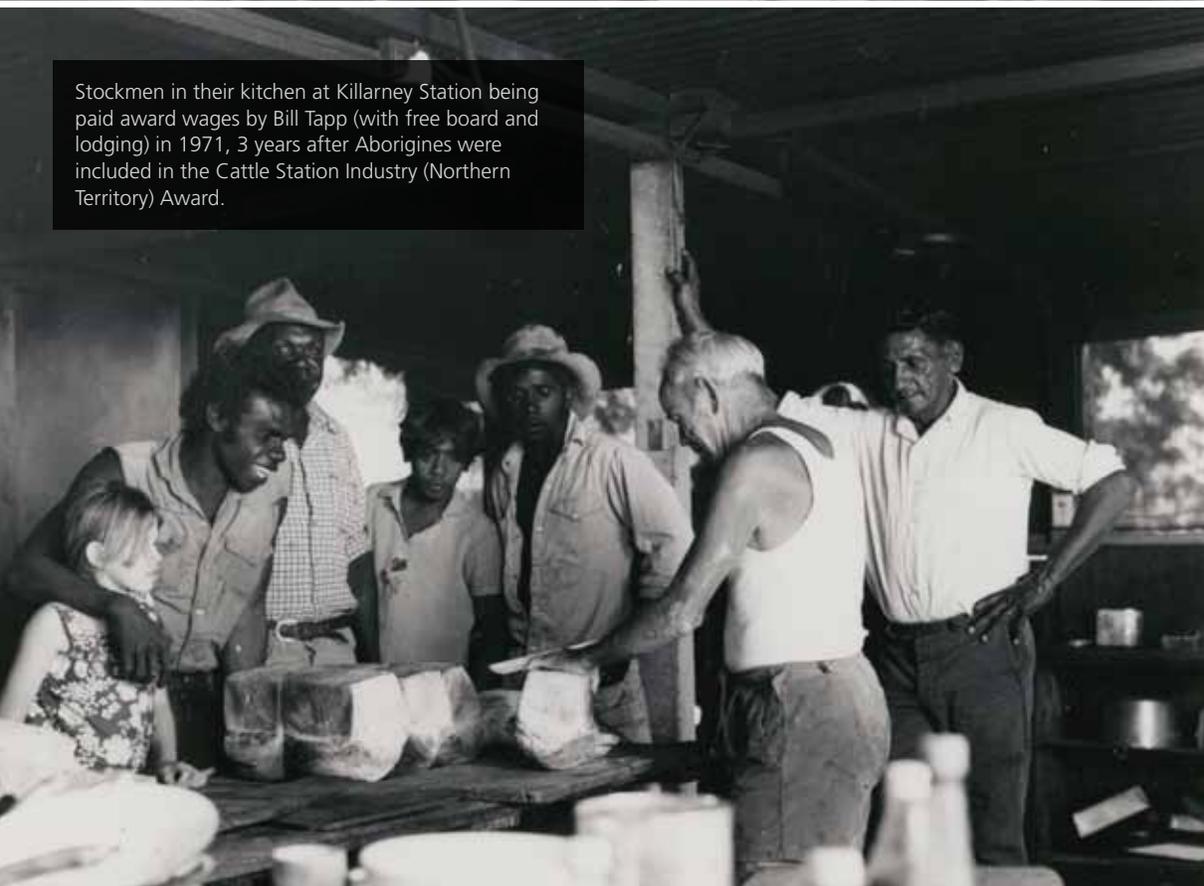
Summary

1. The early minimum wage for women was set on the same level as that for men if women were in competition with men in a particular industry sector or occupation (e.g. if they were fruit pickers or blacksmiths), but on a different level if they were not (e.g. if they were fruit packers or milliners).
2. Most women were not in the formal workforce. Those who worked usually worked in female-dominated areas so that the lower female minimum usually applied.
3. The male wage was set on the basis of a rough estimate of the cost of supporting a wife and family, while the female minimum wage was set on the basis that the woman did not have to support a husband and family. Most married women were not in the formal workforce. They received a 'living wage' but not a 'family wage' set at the rate of about 54 per cent of the male wage (this was the female 'basic wage'). They also received lower extra payments for skill (known as 'margins').
4. World War II Regulations set the minimum rate for women award wages at 75 per cent of the male rate, which was adopted as a general rule in the 1949–50 *Basic Wage Inquiry*. This rate continued despite various attempts to reduce it.
5. In 1972 these principles were abandoned, and the same minimum wage was applied to men and women, without discrimination. The labour force participation rate of women was gradually increasing, undermining the traditional approach of a 'male breadwinner', and there was growing support for equality for men and women.

Aboriginal stockmen at Waterloo station, in the western Victoria River district of the Northern Territory, 1954.



Stockmen in their kitchen at Killarney Station being paid award wages by Bill Tapp (with free board and lodging) in 1971, 3 years after Aborigines were included in the Cattle Station Industry (Northern Territory) Award.



3.2 MINIMUM WAGES FOR ABORIGINAL STOCKMEN

Aboriginal people were not formally considered to be Australian citizens until 1967, and were usually treated as wards of the state, not as adults with full rights. Permits were sometimes required to employ Aboriginal people.

A series of pastoral cases from the 1920s had maintained the exclusion of Aboriginal people on the basis that award coverage and award wages ‘would mean job losses for indigenous workers, and that unions’ claims for inclusion were disingenuous attempts to achieve this goal’.¹⁹⁸ In the Northern Territory the wages and conditions of Aboriginal people had since 1933 been regulated by ordinance of the Northern Territory Administration, which provided lower entitlements than the awards.

Table 8: Aboriginal payments compared to award¹

Year	Wage per week	Eligibility	Other provisions	Full award wage
1933	5 shillings	Nil	Food, clothing, and tobacco	£3.13.0 ²
1949	£1	For males after 3 years’ experience	Rations, clothing and accommodation	£6.17.6 ³
1957	£2.8.3	For males after 3 years’ experience	Plus 15s per week for clothing with provision for improved rations and accommodation	£11.5.20—stockmen, £11.5.10—general station hand, larger margins for other cattle employees ⁴

Source: **1.** (1966) 113 CAR 651 at 652; **2.** Sydney Basic Wage (1933) 32 CAR 90 at 108; **3.** ACT Basic Wage (1949) 65 CAR 645 at 647; **4.** F Gruen, *Aborigines and the Northern Territory cattle industry*, in I Sharp & C Tatz (eds), *Aborigines in the economy*, Jacaranda Press, Brisbane, 1966, p. 198.

In the 1966 *Cattle Industry Case*¹⁹⁹, known as the *Aboriginal Stockmen’s Case*, the Commonwealth Conciliation and Arbitration Commission considered an application by the North Australian Workers’ Union for the deletion of clauses excluding Aborigines

from the *Cattle Station Industry (Northern Territory) Award*. If the union was successful, full-blood Aboriginal stockmen would have the same award rights as non-Aboriginal stockmen for the first time, and their wage entitlements would significantly increase.

The *Pastoral Industry Award* was the main award applying to the agricultural sector where many Aboriginal people worked. It simply provided that the definition of 'station hand' 'excluded ... (d) aborigines'.²⁰⁰

The Commonwealth Government supported the union's position, although it sought to defer the effective operational date of the union's claim for some years.²⁰¹

The employers submitted that the exclusion clause should be replaced by a clause that provided for the payment of a proportion of award rates based on the ability of an employee to carry out the full range of duties normally required of the classification in which he is employed, with three levels of wages being set:

- those who carry out simple tasks not involving consistent effort—30 per cent of the award rate
- an employee capable of carrying out the major part but not the full range of duties—50 per cent of the award rate
- an employee capable of carrying out the major part but not the full range of duties normally required—70 per cent of the award rate.

They submitted that the Commission should 'prescribe a series of rates related to the working capacity of classes of Aborigines, the difference between rates being related to a capacity to perform work and to work without supervision'.²⁰²

The case was about Aboriginal men employed on cattle stations in the Northern Territory. The stations ranged from hundreds to thousands of square miles in area, many of them isolated and remote. The Aboriginal men were all 'full-bloods because virtually all those of mixed blood are treated as whites on the cattle station'. Many were 'semi-tribalised', mostly with no formal education. The Aboriginal men lived on the stations in their own communities on their old tribal grounds, but some lived on special settlements, which were reserves run by the Commonwealth Government. While the case was not about all Aboriginal people, not even all Aboriginal



Photograph of the painting by Robert Campbell Jr titled '*Robert Marbuk Tutawallie Supports Aboriginal Stockmen Striking for Equal Pay at Wattie Creek*', 1988.

The placards in the lower section read '*We want equal pay same as the whites*', '*Striking for equal pay*' and '*Equal pay*'.

people in the Northern Territory, the Commission decision would apply to all awards.

The Commission began its decision by outlining its functions and methods. It said:

Much of the debate before us dealt with the amount to be paid to aborigines and this is the critical issue. The normal standard of the Commission is that all adult male employees are entitled to a basic wage unless they are special cases such as slow workers. It is defined by section 33 as “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.” The basic wage is payable to all adult male employees covered by federal award (other than some slow workers) irrespective of the value of their work. However, most workers receive in addition to the basic wage a secondary wage or margin for skill or special conditions of employment.²⁰³

The employers’ case for maintaining an exemption from the award for Aboriginal stockmen was summarised as:

a request to apply to 75 or 80 per cent of aborigines employed on cattle stations in the Northern Territory the kind of special provision to be found in clauses known as “slow workers” clauses ... The clause is a reflection of the power contained in section 48 of the Act to “provide for the payment of wages at a lower rate for an employee who is unable to earn the minimum wage”. Both the clause in the award and the section itself contemplate that this prescription shall apply to individuals and not to classes ... it would be a big step to make a prescription for classes instead of individuals.²⁰⁴

The employers’ positive case is that on an assessment of the value of their work the aborigines are not entitled to full award wages. Their negative case is that if the Commission applies award rates to aborigines it will cause massive disemployment with consequent unfortunate social and economic results.

...

It was put to us that these aborigines are unable to work as well as whites because of cultural and tribal factors.²⁰⁵

The employers argued that Aborigines are:

semi-tribalised ... [and] that there are a number of factors which prevent most aborigines from working in the same way as white men ... aborigines do not understand the meaning of work in our sense. This is because before their contact with whites they were a hunting race who lived off the land and did not work in any way understood by us ... the idea of working for oneself with ambition to achieve some economic goal was foreign to aboriginal society ... In tribal society the idea of cause and effect was not known. Time, in the Western sense, and the significance of time were also unknown. They had no idea of forward planning, of working out a long term enterprise based on predictions of future planned occurrences. The notions of number, precise distance, and mathematical accuracy were unknown. Their culture excluded the idea of disciplined, reliable and responsible endeavour under a contract of employment.²⁰⁶

The Commission said in its decision that employers claimed that a continued exclusion of Aboriginal men from the award was consistent with international material on discrimination, in particular if discrimination was based on the inherent requirements of the job. The Commission said:

There is a consensus of opinion that one of the great problems of the Northern Territory is the fact that the aborigines who are now adults were not educated as children.²⁰⁷

The employers submitted that the application of award rates to Aborigines would cause 'massive disemployment'. They said that for economic reasons they could not afford to employ Aborigines on award rates:

The employers concede that some aborigines are almost as good as whites and that aborigines enjoy working on cattle stations because it is closely related to their earlier nomadic life and it keeps them living in their own country. But if aborigines are to be paid the same as whites, then employers would prefer to employ whites because they could employ far fewer with the same results.²⁰⁸

The Commission said:

The problem of disemployment must be seen in proper perspective. What we are deciding is, of course, of great significance both to the aborigines and the pastoralists. But the total number of aboriginal males over 16 years employed on pastoral properties in the Northern Territory as at 30th June

1965 was 1,003. Of this 1,003 there are quite a number, perhaps 20 to 25 per cent, who are unable or unwilling to do more than nominal work for a few hours a day and are paid the minimum ordinance rates by the pastoralists. Although they might be unhappy to have their present way of life interfered with, an industrial tribunal cannot be over-concerned with such people who are not employees in any real sense, particularly when the Commonwealth Government is well aware of its responsibilities in regard to them. At the other end of the scale there are those 20 to 25 per cent whom employers are prepared to retain on the Northern Territory award rates. Assuming for the moment that the employers remain prepared to employ at least that number of aborigines, and leaving out those whom we do not treat as employees, then there is something like half the 1,003 employees who might be disemployed. In other words, the figure is something in the nature of 500 if it is confined to employees in any accepted sense.²⁰⁹

The Commission concluded:

In our view the disemployment problem might be partly solved if the slow workers' clause were made more workable and less cumbersome than it is at the present time ... In its present form it is not very practical for remote and isolated cattle stations in the Northern Territory. It seems to us that if the slow workers' clause were made simpler pastoralists might be able to apply for slow workers' permits for individual employees.²¹⁰

The Commission said that if the employers' application was successful their assimilation or integration into white society would be delayed, while employers' arguments were summarised as:

The employers express fear that disemployment would cause aborigines to move to a life of handouts on the settlements.²¹¹

The Commission concluded:

We agree with the pastoralists that there are many aborigines on cattle stations who for cultural reasons and through lack of education are unable to perform work in a way normally required in our economic society. We agree that the problem of assimilating or integrating these aborigines into our society is a difficult one with many facets. Our task, however, is a limited one. The guiding principle must be to apply to aborigines the standards which the Commission applies to all others unless there are overwhelming reasons why this should not be done. The pastoralists have openly and sincerely explained their problems and future intentions.

However they have not discharged the heavy burden of persuading us that we should depart from standards and principles which have been part of the Australian arbitration system since its inception. We do not flinch from the results of this decision which we consider is the only proper one to be made at this point in Australia's history. There must be one industrial law, similarly applied, to all Australians, aboriginal or not.²¹²

The Commission also decided that there should be a delay in the operation of award provisions to Aboriginal stockmen, which should come into effect not immediately but on 1 December 1968, a delay of two years:

It would be undesirable for such a change to come about without notice to the aborigines and without giving them time to prepare themselves for it and without giving the Commonwealth authorities [an] opportunity to help them in this important regard. The aborigines will need guidance to understand and appreciate the implications of moving from a semi-protected situation to an exposed industrial situation whereby they have to care for themselves and their families out of their wages. It is also necessary to give the pastoralists an opportunity to consider the future of their aboriginal employees and to make arrangements for their replacement by white labour if necessary.²¹³

This decision was then applied to the *Pastoral Industry Award*, with the agreement of employers.²¹⁴ This award applied in all states except Queensland.

As Sharp comments, this was effectively the end of differential treatment of Aboriginal people in awards, and by extension the end of differential award rates in the future.²¹⁵

Did the decision have a disemployment effect on Aboriginal stockmen? There was a significant reduction in their employment, but Whitehouse says that it was only one factor amongst several:

Additional factors included reduced demand for Aboriginal labour on cattle stations following capital investment over the period from the 1950s and the effects of drought into the 1960s, as well as the Indigenous populations extended access to pensions and unemployment benefits by the early 1970s (Rowse 1993, 1998). Erosion of the interdependence of pastoralists and Aboriginal communities was thus well under way by the 1970s, and it is

unlikely that a ruling to continue the exclusion of Indigenous stockmen from award conditions would have stemmed the tide.²¹⁶

Sandall is more critical, and more direct in attributing the reduction in employment that followed the decision itself. He says that an incomplete 1972 survey showed a reduction in employment of Aboriginal males of 122, from 383 to 261 (32 per cent), and an increase in employment of other males of 111, from 168 to 279 (60 per cent). There were other similar surveys. He said:

The Gibb Committee [Report of the Committee to Review the Situation of Aborigines on Pastoral Properties in the Northern Territory] attributes most of this to the equal pay decision.²¹⁷

In December 1971 the Gibb Committee issued a report that concluded:

In the course of our inspection and discussion it became clear that the adoption of the Award has adversely affected the employment of Aborigines. In the North where labour is more in demand and alternative avenues of employment are becoming available, the problem is not so marked. However, both of Professor Gruen's predictions of 1966 are obviously being fulfilled: cattlemen are replacing Aborigines with white labour and station owners are investing in improvements such as trap yards and subdivisional fencing which does reduce the amount of labour needed for tracking and mustering. The very recent use of helicopters in mustering in some areas has had a marked effect on the demand for skilled Aboriginal stockmen ... Repeatedly during our tour we were told of the unreliability of Aboriginal employees and of cultural factors limiting their usefulness and of the additional costs not recognised by the Award of providing for their medical and social care. We are persuaded that these claims are not based on racial grounds but on the experience of those concerned. Often Aborigines do not work as well or as consistently as whites and they require much more supervision. The average productivity of Aboriginal labour is below that of white labour.²¹⁸

It may be relevant that there were then no Commonwealth subsidies to assist Aboriginal employment, and none were introduced after the Commission decision made Aboriginal stockmen more expensive to employ. These subsidies are now common, and can, on occasion, assist employment.

It also appears that social arguments or values were of some weight in the Commission's decision and the decision to bring the application. These included the perceived need to end discrimination on racial grounds, and the intense dissatisfaction amongst some Aboriginal stockmen with lower wages and the perceived lower status that this gave them.

Sharp commented that a wage system for Aboriginal stockmen based on cultural factors 'would perpetuate racial discrimination disguised in cultural garb'. He said that the employer proposal for a graduated set of rates based on productivity would allow the employer, at his discretion, to set the wage rate for any individual Aboriginal person. The employer proposal overall in his view 'held out no future hope for the majority of Aborigines, as they did not contemplate those Aborigines who would be assessed outside the award, ever coming within its protection'.²¹⁹

The 'slow worker permit' clause in the award remained unchanged and enabled Aboriginal people to be employed on less than award wages if consent was obtained. The clause provided:

10—AGED, INFIRM AND SLOW WORKERS

A lower rate may be paid to any employee who is unable to earn the minimum wage prescribed, if the rate be fixed with the consent of the North Australian Workers' Union, in writing, signed by the union, or by its authority, or with the consent, in writing, of a police magistrate, or of the nearest police officer in charge, provided that in both the latter cases the consent shall not be valid unless application be made forthwith to the union to confirm the consent, and if such confirmation be refused, in writing, the consent shall not be valid in respect of any employment occurring after the delivery of the written refusal to the employer or his representative, unless such consent be thereafter confirmed, in writing, by a police magistrate or the nearest police officer in charge.

The consent, in writing (in either case), must state the specific ground (age, slowness, infirmity or other such ground) on which it has been granted, and the minimum rate permitted, and it must be for a period not exceeding one year, and must relate to one employee only. The consent will cover employment with any employer present or future, and whether he is or is not known.

The consent may relate to time past as well as to time future, but not to any time earlier than the making of the application for the consent, provided that, if the application be made by post it shall, for the purposes of this sub-clause be deemed to have been made upon the posting (before or during the employment) of an application by registered letter to the union, or to the police magistrate, or the nearest police officer in charge (as the case may be) for consent. The consent may be given after the employment has terminated. Fresh consents may be given from time to time in respect of the same persons.²²⁰

The ‘slow worker permits’ that employers referred to were replaced in the 1980s by the supported wage system, which now applies to people with disabilities. This system provides for payment of a percentage of award wages ranging from 10 to 90 per cent, based on a formal assessment of the capacity of people to perform the particular work. This capacity is assessed by someone external to the employer. The current form of the clause provides:

Supported wage rates

Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause D.5) %	Relevant minimum wage %
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

Provided that the minimum amount payable must be not less than \$73 per week. Where an employee’s assessed capacity is 10%, they must receive a high degree of assistance and support.²²¹

It is relevant to remember the campaigns amongst Aboriginal people, trade unions and others that led to the *Aboriginal Stockmen's Decision*. These campaigns continued even after the decision was handed down, beginning with what became known as the 'Wave Hill walk-off'. Wave Hill Station was a large pastoral station in the Northern Territory. In 1966 Vincent Lingiari, one of the local Gurindji people who had worked on the station, led a walk-off of Aboriginal employees as a protest against wages and conditions. The protestors established the Wattie Creek Camp and eventually began a campaign for land rights for Gurindji. This land rights campaign was an important contributor to the later *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), which gave Aboriginal Australians freehold title to certain 'traditional' lands in the Northern Territory and veto over mining and development on those lands.²²² One commentator explained why campaigns continued after the union success in the *Aboriginal Stockmen's Decision*:

For some Indigenous workers, the problem with the Commission's decision in 1966 was not the risk of job loss, but rather the delay in implementation of equal wages and conditions that 'would amount to their being treated as fellow human beings' ... This fundamental sense of injustice echoed concerns over land rights, and a series of strikes, which began over conditions at Wave Hill, extended to other areas in 1967 and became more inclusive protests ...²²³

A popular song 'From Little Things Big Things Grow' tries to express the views of Vincent Lingiari and the Gurindji, and the emotions of their campaign for land rights, although not unfortunately the views of the pastoralists.

Summary

1. Until the 1966 *Aboriginal Stockmen's Case* 'Aborigines' were excluded from awards that set wages and conditions for non-Aboriginal people.
2. This exclusion was removed as a result of the 1966 case, but did not take effect until December 1968, to allow Aboriginal people and pastoralists time to adjust.
3. The employers opposed the union application on work value grounds, submitting that because of poor education and cultural factors many Aboriginal stockmen did not work in the same way and to the same value as non-Aboriginal stockmen. They proposed instead that individual Aboriginal men be paid based on an assessment of their capacity to perform the work required.
4. These arguments were rejected for a range of reasons including the need for one industrial law to apply to all Australians.
5. There is still discussion about the extent to which this decision led to a drop in employment levels of Aboriginal stockmen and their replacement by non-Aboriginal stockmen.
6. The Commonwealth did not introduce subsidies to assist the employment of Aboriginal stockmen.

3.3 MINIMUM WAGES FOR ADOLESCENTS

Conditions in the early Australian factories were not always what we today would regard as desirable or safe, either for young or old. A Victorian royal commission reported in 1883 that men sometimes worked 18-hour days and women 16, while 'the apprenticeship system was frequently used to obtain labour without remuneration, apprentices being dismissed upon asking for payment at the end of their time'.²²⁴

The royal commission claimed that the needs of young people were 'cruelly ignored'. Some boys under the age of 12 years old were employed in factories, and put to work on dangerous machines. One young boy was prone to fits and was seen lying next to his machine in a fit while he was in charge. The 'character' of boys and girls in factories was said to be 'most repulsive', their conversation 'filthy'. Nearly all the boys were addicted to smoking and chewing tobacco, which was used by some unscrupulous employers to induce them to remain at work. Children were sometimes employed at night, in unsanitary factories, looking after dangerous machines without the necessary qualifications, and with no guards on the machines.²²⁵

The problem of 'sweating' or exploitation was widespread. Colonial Australia before Federation is sometimes described as a 'worker's paradise', given the relatively high wages and conditions compared with other Western nations of the time. Statistics suggest that they may have been the highest or nearly the highest of the time.

Table 9: Per capita GDP in Australia, United States and Argentina¹ (1990 international dollars²)

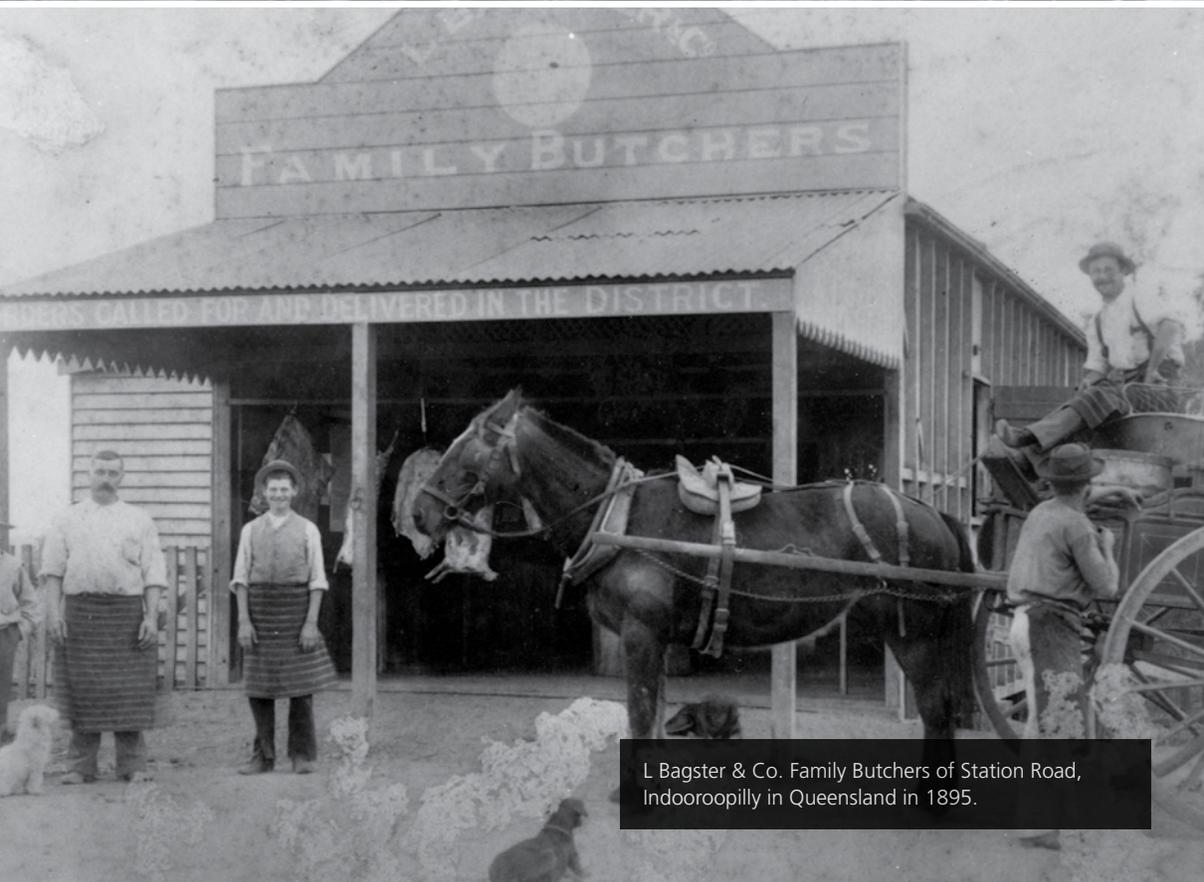
Year	Australia	United States	Argentina
1870	3 641	2 457	1 311
1890	4 433	3 396	2 152
1950	7 493	9 561	4 987
1998	20 390	27 331	9 219

Source: **1.** B Attard, *The Economic History of Australia from 1788: An Introduction*, <www.eh.net/encyclopedia/article/attard.australia>, [cited as Australia: GDP, Haig (2001) as converted in Maddison (2003); all other data Maddison (1995) and (2001)]; **2.** This is the Geary-Khamis dollar often used to compare economic statistics in different countries. It is a hypothetical currency based on the value of the US dollar in 1990.

However, there were problems. One problem was long hours in the 1890s and early 1900s. Workers who served the public might work long hours. Butchers and bakers often worked from 4 am until 10 pm. Barmen 15 or 16-hour days, six days a week, and a further two hours more on Sunday. Shop assistants worked from 7 am until 7 or 9 pm on weekdays and until just before midnight on Saturdays. Most shop workers worked a 60-hour week.²²⁶ Other problems included the poor physical conditions in many factories. Lighting, air and sanitation was often poor, and there might be no fire escapes, and guards on dangerous machines might not exist resulting in serious injuries. Another problem was a refusal by some employers to pay the wages that had been earned by the employee.²²⁷ The Victorian chief inspector of factories wrote in 1898 that many men sign as having received the minimum wage but actually receive less, because of the shortage of jobs, and that he was unable to get enough evidence to prosecute. In 1902–03 the Victorian royal commission heard evidence from the master bakers that this was still common, and from one employer that out of 16 shops in a certain suburb, not three paid the legally required minimum wages.²²⁸ The reports of the inspector of factories from 1908 express ever increasing confidence that rates were being paid, because of the economic recovery, although in 1908 the inspectors consider that in the Chinese furniture trade evasion is the certain rule.²²⁹



William Ashley Norman, a 15 year old boy from North Adelaide, South Australia, working a blacksmith's forge in 1897.



L Bagster & Co. Family Butchers of Station Road, Indooroopilly in Queensland in 1895.

Staff of JH Howe, Bootmaker, of 23 Hindley Street, Adelaide, South Australia (approx. 1865).



In the period 1873–96, the colony of Victoria introduced and improved its Shops and Factories Act, which attempted to address some of these problems. Similar legislation was eventually introduced in the other colonies and later states of Australia. The Victorian 1895 amendments dealt with, for example, overcrowding and poor ventilation, want of cleanliness, and required competent machine operators, and fences on dangerous machines. They restricted child labour by age and by hours of work. They also provided for registration of factories and for some enforcement to ensure that workers were paid their wages.²³⁰

Some of these conditions had, it seems, improved by the time the Commonwealth Court of Conciliation and Arbitration began to operate in 1907. When the Court came to consider the Harvester or boot trades factories, and other premises, it did not usually record these serious problems. State legislation may have had some effect.

The Commonwealth Court of Conciliation and Arbitration did, however, in its awards establish special award clauses that applied to the employment of young people. There were three minimum wages that the Court set for young people:

- the ordinary adult minimum wage
- special lower apprenticeship rates, which might be accompanied by award clauses requiring training, and
- special lower junior rates paid to young people with no training requirements.

The Court preferred to set special apprenticeship rates rather than junior rates for the following reasons:

- The Court wanted to promote apprenticeships, because young people gained valuable training in a trade (e.g. butchery or boot manufacture) through an apprenticeship. The Court was always prepared to establish special apprentice wage rates that were less than adult rates, in order to promote apprenticeships. These apprenticeship minimum wage rates increased with each year of the apprenticeship, which was between three and seven years long.
- The Court was reluctant to establish special lower minimum wage rates for young people who were not required to be trained through apprenticeships. Sometimes it established

and sometimes it refused to establish special wage rates for juniors under 21 without an apprenticeship. Initially these were called rates for ‘lads’, ‘boys’ or ‘youths’, until the modern term ‘junior rates’ began to be used from around 1910 to 1917. Separate rates were set for young women and girls. Examples of decisions where the Court refused to establish special lower rates for unapprenticed juniors in order to promote apprenticeships or protect adult jobs were the *Boot Trades Case*²³¹, the *Butchers Case*²³² and the *Linesmen’s Case*.²³³ Where junior wage rates were established, they usually increased by age of the young person, beginning at age 14.

- The Court attempted to protect adult employment from the employment of cheaper young people. This was done, for example, by establishing ratios of apprentices to tradesmen such as one apprentice to three tradesmen (then referred to as ‘journeymen’) (e.g. the *Boot Trades Decision*), or by refusing to establish a junior rate at less than the adult rate (e.g. the *Linesmen’s Case*).
- The Court sometimes regulated the form of apprenticeship contracts (called ‘indentures’), which set out the nature of the training that the employer had to provide and other matters. Apprenticeship indentures were not well regulated at the time (e.g. the *Boot Trades Decision*, the *Butchers Case*). Queensland introduced the *Apprenticeship Act 1924*, South Australia the *Technical Education of Apprentices Act 1917*, and Victoria the *Apprenticeship Act 1917*, which regulated training and indentures in various ways, for example by requiring certain technical training. Wages boards had previously exercised some functions, for example by restricting apprentices to protect adult jobs.
- The Court often refused to recognise in awards so-called ‘improvers’. These were supposedly less skilled young people and others who were improving their skills and who were paid less than adult wages. They were on what were sometimes lower or higher wages with no guarantee of being trained.

Length of apprenticeships

Today apprenticeships take three to four years to complete. Apprenticeships in the early 1900s were often long apprenticeships, with a maximum of seven years, although at the Harvester factory the apprenticeships generally ended after five years.²³⁴ Young people commenced an apprenticeship at 14 years of age, and indentures finished at 21. After World War I the length of apprenticeships was reduced to five years for most trades, and in the late 1960s, the length was again reduced to four years.²³⁵

Female apprenticeships

Awards commonly contained separate clauses dealing with female apprenticeships which contained both lower rates and specified jobs which were considered to be women's work. For example, the 1921 *Felt Hatting Award*²³⁶ provided that female apprentices shall be apprenticed for a period of six months to binding, trimming or six months to each. No trimmer or binder would have more than one apprentice under tuition, and other matters. A 'foremistress' would have the right to see that she carried out her work properly. She was a person who 'is or usually is a female supervisor of a department in a felt hat manufactory'. Both male and female apprentices were paid a percentage of the adult male or female rate that would apply, which was:

- 1st year—40 per cent
- 2nd year—50 per cent
- 3rd year—60 per cent
- 4th year—70 per cent
- 5th year—80 per cent.

A female apprentice therefore received a lower wage rate, because the female award rates were lower than those for males.

There was a formal apprenticeship agreement that had to be signed which was Schedule B of the Award.

The *Harvester Decision* and apprenticeships

In *ex parte H.V. McKay*²³⁷, known as the *Harvester Decision*, Justice Higgins of the Commonwealth Court of Conciliation and Arbitration set the following wage levels for ‘apprentices’ and for ‘boys (not apprenticed)’ as ‘fair and reasonable’. The level of the wage increased as the years of apprenticeship increased, and for unapprenticed juniors as age increased.

Table 10: Wages for apprentices and boys (not apprenticed), 1907

	Year/age	Rate per week/day
Apprentices	1st year	8s per week
	2nd year	12s per week
	3rd year	16s per week
	4th year	20s per week
	5th year	24s per week
	6th year (if any)	30s per week
	7th year (if any)	36s per week
Boys (not apprenticed)	Under 15	2s per day
	15–16	2s 6d per day
	16–17	3s per day
	17–18	3s 6d per day
	18–19	4s per day
	19–20	5s per day
	20–21	6s per day
Young journeymen—Class A (A person who has completed an apprenticeship and has not more than one year’s subsequent experience.)		Not less than two-thirds of the minimum prescribed for journeymen
Young journeymen—Class B (Temporary classification for two years after 1 November 1907.)		Not less than five-eighths for the first year, and three-fourths for the second year, of the minimum prescribed for journeymen

Source: *ex parte H.V. McKay*, (1907) 2 CAR 1 at 20–21.

A 'journeyman' was a person who had obtained a skilled trades qualification, having completed an apprenticeship, and the later term was 'tradesman'. Today the term is 'tradesperson'.

Justice Higgins said that there were about 189 persons under 21 in the Harvester factory out of 495 employees. In the fitters shop of 102 employees only 28 employees received as much as 8 shillings a day. The rest were 'improvers' (14), 'helpers' (19), 'apprentices not bound' (24), and 'boys' (16).²³⁸

It appears that work done by boys at the Harvester factory included:

- adjusting drilling, punching and shearing machines
- bolt making
- assisting as strikers (blacksmith or brick helpers).²³⁹

Early on separate minimum wage rates were set for male and female junior employees.

Justice Higgins decided not to include 'improvers' in his statement of fair and reasonable wages, although the Victorian Wages Board did. The minimum rate of pay fixed by the board for improvers varied from 8 to 25 shillings from one year to seven years in progressive stages.²⁴⁰

Telegraph employees must be paid as adults

In *Australian Telegraph and Telephone Construction and Maintenance Union v. Public Service Commissioner*²⁴¹ Justice Higgins refused an application by the Public Service Commissioner for a special lower minimum wage to enable boy labour to be employed at less than adult rates, because of concerns about displacing adult workers and because he was concerned about the dangers of the work.

The work involved the erection of overhead and underground telegraph and telephone lines, which was done by teams of linesmen. In the case of overhead lines, Justice Higgins said that no adult linesman would be displaced, but in the case of underground lines, boys would be attached to a senior linesman and an adult linesman displaced. Most of the work was in the view of Justice Higgins too dangerous for ordinary boys, as being heavy and dangerous. In the cities care had to be taken to prevent accidents from electric

light wires and electric power wires, there was the possibility of accumulation of dangerous gases in underground work where 'great precautions are required against coal gas and sewer gas', and the actual lifting of a manhole cover required two adult men. Justice Higgins thought it was better that these functions be performed by 'fully developed men' not by boys, even in part. The only wage rates in the award remained adult wage rates.

Boys on steamships

In *The Federated Marine Stewards and Pantrymen's Association v. The Commonwealth Steamship Owners' Association and Others*, the Court again assessed the work on passenger and cargo steamships.²⁴² It found that work undertaken by boys on steamships included as stewards, cadets or probationers.

Most of the stewards were under 21, and nearly all of those under the grade of saloon waiter or bedroom steward. The hours were long. There was no eight-hour limit to the day; rather the passengers and crew had to be attended to at all meals and in their cabins, night and day, and all days. However, the work was 'light', and the youths received tips, which were referred to in slang as 'bounce'. The tips varied greatly according to time of the year, the class of passengers, the character of the ship, the passage on which the ship was engaged. Justice Higgins calculated the average tips as £2 per month.²⁴³ The stewards had to keep up a good appearance, wear a uniform, exercise tact with passengers, and bear responsibility for their employers' property, and bear the expense of their own uniform and laundry.

Many boys in these positions received less than £2 in wages per month. Wages for boys were set on the basis of age: after 17 years, no boy was to receive less than £3 per month; after the age of 19, no boy was to receive a wage less than £4 per month; and after 21 years, no boy was to receive less than £5 per month.

Boot trade apprentices

In *Australian Boot Trade Employees' Federation v. Whybrow & Co and Others*²⁴⁴ Justice Higgins considered the issue of apprenticeships for the first time, while making an award for nearly 40 boot manufacturers and their employees.

Justice Higgins found that there were large numbers of boys employed in boot factories. He was concerned that they were not being properly trained, and that they were used as cheap labour in place of more expensive adult employees. The award he made tried to address these concerns. The award sought to promote apprenticeships by limiting the circumstances in which boys could be employed except as apprentices. The award required all boys employed to be apprenticed under formal apprenticeship indentures after the age of 16 or on probation for one month. Boys under the age of 16 could be employed without an apprenticeship if they were limited to 'errands, sweeping, last carrying, sorting, heel nail-feeding'.²⁴⁵ The award also set out the requirements of apprentice indentures. Finally, the award tried to protect adult employment by limiting the number of apprentices, with cheaper wage rates, that could be engaged to one apprentice for every three journeymen in the same employment at that time or within the preceding six months.

The age-based rates set in the award were declared invalid by the High Court, because they had not been claimed in the log of claims. However, the provisions regarding apprenticeship survived, other than the wage rates. The award prescribed an 'apprentice' as follows:

- under the age of 21
- duly apprenticed (i.e. bound by indenture of apprenticeship) to an employer, and
- for any time not less than four years.

Justice Higgins expressed 'intense dissatisfaction' regarding the large number of boys working in the trade. A boy might start work as early as 13 years, undertaking relatively simple tasks, such as carrying or fetching items for a journeyman (a tradesman). The employer was not obligated to teach the boy anything. If the boy

Indenture.

This Indenture of Agreement made this 1st day of January 1931, between Thomas Barton of Sping Street Waverley Boot & Shoe Manufacturer hereinafter called the Employer of the first part and Sydney Robinson of No. 1 High Street Waverley hereinafter called the Apprentice of the second part and Frederick Leonard Robinson of Waverley Father of the Apprentice and hereinafter called the Father of the third part.

Now this Indenture witnesseth:

The within-named apprentice was born on Nineteenth day of November 1915
Signed F. L. Robinson
X Parent as Guardian.

1. The Apprentice of his own free will and with the consent of the Father hereby binds himself to serve his employer as his apprentice as hereinafter mentioned for the term of Five years from this date.
2. The master covenants with the Father and the apprentice and with each of them separately—

(a) That he will accept the apprentice as his apprentice for the said term of Five years, and during the term will instruct the apprentice, or cause him to be instructed, in the functions or process of Heeler and Slugging Machines

and will furnish the apprentice with all materials and facilities available for learning.

(b) That he will pay to the apprentice weekly during the said term the wages to be prescribed by the award of the Boot Trade Board.

1st year	<u>17/9</u>	4th year	<u>47/3</u>
2nd year	<u>25/9</u>	5th year	
3rd year	<u>33/9</u>	6th 1st half	<u>46/6</u>
		2nd half	<u>44/9</u>

3. The Father covenants with the employer—
 - (a) That the apprentice shall truly and faithfully during the term serve the employer as his apprentice aforesaid, and shall diligently attend to the business, and at all times willingly obey the lawful commands of the employer, and shall not absent himself from the employer's service without the leave of the employer, or in accordance with law.
 - (b) That in case the apprentice be at any time during the term wilfully disobedient to the commands of the employer, or be habitually slothful or negligent, or otherwise grossly misbehave himself towards the employer, the employer may discharge the apprentice from his service.
 - (c) That the employer may deduct from time to time of the wages to be paid to the apprentice such sums as may be reasonable for any loss of time occasioned by the absence of the apprentice from his employment for any cause other than the acts, defaults or commands of the employer, or as the result of statutory enactment.

These presents shall be handed over to the said apprentice on the completion of his terms of service herein, with a certificate of the Apprentice's due service endorsed thereon.

And for the true performance of all and every of the said covenants and agreements each of the said parties bindeth himself to the other by these presents.

SIGNED SEALED AND DELIVERED by the said—

Employer— Thomas Barton O Witness— W. Quilty
 Apprentice— S. Robinson O Witness— W. Quilty
 Father or Guardian— F. L. Robinson O Witness— J. C. Wallace

Indenture agreement with 15 year old Sydney Robinson for a five year apprenticeship with a boot and shoe manufacturer, dated 1 January 1931.

COPY

14th May 1936

AGREEMENT

An agreement made the first day of January 1936 between Thomas Bardon & Shoe Manufacturer of 27 Spring Street, Waverley, (hereinafter called the employer), and Sydney Robinson of 60 Watson Street, Waverley (hereinafter called the employee), whereby it is mutually agreed that the employee has not thoroughly learned the Heeler and Slugging Machines shown in the Indenture of Apprenticeship, made between these two parties and Fredrick Leonard Robinson, dated the First of January 1931, and in view of the above, it is agreed that the employer undertakes to teach, and employee undertakes to learn the Bottom leveller and Universal Channeller Machines in lieu of those aforementioned, subject to a time for the carrying out of this mutual agreement in accordance with a reasonable trade time for the learning of these Machines.

Signed..T.C.Bardon....

Witness..J.Le.Brocque...

Signed..S.Robinson...

Witness..F.E.Holmes...

Agreement dated 14 May 1936 with Sydney Robinson noting he has not thoroughly learned the machine shown in the indenture agreement.

was fortunate enough, he may have had the task of ‘heel scouring’ or ‘heel brushing’.

Justice Higgins considered that boys should not be employed unless apprenticed to learn ‘some substantial portion of the work of a factory’ and that the apprentice should be properly taught.²⁴⁶ An employer would be more likely to take an interest in an apprentice who planned to stay with him for a number of years as opposed to a boy who may not be in the factory tomorrow.

Justice Higgins was concerned about how the existing method of employing boy labour would develop:

as the men trained to make boots by handwork, from start to finish, pass from the trade, there is every prospect that in place of intelligent, skilled artisans, the Commonwealth will have thousands of anaemic, ill-developed, under-trained factory slaves—youths unfitted for any work but the feeding of some one insatiate machine, youths prematurely put under the strain of bread-winning, and soon to be replaced by other youths ...²⁴⁷

He thought that if boy labour remained unregulated and no training plan was put in place, the industry would be unstable. He accepted that there was a proper role for the employment of young boys, for example to perform light tasks that boys could perform just as well as journeymen. He said that some manufacturers in the industry accused others of not training their fair share of boys to become competent journeymen. Ultimately, it was not a sustainable practice if each boy in the factory was used for one process and when the time came that they required better wages, to cast them aside and replace them with new boys.

Justice Higgins thought that some employers opposed apprenticeships because ‘it is too difficult to get rid of an unruly apprentice, and that lads presume upon this difficulty and become lazy and insubordinate’.²⁴⁸

Meat trade apprenticeships

Another early example of a Court decision on apprenticeships was *W. Anglis & Company Pty Ltd v. Australasian Meat Industry Employees’ Union*.²⁴⁹ Justice Higgins considered a union application for a system of butchery apprenticeships ‘for lads in the abattoirs and in

shops', that are engaged in slaughtering and preparing meat for sale and human consumption. Justice Higgins granted the application and established the following wage rates for an apprentice:

Table 11: Wage rates for apprentices in abattoirs and shops

Year	Wages
1st year	20s per week
2nd year	30s per week
3rd year	40s per week
4th year	60s per week
5th year	70s per week
6th or 7th year	80s per week

Source: (1916) 10 CAR 465 at 505.

The award established a minimum of three and less than four years for a slaughtering trades apprenticeship, and for a term of not less than four or more than five years for a shop trade apprenticeship, and for both a term of not less than five years and more than six.

The slaughtering trade meant 'the trade of slaughtering skinning and dressing beasts for food or other purposes', and shop trade meant 'the trade of a butcher's retail shop including the preparation of small goods or scalding'.

In making the award Justice Higgins said that apprenticeships were:

the best means at hand to check the present slovenly fashion of picking up trades ... But the employers want to be free to employ unindentured lads, who "pick up" the business in a greater or less degree. They want to have lads, but not to have the obligation to teach them. They say that they cannot get apprentices—that the lads like to be free, and to go wherever they can get the best wages. It is not surprising when one reflects on the existing conditions. There is really no inducement held out to the lads to become indentured. But if this Court can prevent lads from entering on this business unless they become indentured, if the lads by means of apprenticeship get a recognised status and the prospect of better wages than in trades which have no apprenticeship, the position may be considerably changed. It is worth a trial. There is nothing in Australian industrial conditions more prejudicial to industry than the existing laxity in qualifying lads for a trade—than what I have described elsewhere as the

“pestilent manufacture of imperfect tradesmen”. I cannot accept the theory that Australian lads are intrinsically different from lads of other nations; they will learn a trade properly if proper conditions be devised. I propose to except from the minimum wage prescribed “apprentices” only—not boys; and to define “apprentices”.²⁵⁰

The lack of state apprenticeship laws

One commentator attributes Justice Higgins’ award and similar regulation in state awards as arising from the lack of state laws regulating apprenticeships. In some awards indentures were regulated, as well as requirements regarding technical training. In the *Carpenters and Joiners’ Award* of October 1924²⁵¹, it was provided that every apprentice shall during the second and third years of the apprenticeship attend at least two nights in each week the classes in joinery and building construction and architecture provided at a technical school. The employer pays the fees of apprentices who have satisfactorily attended the classes, and similarly in the *Electrical Trades* decision of 1923.²⁵² In the *Commercial Printing Award* decision of October 1925²⁵³ each apprentice was given the right after the first year of apprenticeship to attend a suitable technical school for four hours every week for a period of three years, without deduction of wages, and the employer must pay the school fees.

Low numbers of apprenticeships

It was not unusual for people at the time to deplore the lack of an important workable apprenticeship system. Statistics are limited, in New South Wales in 1906 there were 2130 male apprentices or improvers, a quarter in engineering trades, others in boot making, printing and baking. This compared with 24 000 adult males employed in factories. Apprentices and improvers comprised only 20 per cent of all boys employed in factories. Overall, 31 per cent of the male workforce was under 21 years.²⁵⁴

Stromback comments that “The relative insignificance of apprenticeships as a pathway into work is further illustrated by

noting that the figure of 2130 apprentices and improvers represents only 4 per cent of all boys in the relevant age group'.²⁵⁵

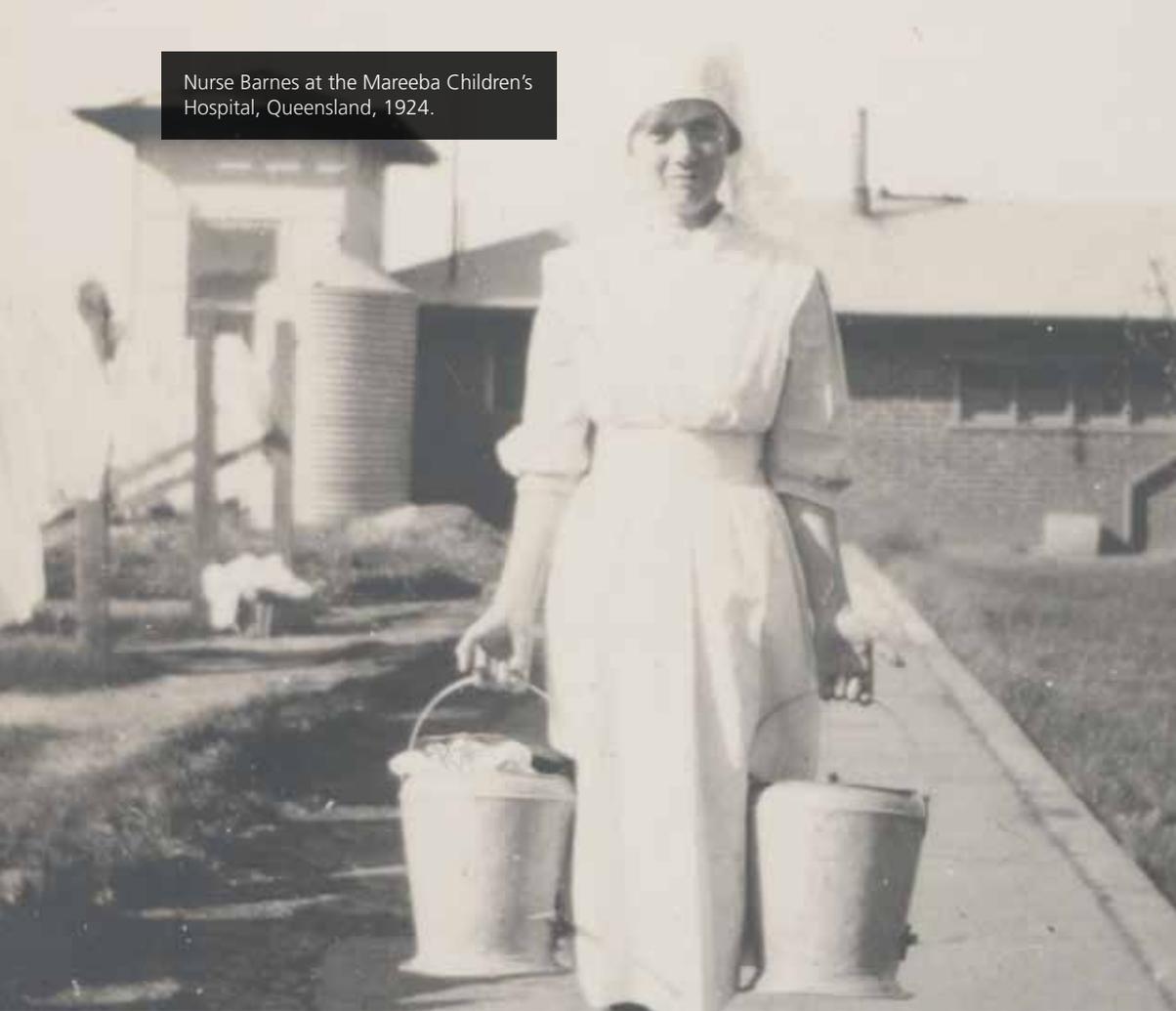
The apprenticeship system continues to operate in Australia today, and a system of 'traineeships' was also introduced in 1987 to promote training of young people in sectors of the economy not covered by apprenticeships. More recently the award modernisation process has extended traineeship wages or other appropriate award wages to all sectors of the economy where federally recognised training packages have been developed.

The Fair Work Australia website's History section contains examples of apprenticeship indentures, including in the boot manufacturing trade, and a guide for young people to a career in a boot manufacturing factory.

Summary

1. Young people were employed under adult wage rates, but usually under apprenticeship rates, junior rates, and 'improver' rates, which were lower than adult rates. This was perhaps a recognition of the high level of the Australian adult minimum wage.
2. Separate female apprenticeship provisions were included in awards where the work was female work.
3. The Court had an objective to promote training, particularly apprenticeships, but its powers were limited. It tried to regulate apprenticeship training contracts at a time when there was limited legislation on the subject.
4. The Court tried to protect adults from competition from cheaper young workers by restricting numbers of apprenticeships and sometimes not including junior rates in the award at all.

Nurse Barnes at the Mareeba Children's Hospital, Queensland, 1924.



PART 4

LEAVE AND OTHER ENTITLEMENTS

- 4.1 Hours of work
- 4.2 Introduction to leave entitlements
- 4.3 Sick leave and personal/carer's leave
- 4.4 Annual leave
- 4.5 Parental leave
- 4.6 Other award entitlements

Time line

1856	Eight-hour day introduced for Victorian stonemasons.
1900s	48 hours per week the standard, except for exploitative workplaces. No sick leave, parental leave, or annual leave. If an employee is absent on illness or injury he or she may eventually be dismissed.
1906	10 days paid leave of absence introduced into federal maritime award.
1907	First mention of sick leave in federal awards. Shearer entitled to absent himself from work if ill.
1913	21 days paid leave of absence in federal award for telegraph employees.
1922	Six days sick leave introduced into the federal Engineers' Award.
1927	44-hour standard week introduced into federal awards.
1935	Federal test case introduces one week's paid annual leave into federal awards.
1930s–70s	Gradual development in most federal awards of 10 days paid sick leave per year, which accumulates each year, with safeguards such as medical certificate requirements. Gradual development of four weeks annual leave entitlements.
1947	Federal test case introduces 40-hour standard week.
1973	Federal public servants granted 12 weeks paid maternity leave if 12 months service completed.
1979	Federal test case introduces a standard 12 months unpaid maternity leave into federal awards.
1983	38-hour standard week introduced by agreement if there are offsets.
1985	Federal test case extends 12 months unpaid parental leave to mothers who adopt children.
1990	Federal test case extends 12 months unpaid parental leave to fathers.
1990s	Three federal test cases combine sick leave and other forms of leave into 'personal/carer's leave'.
2001	Federal test case extends 12 months unpaid parental leave to certain casual employees.

4.1 HOURS OF WORK

An employee has to be at the workplace of his or her employer for a number of hours per day, and in early days this meant very long hours, perhaps 10 to 12 hours per day. The Australian colonies became known worldwide for an early and partly successful trade union campaign for '8 hours work, 8 hours leisure, 8 hours rest'. On 21 April 1856 an eight-hour day was introduced through an agreement between the stonemasons' union and employers in Melbourne, justified in part by the hot Australian weather making it difficult for building workers to work long hours.

The Arbitration Court also came to have an important role. When the *Harvester Decision* was handed down in 1907 ordinary hours of work for most Australians were 48 or 48¾ hours per week, or even longer in some areas where employees were less well treated (known as 'sweating'). This meant that most employees had to be at the workplace, and working, for 48 or more hours in every week. This usually meant that employees worked 8 or 8¾ hours each day on Monday to Friday, and 4¼ hours on Saturday. However, some industries worked at different times according to their needs (e.g. retail, mining).

One of the first important general decisions made by the Court was a decision in 1927 to establish a general 44-hour week for employees covered by federal awards. The *44 Hour Week Case*²⁵⁶ was gradually implemented in federal awards, and by arbitration if agreement was not reached. In 1934 for example sheet metal workers, and timber workers, were still working a 48-hour week.²⁵⁷

In 1947 the Court established award ordinary hours as 40 per week. This led to the end of working on Saturdays for many employees. It was the start of the Australian weekend, and set aside Saturday and Sunday for rest and recreation for many employees. Again it took some time before all awards were varied to provide for a 40-hour week. The *Pastoral Industry Award* was one of the last.

The *40 Hour Week Decision*²⁵⁸ was later upheld in arbitration in the 1970s, but industrial campaigns by trade unions led to agreement to introduce a 38-hour week in some industries. Eventually in 1983²⁵⁹ the Commission recognised that a 38-hour

Parents and their baby outside their new home in Adelaide, 1923.



week could be introduced into awards by agreement only, and only if there were 'cost offsets'. The 38-hour week became a legislated entitlement, averaged over certain stated periods.²⁶⁰

4.2 INTRODUCTION TO LEAVE ENTITLEMENTS

The beginning—the common law

Employees are required to attend work for the working week, which is now 38 hours a week. In 1907 it was 48 or $48\frac{3}{4}$ per week, or even longer in some areas. There were always days on which an employee did not have to work, for example Sundays, and public holidays such as Christmas Day and Easter. Public holidays became recognised in legislation.

What happened when employees became sick, or pregnant, or wanted to take a holiday?

Before awards applied, these questions were answered by the common law, which applied to all employees. Under the common law contract of employment there was and is no general right to take sick leave, annual leave or parental leave. In some very rare cases the written contract provided such rights. Prolonged absence from the workplace might eventually bring employment to an end.

Some examples of common law rights include a biscuit maker who worked in a factory in 1874 for 11 months and then became ill and could not work for five weeks. He had been supported during his illness by a special sick club established and encouraged by the employer. The employer refused to take him back into employment. The biscuit maker sued his employer in the courts, and the employer was not forced to take the employee back into employment, or to pay the employee for the five weeks he was ill. The employer was instead ordered to give him one week's pay as notice of termination of employment, and that was the end of his employment. He had lost his job because he was absent from work due to illness.²⁶¹

There were some special industries that had different entitlements. A seaman might have a right to be paid for a whole voyage even if disabled and unable to work during the voyage, because of the special circumstances of such work.²⁶²

Awards introduce new entitlements

Early in the twentieth century awards began to provide for additional rights to be absent from work. Two common forms of leave entitlements that were gradually included in awards were entitlements of employees to be paid while absent from work on account of illness or injury (sick leave), and for taking holidays (annual leave). A third form of leave was maternity leave. Under many early arrangements, women left the workforce when they married, on the assumption that they would have children, and become full-time homemakers. In 1979 a test case introduced 12 months unpaid maternity leave into awards as a standard provision. This was later extended to men (paternity leave), and to those who adopted children (adoptive leave), and these three combined forms of leave became known as parental leave.

The very gradual introduction of such entitlements probably considerably helped industry by allowing it time to adjust to the new costs. The cost impact was also lessened because the entitlements were at first quite low, only gradually increasing.

Sick leave (now known as personal leave), annual leave, and parental leave are now employee entitlements established by legislation, at present the *Fair Work Act 2009*.²⁶³ Their origin was in awards of the Commonwealth Court of Conciliation and Arbitration, and state tribunals, which gradually introduced these rights into awards and gradually turned them into general entitlements for nearly all employees.



Holiday makers picnicking and swimming on Shorncliffe beach, Brisbane, 1911.

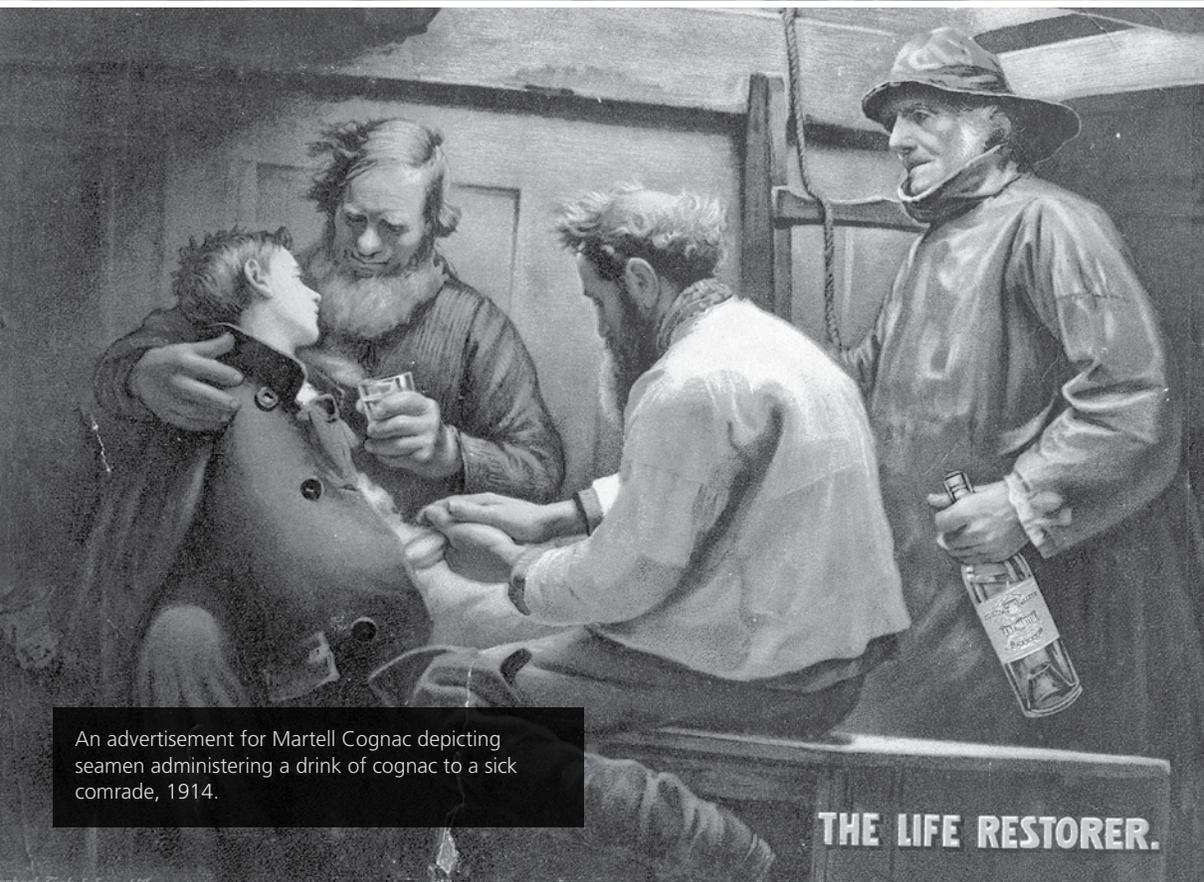


Promenading along the pier at Sandgate, Queensland, 1910.

Woman doctor giving primary school children their medical check-up, 1945.



An advertisement for Martell Cognac depicting seamen administering a drink of cognac to a sick comrade, 1914.



THE LIFE RESTORER.

4.3 SICK LEAVE AND PERSONAL/CARER'S LEAVE

Sick leave clauses were introduced into awards at different times and in different amounts. It took some time before sick leave clauses became 'standard'. There was no system of government-funded unemployment or other benefits until after World War II. There were some schemes that workers contributed to that provided financial support, known as 'friendly societies', which provided some money to sick or injured workers and their families. They were like insurance policies. However, these schemes only applied in some industries, not all workers were members, and the benefits were limited. Some families with a sick 'breadwinner' husband were on occasion left destitute. In 1907 lodges and friendly societies in Melbourne provided insurance for workers against sickness or accident in return for subscriptions of between 1s 1d and 1s 6d a week, and many workers were not able to keep up the subscriptions.²⁶⁴

Sick leave developed through five stages:

1. An employee might be absent from work due to illness or injury, and would not have a right to be paid for that absence. Prolonged absence might bring employment to an end.
2. A right to paid absence from work due to illness or injury was introduced by the inclusion of sick leave clauses in awards. Initially, this right was introduced into awards at different amounts of days, varying from two to six. The amount of days absence gradually increased over the decades, and requirements on the employee to prove actual sickness or illness were gradually introduced.
3. After the 1940s an accumulation clause was introduced into most sick leave clauses in awards, under which the amount of unused sick leave for one year was added to the amount of sick leave available the next year. Amounts of sick leave that accrued each year might increase by years of service.
4. Following a series of test cases in the 1990s, sick leave was merged with other forms of leave to be 'personal/carer's leave'.

5. Personal/carer's leave became a legislated entitlement.

Absence without payment

An example of the first approach to sick leave is found in one of the earliest awards made by the Court, the 1907 award made for shearers. This required a shearer not to absent himself from work except for illness.

- 1907 *AWU Pastoralists Award* at clause 6 provided for sick leave in the following terms:

The shearer not to absent himself from work excepting in case of illness, but if he be discharged, which he may be for breach of the agreement, or in case he leave before the completion of shearing owing to sickness, accident, or other unavoidable cause, or by the permission of the employer or his agent—such permission not to be given without the consent of a majority of the remaining shearers—he shall be paid in full for all sheep shorn by him after deducting fifteen shillings per week or any rate the majority of the shearers agree upon for his board, cook's remuneration included, such sum to be a first charge upon and to be deducted from the amount earned and placed to the credit of the Shearers' Mess Account.²⁶⁵

Introduction and gradual increase in amounts of paid sick leave

The first award entitlement to sick leave was introduced into the *Engineers' Award* in 1922. Sick leave was one of many variations to the award made during a highly contested case. No explanation for the introduction of sick leave is given, but it is in any event self-explanatory.

- 1922 The *Engineers' Award* 1922 introduced sick leave in the following terms:

No employee shall be entitled to payment for non-attendance on the ground of personal ill-health for more than six days in each year.²⁶⁶
[emphasis added]

The development of sick leave clauses was different in each award. One example is provided by the confectionery industry.²⁶⁷ The sick leave provisions in the national confectionery industry award gradually evolved:²⁶⁸

- 1931 'shall be paid not more than two days' sick pay.'
- 1941 'shall not be entitled to payment ... for more than four days in each year.'
- 1947 'shall not be entitled to payment ... for more than 44 hours in each year.'
- 1948 'shall not be entitled ... to leave in excess of one week of working time.'
- 1974 40 hours sick leave (one week) in the first year of service, 48 hours sick leave in the second year of service, 56 hours sick leave in the third year of service, 64 hours sick leave in the fourth and subsequent years of service.

As the clauses developed other provisions were added to them. The 1922 *Engineers' Award* clause, for example, did not provide for notification of the employer of an absence, or proof that the employee was ill or injured and unable to work. However, by 1948 the *Confectioners' Award* clause required an employee to notify the employer within 48 hours of his inability to attend for duty, the nature of the injury or illness, and its estimated duration, and also required the absent employee to prove that he was unable to work because of illness or injury. It also provided for accumulation of leave, so that sick leave that was not taken in one year would be available in the second year, with a maximum of two years accumulation. In that award the change to different amounts of sick leave depending on the years of service occurred in 1974.

Different industries have a different history. For example, the road transport industry history of sick leave includes the following:

1941 Six days sick leave was granted in *The Road Transport Workers (Oil Stores) Award*.²⁶⁹ Judgment by Piper CJ in *The Transport Workers Union of Australia v. The Vacuum Oil Co. Pty. Ltd.* Clause 18(f) provided six days sick leave as follows:

Where an employee becomes disabled by sickness of himself, proof of which is given to the employer by medical certificate or other satisfactory evidence he shall be entitled to absent himself from work for six days in all during any calendar year without deduction of pay.²⁷⁰

Each state system took a different approach, for example in 1951 the New South Wales Industrial Commission introduced paid sick leave and paid long service leave.

Test cases on personal/carer's leave

In the *Family Leave Case*²⁷¹, the *Personal/Carer's Leave Test Case*²⁷², and the *Family Provisions Case*²⁷³, sick leave was combined with other forms of leave to become a multi-purpose form of leave. This leave was also available, for example to enable an employee to take paid leave to care for a sick child, parent or similar relative, not just for personal sickness.

National legislation

After beginning as an award provision, and developing and remaining as such over the last 100 years, personal/carer's leave of 10 days leave per year of service eventually became a national legislated entitlement of employees.²⁷⁴ It only became an entitlement after awards had established it as a national basic entitlement for nearly all employees.

4.4 ANNUAL LEAVE

There were four main stages to the development of four weeks annual leave as a general entitlement for Australian employees:

1. Annual leave was included in awards infrequently, in special areas, and mainly by agreement.
2. In 1935 the Court began to arbitrate annual leave clauses in awards on a general basis.
3. Gradually a four-week standard developed.
4. The standard became a national legislated entitlement for employees.

Early annual leave clauses

As with sick leave, annual leave gradually developed in awards, and annual leave clauses were usually included in awards with the agreement of trade unions and employers. Until 1935 annual leave entitlements were only included in awards by consent, where unions and employers agreed to include them. Some early examples were included in the award that applied to passenger and cargo steamships, and for telegraphic employees.

1906 10 days leave of absence per year for a master and navigating officer:

Every master and navigating officer shall be entitled in each year to a continuous ten days' leave of absence on full sea pay at such time as the ship-owner shall determine.²⁷⁵

1910 21 days leave of absence per year for a master:

In each year every master and officer shall be entitled to leave of absence on full sea pay—the master for a continuous period of twenty-one days, or for such further period not exceeding twenty-eight days as may cover his usual voyage from departure to return to his home port, and the officer for

a continuous period of fourteen days. The leave of absence shall begin and end at the master's or the officer's home port.²⁷⁶

1913 21 days leave of absence for men employed in making, installing, repairing and maintaining telegraph and telephone apparatus, and employed by the Postmaster-General and the Public Service Commissioner. Under the *Public Service Act 1901* the employer had a discretion to grant this leave, and Justice Higgins said:

It seems to be expedient to give the officers a right to this privilege, and not to leave it in the discretion of the chief officers.

The claimant asks that this and other like privileges shall be extended to temporary employees. I think that such officers should, in the case of a holiday during their service, get the holiday or else double pay; but I do not see my way to prescribe for leave of absence, or sick leave, or furlough for officers who may be in the service for a very brief term.²⁷⁷

The clause provided:

Leave of Absence

6. Officers shall be entitled to leave of absence for recreation for 18 days in each year exclusive of Sundays and holidays.²⁷⁸

In *A new province for law and order*, Henry Bournes Higgins wrote that such leave had been granted in 'certain exceptional cases', namely in the case of masters and officers of ships, and postal workers, but that it applied only after a certain length of continuous service, and not to casual or temporary employees.²⁷⁹ *A new province for law and order* was a series of articles written for the *Harvard Law Review*, which explained the work of the Arbitration Court. It is the most widely read guide to the early court ever published.

A test case on annual leave

In 1935 the Commonwealth Court of Conciliation and Arbitration decided that annual leave entitlements should be included in awards covering reasonably prosperous industries, regardless of whether trade unions and employers were in agreement.



Picnickers at Victor Harbour, South Australia, 1910.

1935 Commonwealth Court of Conciliation and Arbitration grants one week's annual paid leave to the printing industry in *The Printing and Allied Trades Employers Federation of Australia v. The Printing Industry Employees Union of Australia (Commercial Printing Judgment)*.²⁸⁰ A principle was established that leave should be granted in reasonably prosperous industries. Chief Justice Dethridge said:

Unless an industry is finding difficulty in maintaining itself, in my opinion the institution of paid annual leave is a very desirable boon for employees. Although at first it might cause some increase in labour cost, this probably would not be commensurate with the shortening of the working year and

Employees of Brighton Cement and their families on a picnic at Long Gully, Mount Lofty Ranges, South Australia, 7 April 1917.



ultimately might be virtually balanced by increased vigour and zeal of employees. The publication already referred to—*Holidays with Pay*—at p. 82 has the following passage—“It would undoubtedly be a fallacy, even from a purely economic point of view, to regard paid holidays as a burden to the employer for which he receives no return. On the contrary, he obtains a very real return by finding his employees fresh and eager for work when they return from their holidays. He reaps an advantage in higher output, fewer spoilt goods, less absence, less sickness and fewer accidents. It is of course difficult to reckon these advantages in figures, but that they are nevertheless real is shown by the testimony of many employers who have themselves spontaneously introduced annual holidays with pay”.

The introduction of annual leave with pay should not however be made in an industry unless at the time there is a reasonable certainty of stable prosperity in the industry. As a remedy for unemployment it would, like the reduction of weekly working hours almost certainly be valueless, and it might indeed be harmful. As I have already said, this industry has I think recovered from the depression, but its restoration is recent and may not be lasting. For the reasons already stated I concluded that an increase in the hand compositor’s margin can safely be made without delay, but if the innovation of annual leave is made at all it should only be made when experience has shown that normal prosperity in the industry has become stable. I have decided to prescribe annual leave for a week with

full pay for the employees in this industry, but to defer its operation until the expiration of a year from the commencement of the award. The prescription will then begin to operate unless the employers concerned satisfy a judge of the Court that the financial position of the industry then will be such that such operation will imperil the maintenance of the industry.²⁸¹

- 1941 This was followed by Justice O'Mara in 1940²⁸² and 1941. In *Amalgamated Engineering Union v. The Metal Trades Employers Association* one week of annual leave was granted. Justice O'Mara said:

The annual leave to be allowed is seven consecutive days including non-working days but excluding public holidays. Christmas Day, Boxing Day and New Year's Day are public holidays and under weekly hiring these will be allowed without loss of pay and I am considering the case in which annual leave will be allowed in a period in which those holidays are observed. If an employee is allowed annual leave from and including 25th December, 1941 to and including 3rd January, 1942 he will receive the leave prescribed by the award, that is seven consecutive days including non-working days but excluding public holidays.²⁸³

- 1944 The New South Wales *Annual Holidays Act 1944* came into force, providing two weeks paid leave for workers not covered by a federal award. This was the first provision of its type in Australia. Later in the year the *Metal Trades Award* made by the Commonwealth Arbitration Court made two weeks of annual leave the standard.

Gradual development of a four-week standard

- 1958 The New South Wales Government granted three weeks annual leave by the *Annual Holidays (Amendment) Act 1958*, assented to on 24 November 1958.
- 1963 Following campaigns by trade unions, the Commonwealth Conciliation and Arbitration Commission adopted three weeks annual paid leave as standard in various cases. For example, the *Liquor Industries (Yeast and Vinegar Section)*

Award 1960 provided for annual leave at clause 19(a) as follows:

Each employee on the completion of twelve months continuous service shall be granted ten ordinary working days leave of absence on full pay. Provided however that where an employee completes such twelve months continuous service on or after the 30th day of November, 1963, he shall be allowed fifteen ordinary working days leave instead of the ten consecutive ordinary working days prescribed herein.²⁸⁴

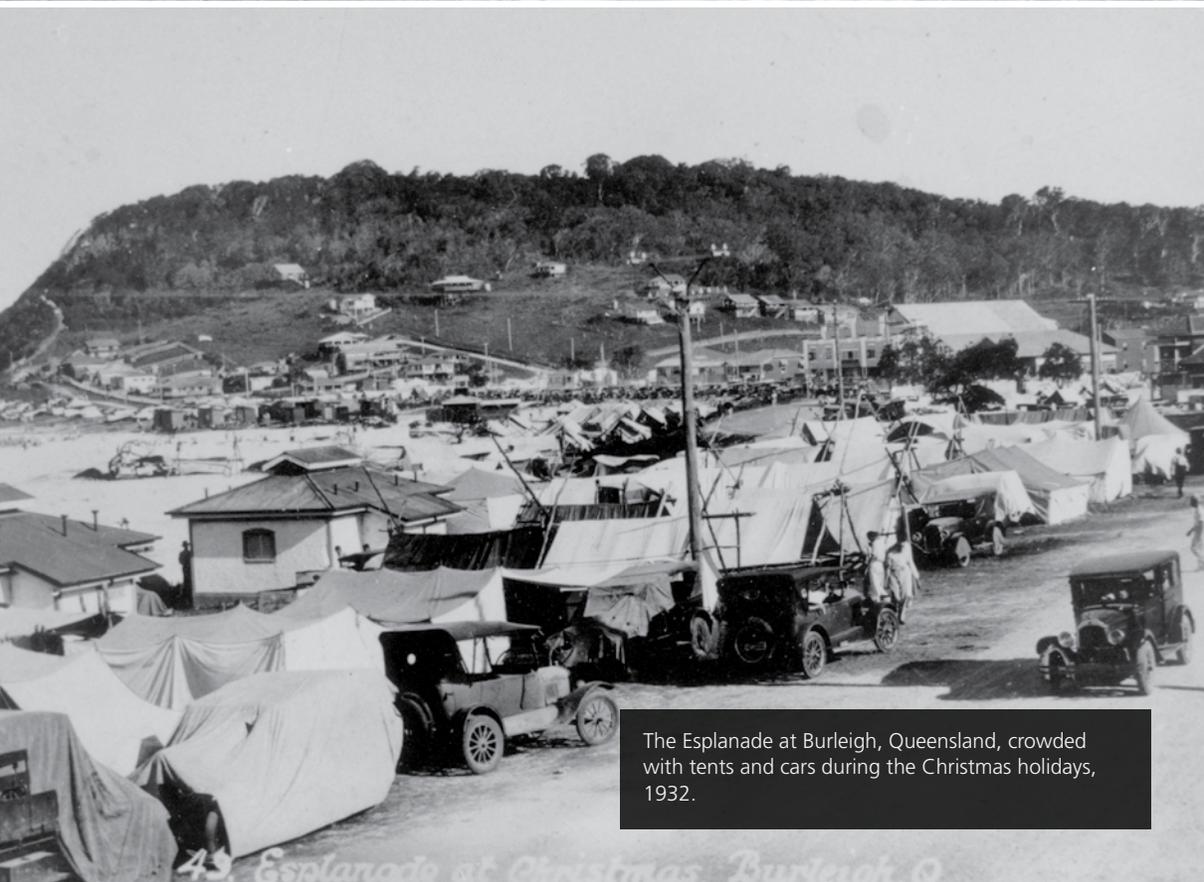
- 1973 Four weeks annual leave for public servant union members granted by the federal Labor Government.
- 1974 The New South Wales *Annual Holidays Case* of 1974²⁸⁵ resulted in four weeks annual leave becoming standard. In a test case arising from an application by the Australian Workers' Union seeking variation of 69 awards, and with which an application by the Electrical Trades Union in respect of the *Electricians &c. (State) Award* was heard jointly, the New South Wales Industrial Commission made a general ruling that on application made to it, the commission would insert into awards provisions entitling workers who were entitled to three weeks to four weeks' annual leave.

National legislation establishes a four-week standard

After beginning as an award provision, and developing and remaining as such for a century, paid annual leave of four weeks for each year of service with the employer eventually became a national legislated entitlement of employees.²⁸⁶ It only became that after awards had established it as a national basic entitlement for nearly all employees, with some support from state legislation.



Camping at Rottnest Island, Western Australia, 1920.



The Esplanade at Burleigh, Queensland, crowded with tents and cars during the Christmas holidays, 1932.

49 Esplanade at Christmas Burleigh Q

Mrs GG Nicolaides at her home in Unley, South Australia,
with her baby daughter Loulla, and Nurse Stacey, 1921.



4.5 PARENTAL LEAVE

Maternity leave involves an employee maintaining a job following the birth of a child, while being on leave for 12 months. The idea of such leave arose when it was accepted that women need not leave their job on marriage. Women were usually expected or required to leave their job on marriage in the earlier parts of the twentieth century.

The development of campaigns for maternity leave reflected the growing dissatisfaction with the traditional position, the growing support for a more equal approach towards men and women in the workforce, and the simple fact that in growing numbers women married but remained in their jobs. Then came the problem of how to reconcile pregnancy, childbirth, and a family life, with the demands of the workplace. There were six main stages to the introduction of parental leave:

1. Award-by-award, and sector-by-sector, various arrangements were made for women to take unpaid maternity leave. There was no consistency in these arrangements, and most women did not have access to unpaid maternity leave.
2. In 1979 a test case in the Australian Conciliation and Arbitration Commission introduced one year's unpaid maternity leave, in a standard award provision to be introduced into all awards.
3. In 1985 a test case in the Australian Conciliation and Arbitration Commission extended these provisions to women who adopt a child, as opposed to maternity leave being a right only for natural mothers.
4. In 1990 a test case in the Australian Industrial Relations Commission extended these provisions to men. Men and women each had a right to one year's unpaid parental leave, paternity leave for men, and maternity leave for women.
5. These provisions were granted to certain casual employees by a test case in the Australian Industrial Relations Commission in 2001.
6. These provisions gradually became a legislated entitlement.

Sector-by-sector maternity leave arrangements

An example of the first approach, a measure introduced for a particular sector, was a decision in 1973 to grant federal public servants maternity leave.

- 1973 First paid maternity leave granted to federal public servants (*Maternity Leave (Australian Government Employees) Act 1973*). The Act entitled employees to between six and 52 weeks of leave, including 12 weeks paid leave, if they had completed 12 months continuous employment with the employer immediately before the start of the leave.

Test case on maternity leave

In 1979 a test case introduced a standard 12 months unpaid maternity leave clause.

- 1979 The Australian Conciliation and Arbitration Commission introduced one year's unpaid maternity leave. *Maternity Leave Case*.²⁸⁷ The Australian Conciliation and Arbitration Commission set a standard of 12 months unpaid maternity leave for permanent employees. The entitlement included a 12-month qualifying period for full and part-time workers and a maximum total maternity leave provision of 52 weeks. It also included a compulsory period of six weeks' leave immediately following confinement; provision for transfer to a 'safe job' until maternity leave commences; and access to special maternity leave where the pregnancy terminates, other than by the birth of a living child. The maternity leave standard was soon extended to all federal and state awards (covering around 70 per cent of workers), but paid maternity leave was still largely confined to the public sector.

A test case establishes adoption leave

In 1985 a test case conducted in the Australian Conciliation and Arbitration Commission established maternity leave for mothers who adopt children.²⁸⁸

A test case establishes paternity leave

In 1990 a test case conducted in the Australian Industrial Relations Commission established paternity leave, and overall established parental leave for males and females.

1990 The Australian Industrial Relations Commission extended parental leave rights to men (*The Federated Miscellaneous Workers Union of Australia v. Angus Nugent and Son Pty Ltd & Others (Paternity Leave Case)*).²⁸⁹ The Commission granted fathers the right to take unpaid leave to become the primary care-giver for their newborn or newly adopted child. It also granted employees the right to negotiate part-time work arrangements with their employers. Before 1990, paternity leave existed only in the public service and in those industries covered by a few isolated awards.

A test case establishes maternity and paternity leave rights for certain casual employees

In 2001 a test case decision extended parental leave rights to certain casual employees.

2001 The Australian Industrial Relations Commission extended parental leave rights to casuals (*Shop, Distributive and Allied Employees Association & Others*).²⁹⁰ The Commission extended the right to parental leave to 'eligible casual employees'. These employees are described as those with ongoing associations with their employers and whose employment is not limited to short periods. Such casual employees must also have reasonably predictable working patterns and regular earnings with expectations of ongoing

employment. Parental leave includes maternity leave, paternity leave and adoption leave.

2001 Australian Catholic University was the first employer to provide one year's paid maternity leave (Agreement A1084, part 9).

Parental leave becomes a national legislated entitlement

After beginning as an award provision, as a result of a test case, 52 weeks of unpaid maternity and paternity leave became a national legislated entitlement.²⁹¹ It only did so after test cases in the Commission established it as a national entitlement for nearly all workers.

4.6 OTHER AWARD ENTITLEMENTS

Many other award entitlements have been developed within the conciliation and arbitration systems since 1904. These include requirements to pay special extra payments for weekend work, or work after ordinary hours, or on public holidays (known as 'penalty rates'), different types of allowances, different types of leave (such as jury service leave and Aboriginal traditional leave), and provisions relating to termination of employment, and redundancy. It is not possible to deal here with the history of all award provisions.²⁹²

Summary

1. Annual leave and parental leave entitlements were introduced into awards by one or more test cases.
2. Sick leave was developed across awards not through a test case but by negotiation, and conciliation and arbitration on an award-by-award basis. As a result the entitlement varied to some extent by award.
3. While a minimum wage developed in the early days of arbitration, all forms of leave were slower to develop.
4. Paid leave provisions replaced the common law position that the employer is responsible just for payment for time worked. Paid leave provides an employee with an entitlement to payment by the employer for a limited and stated period without work being performed.
5. These leave provisions are now an entitlement by Act of parliament.

BIOGRAPHIES

1. The Hon Henry Bournes Higgins (1851–1929)—by Emeritus Professor Joe Isaac AO, Melbourne University

Henry Bournes Higgins was a lawyer, politician, justice of the High Court of Australia, and the pioneer president of the Commonwealth Conciliation and Arbitration Court. In the dual role of High Court justice (1906–29) and Arbitration Court president (1907–21), he had a significant impact on the Australian economy. In the former, he participated in the extension of the jurisdiction of federal arbitration, which made national wage policy possible; in the latter, he formulated wage fixing principles that were adopted by tribunals for over 50 years.

Higgins was born on 30 June 1851 in Newtownwards, County Down, Northern Ireland, second son of John Higgins, a Methodist minister, and Anne nee Bournes. He was one of six sons and two daughters who ‘grew up in an atmosphere of evangelical piety and genteel frugality’. His early education was steeped in the Bible, Greek and Latin. He left school at the age of 15 to work in a drapery store and later in a tailor’s shop. Concern for the health of the children following the death of his older brother of consumption, his parents decided to migrate to Melbourne, arriving on 12 February 1870. He matriculated and commenced university studies while school-teaching and private tutoring. His academic performance was outstanding. He won exhibitions in English and economics, the latter under WE Hearn. He graduated LLB in 1874 and MA in 1876. In 1885, he married Mary Alice Morrison. Their only child, Mervyn, was killed in the war in 1916. His choice to go to the Victorian Bar brought him financial success and opened the door to a political career. He was elected as an independent to the seat of Geelong in 1894. He later participated in framing the Commonwealth Constitution as a member of the Australasian Federal Convention in which his role was crucial in securing the industrial power for the Commonwealth. He was later to interpret

this power as justice of the High Court and to apply it as president of the federal tribunal.

Although not a member of the Labor Party, he was invited to be Attorney-General in the short-lived Watson ministry. Following his appointment to the High Court in 1906, it was understood that he would head the newly established Conciliation and Arbitration Court to succeed the reluctant first occupant, High Court Justice O'Connor, in 1907. He resigned this position in 1921 in protest at what he saw as an unwarranted interference by Prime Minister Hughes in the arbitration process.

The subtitle of one of his biographies, 'The Rebel as Judge', was apt. He was a political radical and a social reformer whose ideas went against the mainstream values of his profession—he was opposed to the Federation Bill, he supported Irish Home Rule, he opposed Australia's participation in the Boer War, he lacked enthusiasm for trade protection, and he championed workers and trade unions against the power of employers.

In his role as industrial arbitrator, he is best remembered as an innovative and controversial judge. The employers were particularly hostile to the concept of compulsory arbitration, which they saw as interfering with their right to manage. But the language of his judgments added to their discomfort and they spent the first 20 years of the Court's existence challenging its legal jurisdiction. He was familiar with Marxian literature and wrote of 'classes' to which people belonged, the 'war between the profit-maker and the wage-earner', and labour being regarded as a 'commodity'. He saw the Act as 'designed for the benefit of employees ... to secure for them something which they could not get by individual bargaining'. But he did not regard the role of the Court 'to favour or to condemn any theories of social reconstruction'. His somewhat disdainful references to the laws of supply and demand have led some to comment pejoratively about his grasp of economic principles. At a time when welfare provisions for the needy were minimal, he emphasised social considerations in fixing the wage of unskilled workers, and made no bones about the unbalanced bargaining power of individual workers. There was an 'unequal contest' inherent in the laws of supply and demand: 'The power of the employer to withhold bread is a much more effective weapon than the power of the employee

to refuse to labour'. He saw the fixing of the minimum wage as analogous to the provision of health and safety requirements that could not be left to individual bargaining.

However, the principles on which he determined the basic wage, relative wages and women's wages were not radical by the standards of the day. They conformed in substance to the labour market norms of the times. The notion of a 'living wage' to meet the basic needs of a family unit had been accepted by the New South Wales tribunal ahead of his 1907 *Harvester Judgment*, which determined what was a 'fair and reasonable' wage for unskilled workers. The concept was not new in other countries and had had the authority of Pope Leo XIII's encyclical in 1891.

Although he regarded the basic wage as 'sacrosanct' even when it resulted in the closing down of a firm unable to pay it—'the needy employer should pay at the same rate as his rich rival'—he did not ignore the economic capacity of an *industry*. His approach recognised implicitly the relevance of efficient resource allocation. Further, although he justified consistency between awards as necessary for industrial peace—'comparisons breed unnecessary restlessness, discontent, industrial trouble'—it could also be justified in terms of allocative efficiency. Moreover, 'fairness' in relative wages, meaning in essence equal pay for equal work, had been given respectability by Alfred Marshall and AC Pigou. As for women's wages, Higgins accepted the convention that the woman's lot was to be a housewife, and that those in the workforce should be paid a fraction of the male basic wage based on the needs of a family unit; while those in competition with men in traditional male occupations should be paid the full male rate. His views on industrial arbitration and wage principles, published in 1922 under the title *A new province for law and order*, earned him a DLitt from the University of Melbourne.

Unwittingly, Higgins established the mechanism for national wage policy by regarding the basic wage as a component—'foundational element'—of all wages. Work calling for extra work requirements like skill and responsibility attracted a 'margin'. When cost of living adjustments came to be made for inflation during and after World War I, they were applied only to the basic wage component. As the coverage of the federal tribunal grew and indirectly influenced the basic wage determination of state

tribunals, a change in the basic wage effectively generated national wage movements. By 1931, this development made it necessary for macro-economic considerations to enter into the determination of the basic wage, a principle that continued with the merging of the two components in the ‘total wage’ decision of 1962.

Although of ‘delicate’ health in childhood, he lived to the age of 77. He died on 13 January 1929 in Dromana near Melbourne.

References

Henry Bournes Higgins, *A new province for law and order*, Constable, London, 1922.

Nettie Palmer, *Henry Bournes Higgins: a memoir*, Harrap, London, 1931.

John Rickard, *H.B. Higgins, the rebel as judge*, Allen & Unwin, Sydney, 1984.

Reprinted from J.E. King, ed., *A Biographical Dictionary of Australian and New Zealand Economists*, Edward Elgar (Cheltenham UK) 2007, pp. 138–141.

2. Charles Cameron Kingston (1850–1908)

Charles Kingston was a South Australian radical, lawyer and politician. He drafted a Bill in 1890 which was later followed in the *Commonwealth Conciliation and Arbitration Act 1904*. The 1904 Act established the Arbitration Court. He was therefore the inventor of the main Australian model of arbitration.

Kingston then proposed to the first Constitutional Convention held in 1891 that the Australian Constitution contain a power to enable the Australian Parliament to legislate to establish courts of conciliation and arbitration. This proposal was based on his 1890 Bill. His proposal was accepted in 1898 in a modified form, and the power was used by the Australian Parliament to establish the Arbitration Court in 1904.

Kingston was elected to the Australian Parliament in the first federal election in 1901 after six British colonies in Australasia federated to become the new nation of Australia. He ran for

election as a strong supporter of protection for Australian industry. As a member of Parliament, and Minister, he drafted the first Conciliation and Arbitration Bill. He resigned due to ill health.

He was also responsible for guiding the first tariff legislation through Parliament, and was one of the leading figures promoting Federation and the establishment of Australia as a nation. He was the dominant figure in South Australian politics before he joined the Australian Parliament, and strongly supported votes for women in South Australia.

His marriage was an unhappy one, and he was rumoured to be promiscuous and improper in his private life at a time when such matters could cause considerable scandal and criticism. He could be wild in his behaviour towards political enemies, and in his language. In 1892 he procured some pistols and challenged an opponent, Sir Richard Baker, to a duel. He was arrested by police, tried, and bound over to keep the peace.

3. The Hon Alfred Deakin (1856–1919)

Alfred Deakin was arguably the most influential of the early Prime Ministers and politicians of Australia. He was Prime Minister of Australia three times—from 1903–04, 1905–08 and 1909–10. After Edmund Barton resigned, he led one of the three important political groupings in Parliament, the Liberal Protectionists. He was a key figure in the establishment of Australia as a nation in the campaign for Federation, in drafting the Australian Constitution, and in the establishment of most of the early Australian institutions and laws, including arbitration.

He was the most influential political supporter of the establishment of the Arbitration Court. His reasons for supporting it included the need to prevent the barbarous remedy of strikes and lock-outs, and to introduce justice into the outcome of industrial conflict. He introduced and explained the Bill which became the *Commonwealth Conciliation and Arbitration Act 1904*. He had lost power as Prime Minister to George Reid when it finally passed in 1904.

Like Kingston, he was elected to the first Australian Parliament after Federation as a supporter of protection for industry (tariffs) and was probably only second to Edmund Barton amongst the campaigners for Federation.

Like many of his day he considered himself an independent Australian Briton, and while a leading politician before and after Federation wrote anonymous articles on Australian political events for British newspapers: the *Morning Post*, and later in 1904–5 for the *National Review*. His cleverness and humour showed itself in his first campaigns for political office in the Victorian Parliament in 1879. He listened to the speech of his opponent at one country town, and then at the next spoke first and repeated the speech, twisting it to his own views. His opponent, Harper, arrived and gave his standard speech and was then accused of stealing Deakin's. He had many achievements as a member of the Victorian Parliament including irrigation and the establishment of the important agricultural sector of Mildura, and the Shops and Factories Act of 1895.

A nickname for him was 'Affable Alfred', because he was pleasant to deal with, but he was also a most effective political schemer and strategist. One of his most celebrated rivalries was with George Reid. Reid was a free trader, while Deakin supported the introduction of tariffs, but they appeared to disagree on many other issues. Deakin was best described as a liberal, and while willing to work with Labor on reform and development, was also opposed to the binding nature of its caucus rules, and an opponent of what could be described as socialist measures. His Liberal Protectionists eventually joined with the Free Traders to form an anti-socialist grouping in 1909.

Privately he loved the arts, and for a time wondered if literature would be his career. He was perhaps an essentially private man, and few shared his inner life. He was one of the few Australian Prime Ministers to leave behind a body of writing of any significance.

4. John Christian Watson (1867–1941)

John Christian Watson, known as Chris Watson, was elected to the Australian Parliament in 1901, and was immediately accepted as the Labor Party's first leader. As the leader of one of

the three main groupings in Australia's first national Parliament, he played an important role. He supported Alfred Deakin's Liberal/Protectionist Government but then combined with George Reid to defeat that Government when it refused to bring railways under the Conciliation and Arbitration Bill. Watson became Prime Minister on 27 April 1904, but his Government fell on 12 August over the same Bill. This was the end of the first national Labor Government in the world.

Labor decided to support an arbitration court as a binding Caucus decision after the 1901 election, and strongly supported the Bill as it progressed through Parliament. Labor saw the Bill as a much needed measure to rectify 'sweating' or oppression of workers in employment and in labour disputes, and as a rational means of settling disputes. They wished to improve the bargaining position of workers, who had lost the disputes known as the Great Strikes. However, Labor also had strong views on issues such as the need for state railway workers to be covered by the Bill, and for the Bill to provide for preference to union members in employment. These issues divided the Parliament and led to the fall of several Governments.

5. Sir George Houstoun Reid (1845–1918)

George Reid was one of the most charismatic early Australian politicians, and was Prime Minister in 1904–05. He led one of the three main political groupings in the first Australian Parliaments, the Free Traders. They were elected on a platform of opposing protection for industry (tariffs), and were opposed by Edmund Barton and Alfred Deakin's Liberal Protectionists, who believed that a tariff should be introduced. A tariff was introduced in 1902, but it was a hard fought compromise.

George Reid introduced a Bill into the NSW Parliament which would have required compulsory investigation of industrial disputes. The Bill was rejected by Parliament. Reid was never clearly an opponent of an arbitration court. When he spoke on the Conciliation and Arbitration Bill in Parliament his speech consisted of both formal support for the Bill, and criticisms of it. He was

known as ‘Yes/No’ Reid for speaking both for and against Federation, and his behaviour on the arbitration court was somewhat similar. When he became Prime Minister, however, the Bill passed with his support, whether for reasons of political calculation or principle, or more probably some combination of both. He was a consistent opponent of Alfred Deakin, and the enmity between them made it eventually impossible for him to continue in politics after the non-labor groupings in Parliament, the Liberal Protectionists and Free Traders, fused to become one united liberal/conservative grouping in 1909.

Reid was appointed Australia’s first High Commissioner in London in December 1909, and in 1916 was elected as a member of the British House of Commons. He wrote an unimpressive autobiography ‘My Reminiscences’ and died in 1918. He is remembered for establishing a specifically anti-socialist political grouping for the first time in national Australian politics, for his opposition to tariffs, and for his wit and debating skill.

6. Sir Charles Powers (1853–1939)

Charles Powers was admitted as a solicitor in 1876 in Queensland, and then became a member of Queensland Parliament in 1888 as an independent, supporting votes for women and other causes. After becoming crown solicitor for the Commonwealth in 1903, he was appointed to the High Court in 1913. He almost immediately began to assist Justice Higgins on the Arbitration Court. He disagreed with Higgins on some issues, and became President of the Court in 1921 when Higgins resigned after disagreements with William Morris Hughes, the Prime Minister. He handed down the important 1921 *Gas Employees Case* in which he refused to increase the level of the minimum wage to the amount found by the 1919 Royal Commission into the Basic Wage to be necessary to support a family. He refused on the grounds that the economy, the modern ‘steam engine’ of Australian industry, could not sustain such an increase.

This decision made explicit the fourth important leg of Court decision making on the minimum wage. Justice Higgins had

established a 'living' or 'family' wage based on an assessment of the household needs of a family budget, and had to some extent indexed the wage in line with inflation to maintain its actual buying power, and had introduced 'margins', extra payments for more skilled employees. Justice Powers found that economic sustainability, not humanitarian arguments, had to determine the case before him. The minimum wage system now had a general economic impact because it applied to most employees, and this had to be openly and fully addressed. Subsequent cases on the minimum wage would have to have regard to all four factors, and the weight given to each would vary according to the circumstances.

Sources for biographies 2–6

Sources cited and footnoted earlier including Hansard, and Constitutional Convention debates. *Australian Dictionary Of Biography*, article on Kingston by John Playford, on Deakin by R Norris, on Reid by WG McMinn, on Watson by Bede Nairn, on Powers by Colin Forster; *And Be One People*, by Alfred Deakin, (ed.) by Stuart Macintyre, Melbourne University Press 1995; *Alfred Deakin: A Biography*, by JA La Nauze, Angus and Robertson 1979; *The Crisis in Victorian Politics, 1879-1881: A Personal Retrospect*, by Alfred Deakin, Melbourne University Press, 1957.

FURTHER READING

A full bibliography is set out in J Isaac and S Macintyre (eds), *The new province for law and order*, Cambridge University Press, Port Melbourne, 2004. This book is a good starting point for any attempt to understand the story of conciliation and arbitration in Australia.

There are many excellent general histories of Australia, but not all deal with the history of the Commonwealth Court of Conciliation and Arbitration in any real sense. Five general history books that do deal with the 1890s strikes or the Court in highly readable terms are:

G Greenwood (ed), *Australia: a social and political history*, Angus & Robertson, 1955, chs IV and V.

B Fitzpatrick, *The British Empire in Australia*, Melbourne University Press, 2nd edn, 1949.

S Macintyre, *A concise history of Australia*, Cambridge University Press, 1999, chs 6 and 7.

S Macintyre, *The Oxford history of Australia, Volume 4: The succeeding age*, Melbourne, Oxford University Press, 1993.

R Ward, *A nation for a continent*, Heinemann, Richmond Victoria, 1977.

There are readable biographies of prominent figures in the days of early arbitration including Deakin, Higgins and Watson, which include accounts of their important role in the early days of arbitration:

J Rickard, *H. B. Higgins: the rebel as judge*, Sydney, George Allen & Unwin, 1984.

JA La Nauze, *Alfred Deakin: a biography*, Angus & Robertson, Melbourne, 1979.

S Macintyre and R Mitchell (eds), *Foundations of arbitration*, Oxford University Press, 1989 is one of the most important books published on the origins of the Australian conciliation and arbitration model.

There are many academic articles on the *Harvester Decision*. The following are some of them:

J Isaac, *The economic consequences of Harvester*, Australian Economic History Review, vol. 48, no. 3.

C Forster, *Indexation and the Commonwealth Basic Wage 1907–22*, *Australian Historical Studies*, vol. 19.

Two general articles on the development by the Court of a minimum wage are:

K Hancock, ‘The first half-century of Australian wage policy—part II’, *Journal of Industrial Relations*, vol. 21, 1979, and

K Hancock, ‘The first half-century of Australian wage policy—part I’, *Journal of Industrial Relations*, vol. 21, 1979.

The introduction in 1855–60 of self-government by elected Parliaments in each of the Australian colonies except Western Australia led to the gradual development of colonial employment legislation, eventually including various forms of conciliation and arbitration. An account of the introduction of self-government can be found in R Hamilton, *Colony: Strange Origins of One of the Earliest Modern Democracies*, Wakefield Press, Kent Town, 2010.

NOTES

Introduction

- 1 These protections are currently contained in the *Fair Work Act 2009*. They were also provided for in the Work Choices legislation, and before that in awards made under the *Workplace Relations Act 1996*, the *Industrial Relations Act 1988*, and the *Conciliation and Arbitration Act 1904*. However, the Work Choices safety net was described by Professor Isaac as ‘pruned’.
- 2 W Vamplew (ed.), *Australians, Historical Statistics*, Fairfax, Syme & Weldon Associates, 1987, p. 146.
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Part 1—‘Waltzing Matilda’ and the great strikes: The origins of the Commonwealth Court of Conciliation and Arbitration

1.1 *The great strikes of the 1890s*

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- 7 (1905–07) 1 CAR 62 at 98, 20 July 1907.
- 8 (1907–08) 2 CAR 1, November 1907.
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- 25 Mediation is a similar process sometimes used in place of conciliation, and some argue it is a distinct means of settling disputes, with less intervention from the third party.
- 26 New South Wales, Royal Commission on Strikes, op. cit., p. 233, para 6185.
- 27 R Hamilton, op. cit. The phrase ‘democratic laboratory’ comes from M Simms.
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- 31 O Foenander, *Better employment relations and other essays in labour*, Law Book Company, Sydney, 1954, pp. 17–18.
- 32 US Supreme Court, *Morehead v. Tipaldo*, 298 US 587 (1936). See <www.dol.gov>, accessed 30 August 2010.

1.2 The Australian Constitution and arbitration

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- 34 Official Record of the Debates of the Australasian Federal Convention, Third Session, Melbourne, 20th January to 17th March 1898, 2 vols, Government Printer, Melbourne, 1898, 25 January 1898, p. 181.
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- 36 *ibid.*, 25 January 1898, p. 208.
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1.3 Australia's own experiment: The Conciliation and Arbitration Act

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- 41 J Fleming & P Weller, *The ballot is the thing*, in M Simms (ed), op. cit., p. 132.
- 42 Australia, House of Representatives, 7 July 1903, p. 1763.
- 43 G Sawyer, op. cit., p. 20; See Hansard, House of Representatives, 6 August 1903, p. 3205.
- 44 Australia, House of Representatives, 1901–1904, p. 2862.
- 45 Conciliation and Arbitration Act—2nd Reading Speech 1901–1904, p. 2864.
- 46 Australia, House of Representatives, 1901–1904, pp. 2861–2.
- 47 Australia, House of Representatives, 30 July 1903, p. 2864.
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- 50 *ibid.*, p. 3185.
- 51 *ibid.*
- 52 *ibid.*, p. 3183.
- 53 *ibid.*
- 54 *ibid.*
- 55 *ibid.*, pp. 3183–4.

- 56 *ibid.*, p. 3184.
- 57 *ibid.*, p. 3185.
- 58 *ibid.*
- 59 *ibid.*, p. 3187.
- 60 *ibid.*, p. 3189.
- 61 *ibid.*, p. 3193.
- 62 *ibid.*, p. 3185.
- 63 *ibid.*, p. 3190.
- 64 *ibid.*, p. 3195.
- 65 *ibid.*, p. 3197.
- 66 *ibid.*, p. 3197–8.
- 67 *ibid.*, p. 3199.
- 68 *ibid.*, p. 3201.
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1.4 Establishment of the Commonwealth Court of Conciliation and Arbitration

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- 82 Letter from G Castle, Industrial Registrar to the Secretary, Attorney-General’s Department, 12 March 1907.

Part 2—Establishing an Australian minimum wage

2.1 The Harvester minimum wage

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- 88 S Macintyre, *The Oxford history of Australia, 1901–1942, the succeeding age*, vol. 4, Oxford University Press, Melbourne, 1986, p. 103.
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- 90 K Hancock, unpublished manuscript, cited in J Isaac, *op. cit.*, Table 1, p. 284.
- 91 *Basic Wage and Wage Reduction Inquiry*, (1931) 30 CAR 2 at 29–30.
- 92 (1922) 16 CAR 4.
- 93 (1912) 6 CAR 61, 20 June 1912.
- 94 (1907–08) 2 CAR 1 at 3.
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- 97 K Buckley and T Wheelwright, *No paradise for workers*, Oxford University Press, Melbourne, 1988, p. 234; S Macintyre, *op. cit.*, p. 103.
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- 101 *ibid.*, p. 396.

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- 103 K Hancock, 'The first half-century of Australian wage policy—part II', *Journal of Industrial Relations*, vol. 21, 1979, p. 135.
- 104 M Rimmer, 'Unions and arbitration', in J Isaac & S Macintyre (eds), *op. cit.*, pp. 282–3.
- 105 P Macarthy, 'Victorian wages boards: their origins and the doctrine of the living wage', *Journal of Industrial Relations*, 1968, vol. 10, p. 116 at 127–130; P Macarthy, 'Wage determination in New South Wales 1890–1921', *Journal of Industrial Relations*, 1968, vol. 10, p. 189, at 198–202.
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- 107 Commonwealth Bureau of Census and Statistics, Labour and Industrial Branch, report no. 12, p. 115.
- 108 M Rimmer, 'Unions and arbitration', in J Isaac & S Macintyre (eds), *op. cit.*, pp. 282–3.
- 109 K Hancock, 'The first half-century of Australian wage policy—part I', *Journal of Industrial Relations*, vol. 21, 1979, p. 6.
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- 111 (1972) 147 CAR 172 at 178–9, 15 December 1972.
- 112 M Lake & F Kelly, *Double time: women in Victoria—150 years*, Penguin Books Australia Ltd, 1985, Introduction, p. xi.
- 113 B Kingston, *My wife, my daughter and poor Mary Ann*, Thomas Nelson (Australia) Limited, 1975, p. 62.
- 114 HB Higgins, 'A new province for law and order', *Harvard Law Review*, vol. 29, November 1915, p. 20, para 25.
- 115 (1912) 6 CAR 61 at 66.

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- 117 *ibid.*, at 67.
- 118 *ibid.*, at 71.
- 119 *ibid.*, at 71–2.
- 120 *ibid.*, at 72.
- 121 *ibid.*, at 73.
- 122 (1919) 13 CAR 647, 21 October 1919.
- 123 G Whitehouse, ‘Justice and equity: women and Indigenous workers’, in S Macintyre & J Isaac (eds), *op. cit.*, p. 219.
- 124 W Vamplew (ed), *Australians, Historical Statistics*, Fairfax, Syme & Weldon Associates, 1987, p. 147 ‘Workforce, states and territories 1911-1981’.
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- 126 A Summers, *Damned whores and God’s police*, Penguin Books Australia, 1975, pp. 338–339.
- 127 G Whitehouse, *op. cit.*, p. 227.
- 128 B Kingston, *op. cit.*
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- 131 e.g. *Storemen and Packers Case*, (1916) 10 CAR at 644, Powers J; *Glass Manufacturers Case*, (1917) 11 CAR at 34, Higgins J; *AWU v. Adelaide Milling Company*, (1919) 13 CAR 823 at 839, Higgins J.
- 132 K Hancock, National Institute of Labour Studies Working Paper Series, June 2004, no. 152, p. 21.
- 133 (1919) 13 CAR 823 at 839.
- 134 (1923) 17 CAR 376, 30 April 1923.
- 135 (1923) 18 CAR 193 at 215, 1 October 1923.

- 136 Australia, Royal Commission on the Basic Wage, *Report of the Royal Commission on the Basic Wage together with evidence*, 23 November 1920.
- 137 *ibid.*, p. 18.
- 138 *ibid.*; G Anderson, *op. cit.*, pp. 246–52.
- 139 Australia, Royal Commission on the Basic Wage, *op. cit.*; G Anderson, *op. cit.*, p. 254.
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- 141 *ibid.*, at 849.
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- 143 *ibid.*, at 849.
- 144 *ibid.*, headnote, at 838.
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- 150 (1931) 30 CAR 2 at 31.
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- 154 *Metal Trades Case*, (1937) 37 CAR 176, Beeby J.
- 155 *Engineers Case*, (1947) 58 CAR 1088, Full Court.
- 156 *Gas Employees Case*, (1919) 13 CAR 437 at 461, Higgins J.

- 157 *Engineers Case*, (1921) 15 CAR 297 at 300, Higgins J.
- 158 (1924) 19 CAR 788 at 795–796, Webb DP.
- 159 *Carters and Drivers Case*, (1925) 21 CAR 232 at 236, Webb DP.
- 160 *Printing Industry Employees Case*, (1925) 22 CAR 247 at 248; *Coopers Case*, (1925) 22 CAR 141 at 144; *Moulders (Metals) Case*, (1924) 20 CAR 890 at 897–898; *Builders Labourers Case*, (1913) 7 CAR 210 at 220, Higgins J.
- 161 (1928) 26 CAR 577 at 585, Lukin J.
- 162 (1909) 3 CAR 1 at 32; *AWU Mining Case*, (1919) 13 CAR 563 at 570, Powers J.
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- 172 W Vamplew, op. cit., p.146.
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- 174 *The King v. Barger*, (1908) 6 CLR 41.
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- 177 (1911) 5 CAR 37.
- 178 (1909–10) 4 CAR 108.
- 179 (1916) 10 CAR 2; (1916) 10 CAR 136.
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- 181 A detailed examination of the history of industrial action since 1904 can be found in B Harley, ‘Managing industrial conflict’, in J Isaac & S Macintyre (eds), *op. cit.*
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- 183 J Rickard, *H.B. Higgins: the rebel as judge*, Allen & Unwin, Sydney, 1984; repeated for example in J Hirst, *Sense and nonsense in Australian history*, Black Inc, 2005, p. 16.
- 184 G Sawyer, *Australian federal politics and law 1901–1929*, Melbourne University Press, Melbourne, 1972, p. 40.
- 185 J Isaac & S Macintyre (eds), *op. cit.*
- 186 A more detailed examination of the history of capacity to pay in the Australian conciliation and arbitration system is contained in K Hancock & S Richardson ‘Economic and social effects’, in J Isaac & S Macintyre (eds), *op. cit.*

Part 3—The campaigns for equal pay for women and Aboriginal stockmen and minimum wages for adolescents

3.1 Minimum wages for adult women

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- 188 *ibid.*, pp. 223–5.
- 189 See J Macken, G McCarry & C Sappideen, *The law of employment*, 2nd edn, Law Book Company, 1984, p. 70.
- 190 G Whitehouse, *op. cit.*, p. 226.
- 191 *National Wage and Equal Pay Cases*, (1972) 147 CAR 172.

- 192 *The Australasian Meat Industry Employees Union & Others v. Meat and Allied Trades Federation of Australia & Others (Equal Pay Case)*, (1969) 127 CAR 1142.
- 193 *ibid.*, pp. 1158–9.
- 194 (1972) 147 CAR 172 at 178.
- 195 *ibid.*, 178–180.
- 196 *ibid.*, 178.
- 197 G Whitehouse, *op. cit.*, p. 233.

3.2 Minimum wages for Aboriginal stockmen

- 198 G Whitehouse, *op. cit.*, p. 210, citing *The North Australian Industrial Union v. J.A. Ambrose*, (1924) 20 CAR 507 at 511, and *North Australian Workers Union v. Northern Territory Pastoral Lessees Association*, (1928) 26 CAR 607 at 623, and subsequent decisions.
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- 200 (1965) 110 CAR 422 at 439, Donovan C.
- 201 (1966) 113 CAR 651 at 652.
- 202 *ibid.*, at 652–653.
- 203 *ibid.*, at 656.
- 204 *ibid.*, at 657.
- 205 *ibid.*, at 658.
- 206 *ibid.*, at 658–659.
- 207 *ibid.*, at 663.
- 208 *ibid.*, at 665.
- 209 *ibid.*, at 665–666.
- 210 *ibid.*, at 668.
- 211 *ibid.*, at 668.
- 212 *ibid.*, at 669.
- 213 *ibid.*, at 669.
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- 215 I Sharp, op. cit., p. 158.
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- 221 [2009] AIRCFB 50 (23 January 2009), as amended by PR998748 (29 June 2010) operative from the first full pay period commencing on or after 1 July 2010.
- 222 See National Archives of Australia, 'Wave hill walk off', fact sheet 224; National Museum of Australia fact sheets on the wave hill walk off.
- 223 G Whitehouse, op. cit., p. 213.

3.3 Minimum wages for adolescents

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- 225 Appendix to the Final Report of the Royal Commission on Employees in Shops, pp. 161–2, Victorian Parliamentary Papers 1884, vol. 3, in M Clark (ed), *Select documents in Australian history 1851–1890*, vol. 2, Angus & Robertson, Sydney, 1977, pp. 604–6.
- 226 H McQueen, *Social sketches of Australia 1888–2001*, University of Queensland Press, St Lucia, 2004, p. 44.
- 227 *ibid.*, p. 8.

- 228 M Rankin, *Arbitration and conciliation in Australasia*, George Allen & Unwin, London, 1916, pp. 50–53.
- 229 *ibid.*, p. 57.
- 230 Speech by Mr Peacock on the Factories and Shops Act Amendment Bill, 17 October 1895, Vic PD, 1895–96, vol. 78, pp. 2633–6, in M Clark (ed.), *op. cit.*, pp. 616–7.
- 231 (1909) 4 CAR 1, Higgins J.
- 232 *W. Anglis & Company Pty Ltd v. Australasian Meat Industry Employees' Union*, (1916) 10 CAR 465.
- 233 *Australian Telegraph and Telephone Construction and Maintenance Union v. Public Service Commissioner*, (1916) 10 CAR 602.
- 234 *Harvester Judgment*, case transcript, Part 1, p. 40.
- 235 COSTAC, *Essential features of Australian apprenticeship systems*, AGPS, Canberra, 1985, pp. 1–2.
- 236 (1921) 15 CAR 374 at 394, Powers J.
- 237 (1907–08) 2 CAR 1.
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- 239 *Harvester Judgment*, case transcript, Part 1, p. 35.
- 240 *ibid.*, p. 32.
- 241 (1916) 10 CAR 602 at 613–614.
- 242 (1909–10) 4 CAR 61.
- 243 *ibid.*, at 65.
- 244 (1909–10) 4 CAR 1.
- 245 *ibid.*, at 50.
- 246 *ibid.*, at 15.
- 247 *ibid.*
- 248 *ibid.*, at 23.
- 249 (1916) 10 CAR 465.
- 250 *ibid.*, at 494–5.
- 251 (1924) 20 CAR 311 at 331–2.
- 252 (1923) 18 CAR 685 at 706.

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- 254 T Stromback, *By chance or choice: the regulation of the apprenticeship system in Australia, 1900–1930*, The Centre for Labour Market Research, CLMR discussion paper series 06.3, June 2006.
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Part 4—Leave and other entitlements

4.1 Hours of work

- 256 *Amalgamated Engineering Union v. J. Alderdice & Company Pty Ltd & Others (44 Hour Week Case)* (1927) 24 CAR 755, Dethridge CJ, Beeby and Lukin JJ, 24 February 1927.
- 257 (1934) 33 CAR 1093 at 1094; (1934) 33 CAR 1095.
- 258 *Standard Hours Inquiry 1947 (40 Hour Week Case)*, (1947) 59 CAR 581, Drake-Brockman CJ, Foster and Sugarman JJ, 8 September 1947.
- 259 *National Wage Case Decision September 1983*, Print F2900, Principle 5, Standard Hours, p. 51.
- 260 Work Choices; s.62 of the *Fair Work Act 2009*.

4.2 Introduction to leave entitlements

- 261 *Finch v. Sayers*, [1976] 2 NSWLR 540 at 552 and 558; *Carr v. Haddrill*, (1874) 39 JP 246.
- 262 *ibid.*
- 263 These protections are currently contained in the *Fair Work Act 2009*. They were also provided for in Work Choices, and before that in awards made under the *Workplace Relations Act 1996*, the *Industrial Relations Act 1988*, and the *Conciliation and Arbitration Act 1904*.

4.3 Sick leave and personal/carer's leave

- 264 Mr Hannon, Secretary of the Iron Founders' Employees' Union, Harvester Transcript, pp. 436–7, and subsequent.
- 265 (1905–07) 1 CAR 62 at 100.
- 266 (1922) 16 CAR 231 at 285.
- 267 This analysis is taken from *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v. Nestle Confectionery Aust*, PR936904, Hamilton DP, 1 September 2003.
- 268 See (1931) 30 CAR 790 at 797, (1941) 44 CAR 8 at 14, (1946) 56 CAR 533 at 534, (1948–49) 62 CAR 364 at 371, (1955) 81 CAR 382 at 388, (1959) 92 CAR 431 at 438, (1968–69) 126 CAR 691 at 698, (1974) 163 CAR 342 at 343, (1977) 189 CAR 198 at 207.
- 269 (1941) 45 CAR 536.
- 270 *ibid.*, at 543.
- 271 Print L6900, 29 November 1994.
- 272 Print M6700, 28 November 1995.
- 273 PR082005, 8 August 2005.
- 274 Work Choices; ss.95–107 of the *Fair Work Act 2009*.

4.4 Annual leave

- 275 (1905–07) 1 CAR 4 at 42, clause 15.
- 276 (1909–10) 4 CAR 89 at 103, clause 3.
- 277 (1913) 7 CAR 5 at 17.
- 278 *ibid.*, at 23.
- 279 HB Higgins, 'A new province for law and order', *Harvard Law Review*, vol. 32, no. 3, January 1919, p. 21.
- 280 (1936) 36 CAR 738.
- 281 *ibid.*, at 747.
- 282 (1940) 43 CAR 406.
- 283 (1941) 45 CAR 701 at 703-4.

284 (1960) 103 CAR 14.

285 *NSW Case*, (1974) AILR 477.

286 Work Choices; ss.87–94 of the *Fair Work Act 2009*.

4.5 Parental leave

287 (1979) 218 CAR 120.

288 (1985) 298 CAR 321, 16 August 1985.

289 Print J3596, 26 July 1990.

290 PR904631, 31 May 2001.

291 Act no. 98 of 1993, Schedule 1, commenced 30 March 1994; Work Choices; ss.67–85 of the *Fair Work Act 2009*.

4.6 Other award entitlements

292 Any person who is interested in the development of other award provisions should consult, for example, the CCH *Australian Labour Law Reporter*, and other publications.

Glossary

293 Mediation is a similar process sometimes used in place of conciliation, and some argue it is a distinct means of settling disputes, with less intervention from the third party.

ILLUSTRATION ACKNOWLEDGMENTS

- Front cover Shearing the rams 1890, Tom Roberts. *Courtesy:* National Gallery of Victoria, Melbourne. Felton Bequest 1932 (full details appear on back cover).
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- 33 The Hon Alfred Deakin (1856–1919). From the collection of the National Archives of Australia: A5954, 1299/2 PL765/1.
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- 75 Picking apples at Zerbe’s Orchards in Doncaster, Victoria, 1917. *Courtesy:* Doncaster Templestowe Historical Society.
- 78 Immigration—migrants in employment. Packing pineapples, Northgate Cannery Brisbane, March 1959. From the collection of the National Archives of Australia: A12111, 1/1959/16/244.
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- 80 Sheep shearing at Yandilla Station, Queensland, 1894. *Courtesy:* State Library of Queensland, image no. 64354.

- 81 Canowie Station shearing shed in South Australia, around 1870. *Courtesy:* National Library of Australia, (an23372006).
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- 108 March for equal pay, Fremantle, 1965. *Courtesy:* State Library of Western Australia, Battye Library, Call No. 5700B/10.
- 114 Aboriginal stockmen at Waterloo station, Northern Territory, 1954. *Courtesy:* Northern Territory Library, Ellen Kettle Collection, PH0127/0005.
- 114 The Stockmen's Kitchen on Killarney Station, Northern Territory, Photograph by Michael Jensen 1971. *Courtesy:* National Library of Australia, (vn4589554).
- 117 Photograph of the painting by Robert Campbell Jnr titled "Robert Marbuk Tutawallie Supports Aboriginal Stockmen Striking for Equal Pay at Wattie Creek", 1988. *Courtesy:* Museum and Art Gallery of the Northern Territory. Copyright held by Roslyn Oxley Gallery, Sydney.
- 129 William Ashley Norman from North Adelaide, South Australia, 1897. *Courtesy:* State Library of South Australia, Archival No. B 56882.
- 129 L Bagster & Co. Family Butchers, Indooroopilly, Queensland, 1895. *Courtesy:* State Library of Queensland, image no. 10572.
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- 160 Employees of Brighton Cement and their families at Long Gully, Mount Lofty Ranges, South Australia, 7 April 1917. *Courtesy:* State Library of South Australia, Archival No. PRG 280/1/33/166.
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- 163 The Esplanade at Burleigh, Queensland, 1932. *Courtesy:* State Library of Queensland, image no. 87803.
- 164 Mrs GG Nicolaidis, her daughter Loulla and Nurse Stacey, 1921. *Courtesy:* State Library of South Australia, Archival No. B 58599.

GLOSSARY

Act	A law made by Parliament. Laws are binding and must be complied with.
Adult	Person over the age of 21.
Annual leave	A period of working time which is paid for by the employer, but during which the employee is not required to be at work and can go on holiday.
Apprentice	A young person who enters into a formal contract of training to learn a trade skill while also working in the trade. The training leads to a formal trades qualification.
Apprenticeship	The combination of work and training that leads to a tradesperson's qualification.
Arbitration	The binding determination of an issue, in this context an employment issue. This can be the level of wage rates, or other conditions of employment such as the length of sick leave, whether or not the termination of employment is unfair or not, or another issue.
Arbitration Court	The Commonwealth Court of Conciliation and Arbitration.
Award	An order of the Arbitration Court setting the minimum wages and conditions that must be paid by employers to their employees employed in a certain industry, occupation or enterprise.
Award entitlements	The legal right that an employee has to certain wages and conditions under an award made by the Arbitration Court.

Basic wage	A part of the Australian minimum wage system. The minimum wage in Australia was made up of two parts, a basic wage and a margin. The basic wage was initially 7 shillings a day for an unskilled labourer. More skilled employees received amounts in addition to this known as a 'margin'.
Bill	A proposed law introduced into Parliament.
Case	An application made to the Arbitration Court for an order or award or other remedy.
Casting vote	The vote on a proposal made in a Parliament or other body of people which determines whether or not that proposal succeeds (e.g. the Australian Parliament voted in 1904 to pass the <i>Commonwealth Conciliation and Arbitration Act 1904</i>).
Colony	A settlement in a new country, e.g. Britain established the colony of New South Wales in 1788.
Commission	The Australian Conciliation and Arbitration Commission, or the Commonwealth Conciliation and Arbitration Commission. They operated in a similar manner to a court, but were not actually courts under Australia's Constitution.
Common law	Judge-made law. When judges make decisions, those decisions can constitute new law which is then applied in later cases.

‘Common rule’ award	An award which applies not to named employers and trade unions, but to an area of industry or occupation or a geographical area (e.g. Clerks in Victoria).
Conciliation	Conciliation is a process where an independent third party assists two sides in a dispute to reach an agreed resolution. ²⁹³
Conditions	These are matters such as the hours of work in each day or each week that an employee must work, arrangements for taking leave of absence from work, and other matters which are not monetary.
Constitution	The basic law of a country. The Australian Constitution sets out the basic structure of government, law and democracy in Australia.
Cost of living	How much it costs to buy food, clothing, housing and other matters for citizens of a country.
Court	A place where matters are decided. Judges of courts decide and enforce the law of a country. This may be criminal law (e.g. assault and theft) or civil law (e.g. parking offences).
Decision	A binding judgment or order handed down by a court or tribunal deciding a matter, such as an application to make a new award.
Determination	A determination is another term for a binding decision.

Equal pay	Different groups, such as men and women, or Aboriginal stockmen, receive equal pay when the pay they receive is the same or set on the same basis. Until 1972 women received less pay under awards than men.
Equal value	A term used in deciding equal pay. An unskilled labourer may receive less pay than a skilled tradesperson, because the work of a skilled tradesperson is worth more in the labour market.
Ex parte	A legal term used to describe a case with one party.
Fair Work Australia	The national workplace tribunal. It is an independent body with power to carry out a range of functions relating to the safety net of minimum wages and employment conditions, enterprise bargaining, industrial action, dispute resolution, termination of employment and other workplace relations matters.
Family wage	A term used to describe the early minimum wage. The name is used to describe the fact that the minimum wage was set having regard to the expenses of supporting a family of five.
Federal Labor Party	One of the three early political groupings in the Australian Parliament after it was established in 1901. The Labor Party was established by trade unions to represent working class people.
Federation	In 1901 the six British colonies of Australia became one nation by 'federating' or joining together. This is known as 'Federation'.

- Free Traders** They were one of the three important political groupings in the Australian Parliament after it was established in 1901. They believed in free trade, that is, trade without Australian industry being protected by ‘tariffs’, which are taxes paid on goods made overseas and imported into Australia. Tariffs make foreign made goods more expensive.
- Great Depression** In 1929 the Great Depression began. Prices fell, and many people lost their jobs and were unemployed.
- Great Strikes** The Great Strikes of the 1890s were key events that led to the establishment of the Arbitration Court. In particular, the 1890 maritime strike, the 1891 and 1894 shearers’ strikes, and the 1892 Broken Hill strike.
- Gurindji** A tribe of Aboriginal people who live in the Northern Territory.
- Harvester** A machine that harvests wheat and similar crops. Harvester machines were made at the HV McKay factory at Sunshine outside Melbourne.
- High Court** The highest Court in Australia.
- Hours of work** The hours an employee works with an employer, whether per day, per week, or some longer period. In 1907 hours of work per week were usually 48 or 48¾. Now they are 38 per week.

Indexation	A system used to increase award wages in line with increases in the cost of goods. The increases in the cost of goods and services, known as 'inflation', were measured by statistics developed by the Australian Government.
Industrial registrar	The person in charge of receiving applications to the Arbitration Court and providing administrative support, maintaining the Court premises and similar functions.
Inflation, Consumer Price Index, 'A' Series	This was the measure of inflation developed by the Australian Government in 1912.
Inter-state dispute	A dispute which occurred in more than one state, for example a dispute which occurred in both New South Wales and Victoria.
Judge	The person appointed to a court who hears applications and makes decisions.
Junior	A young person, under 21. Juniors receive lower wages than adults in many awards.
Leave	Employees were given the right to be paid while absent from work for certain limited periods, for example if they were sick or wished to have a holiday.
Legislation	Laws passed by the Australian or a state Parliament.
Liberal Protectionists	One of the three important political groups in the Australian Parliament after the first election in 1901. They strongly supported the introduction of 'tariffs', protection for Australian industry, and were opposed by the Free Traders.

Living wage	A term used to describe the early minimum wage. The name is used to describe the fact that the minimum wage was set having regard to living expenses (e.g. food, clothing, housing, other).
Lock-out	The equivalent of a strike by employers. Employers locked out employees when they were in dispute over their wages or conditions. This meant that they simply closed the doors of the factory or other premises, refused to allow employees to work, and refused to pay them.
Margin	The amount paid to more skilled employees in awards.
Maternity leave	Leave given to women who are about to have or have had a child, to enable them to care for the child.
Minimum wage	By law, the minimum amount of wages payable by an employer to an employee. The first minimum wage for an unskilled labourer set by the Arbitration Court was 7 shillings a day.
Nationalists	An important liberal/conservative and non-labour political party. Billy Hughes led a Nationalist Government during World War I.
Papal encyclical	A document issued by the Pope (the head of the Catholic Church) for wide distribution.
Parental leave	Leave for a parent to care for a child just before and after its birth. Maternity leave is a type of parental leave, and is taken by the mother.

Paternity leave	Leave for a parent to care for a child just before and after its birth. Paternity leave is taken by the father.
Penalty rates	Awards require an employer to pay extra money to an employee who works certain hours of work, such as on weekends or on public holidays such as Easter and Christmas.
Personal/carer's leave	Paid leave that an employee may take when ill, or to care for certain family members (e.g. a sick child).
President	The head of the Arbitration Court.
Recession	An economic downturn, when industry may find it difficult to sell its goods and services, or to make a profit, and workers may find it hard to find work or keep a job.
Registrar	The person in charge of the registry (see Industrial registrar).
Royal commission	The Australian Government establishes royal commissions to inquire into certain important matters and to draft a report.
Safety net	A term used to describe legal protections for employees or citizens such as awards. Other parts of the safety net may include unemployment benefits and similar government payments to citizens.
Sick leave	Paid leave taken by an employee while he or she is ill and unable to work.
Skilled	An employee with an extra ability, often gained through a special process of learning and training. For example tradespersons such as fitters and joiners have special skills which are recognised by law.

Social security	The system of government support for people who have a special need for support, such as unemployed people.
State	The Australian Constitution recognises the existence of the states of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania. These States each have a government and an elected Parliament, which makes laws.
State tribunal	A tribunal such as a commission made by a state law.
Stockman	An employee who has the job of rounding up and looking after cattle, sheep or similar livestock.
Strike	A strike is the refusal by a group of employees to work, in order to pursue a claim for increased wages or conditions. Strikes are usually but not always led or organised by a trade union.
Sweating	A term used to describe various types of exploitation of employees by employers. These include very long hours and refusal to pay the wages that were required by law.
Tariff	A tax placed on goods made overseas and brought into Australia. This makes such goods more expensive compared with goods made in Australia.
Test case	A case which decides an important point of law or what should be in an award. Test cases established minimum wage levels, and entitlements such as maternity leave.

Tradesman	Another term for a ‘tradesperson’, a person who has gained a qualification as a skilled person recognised by law.
Traditional lands	A term used to describe the lands which were occupied, owned or lived on by tribes of Aboriginal people.
Union	A trade union. A group of employees who join together in order to protect their wages and conditions, or to gain better wages and conditions from employers. Employees pay amounts to join, and receive formal membership cards.
Unskilled	A term used to describe employees who do not have trade qualifications.
v.	A term used in decisions as a shorthand for ‘versus’ (e.g. <i>Brown v. Dunne</i>).
Veto	The power to say no and to stop some course of action occurring.
Wages	The money an employee receives from an employer for working at a job.
Work Choices	The <i>Workplace Relations Amendment (Work Choices) Act 2005</i> . This Act was introduced by the then Liberal/National Coalition Government under Prime Minister John Howard, and made substantial changes to industrial laws.

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