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

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:

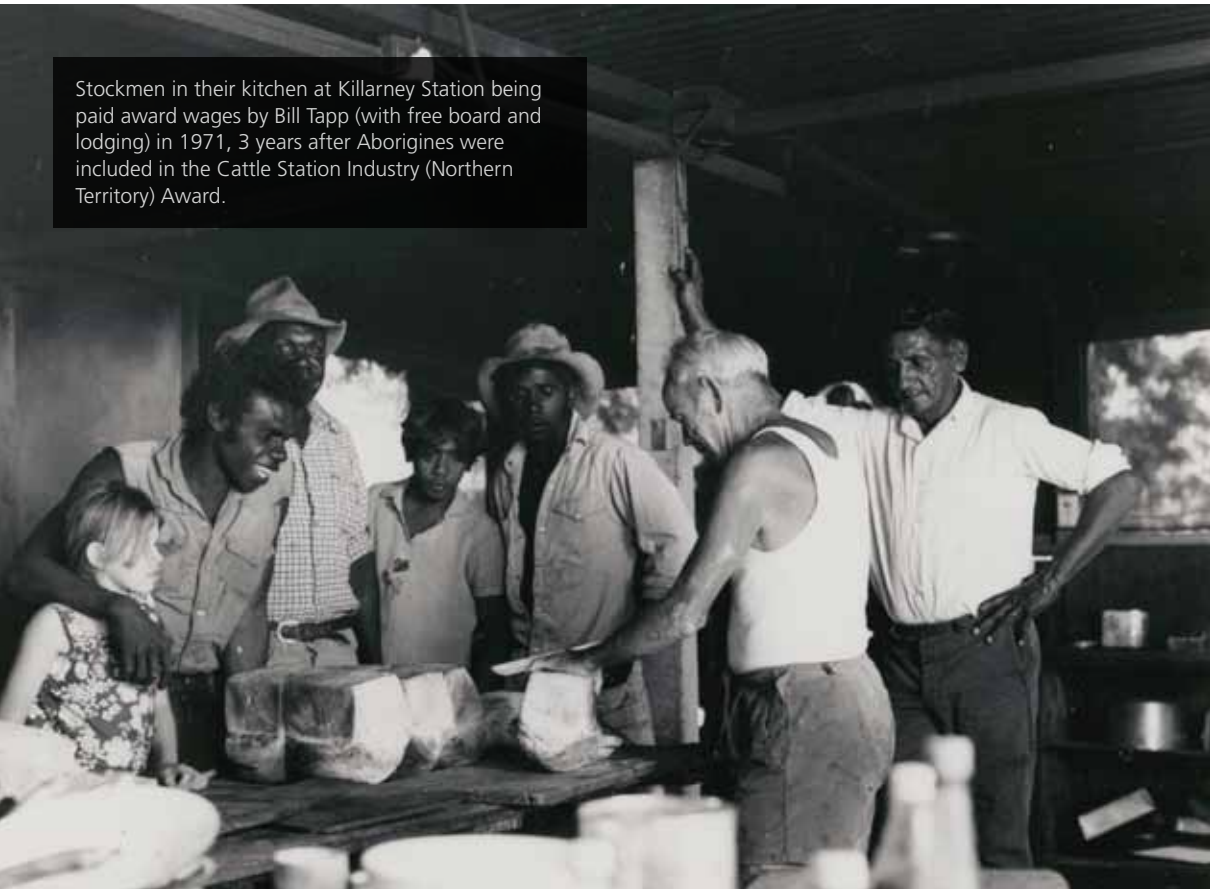
- Convention No. 100 of the International Labour Organization (ILO), which dealt with equal remuneration for work of equal value. This convention was said to reflect international opinion on the issue of equal pay for equal work, although it had been considered by the Commission in 1969, and in 1972 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 award[1]

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 Jnr 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.

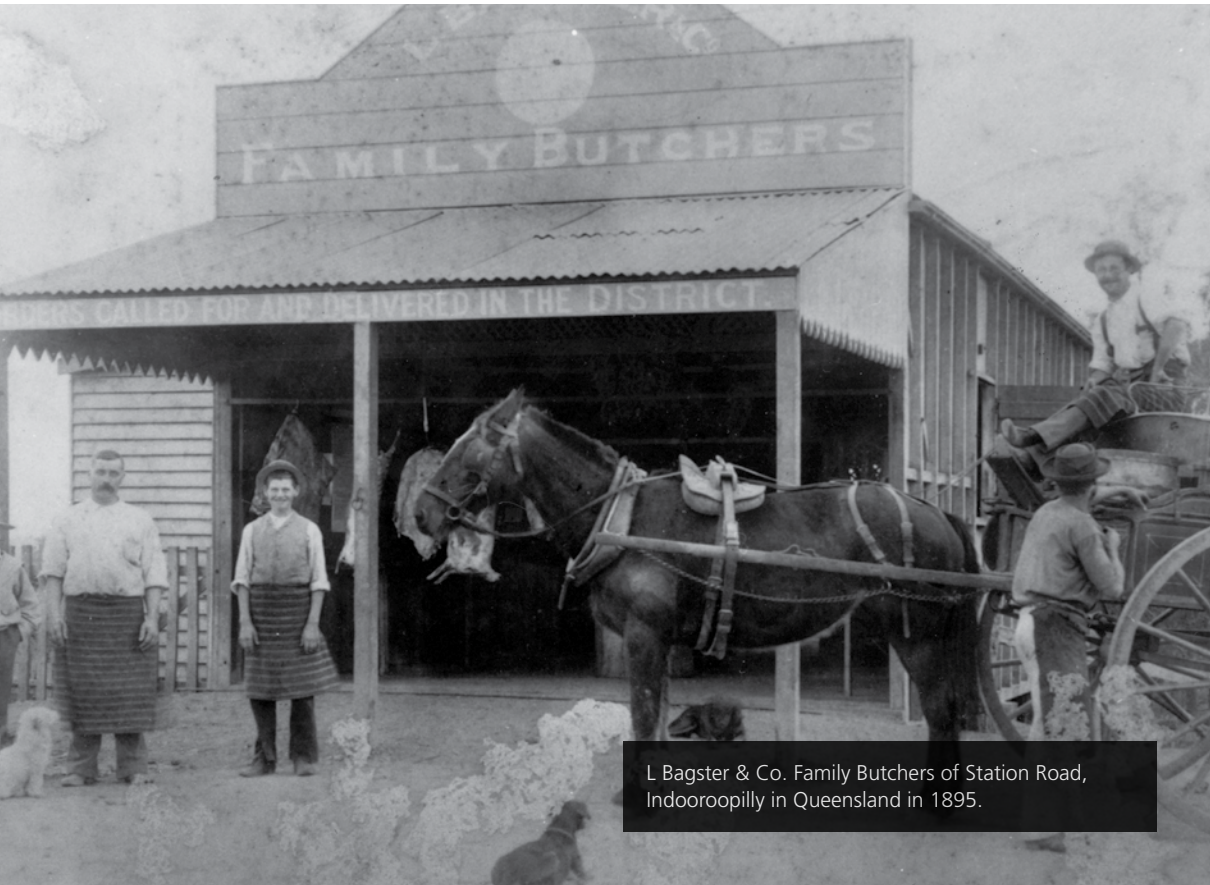
Table 9: Per capita GDP in Australia, United States and Argentina[1] (1990 international dollars[2])

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-eights 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

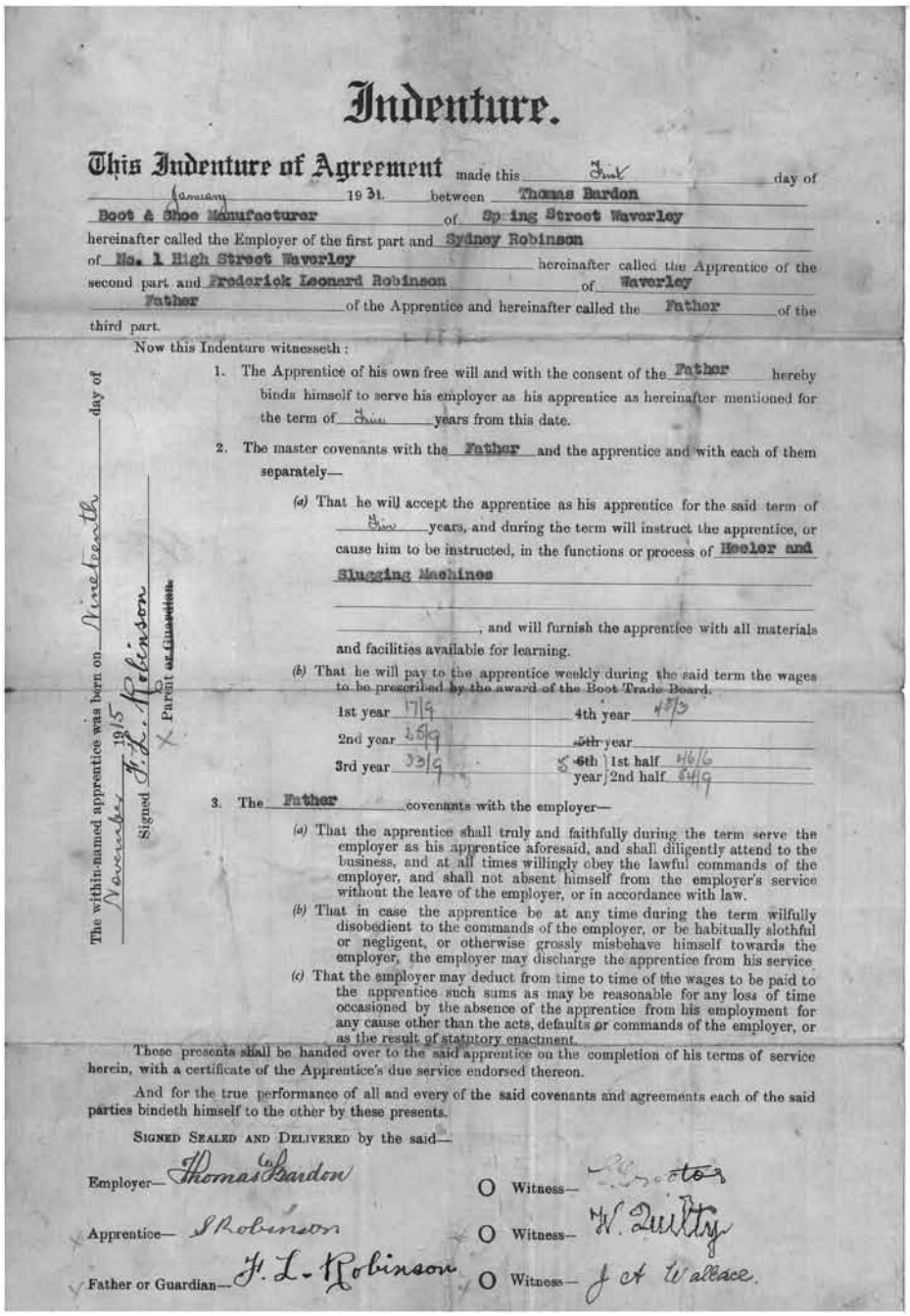
In *Australian Boot Trade Employees' Federation v. Whybrow & Co and Others*[244] Justice Higgins considered the issue of apprenticeships for the first time, while making an award for nearly 40 boot manufacturers and their employees.

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 First day of January 1931 between Thomas Bardon Boot & Shoe Manufacturer of Spring Street Waverley 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:

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 17/9 — 4th year 47/3
   2nd year 25/9 — 5th year
   3rd year 33/9 — 6th year | 1st half 46/6 | 2nd half 54/9

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.

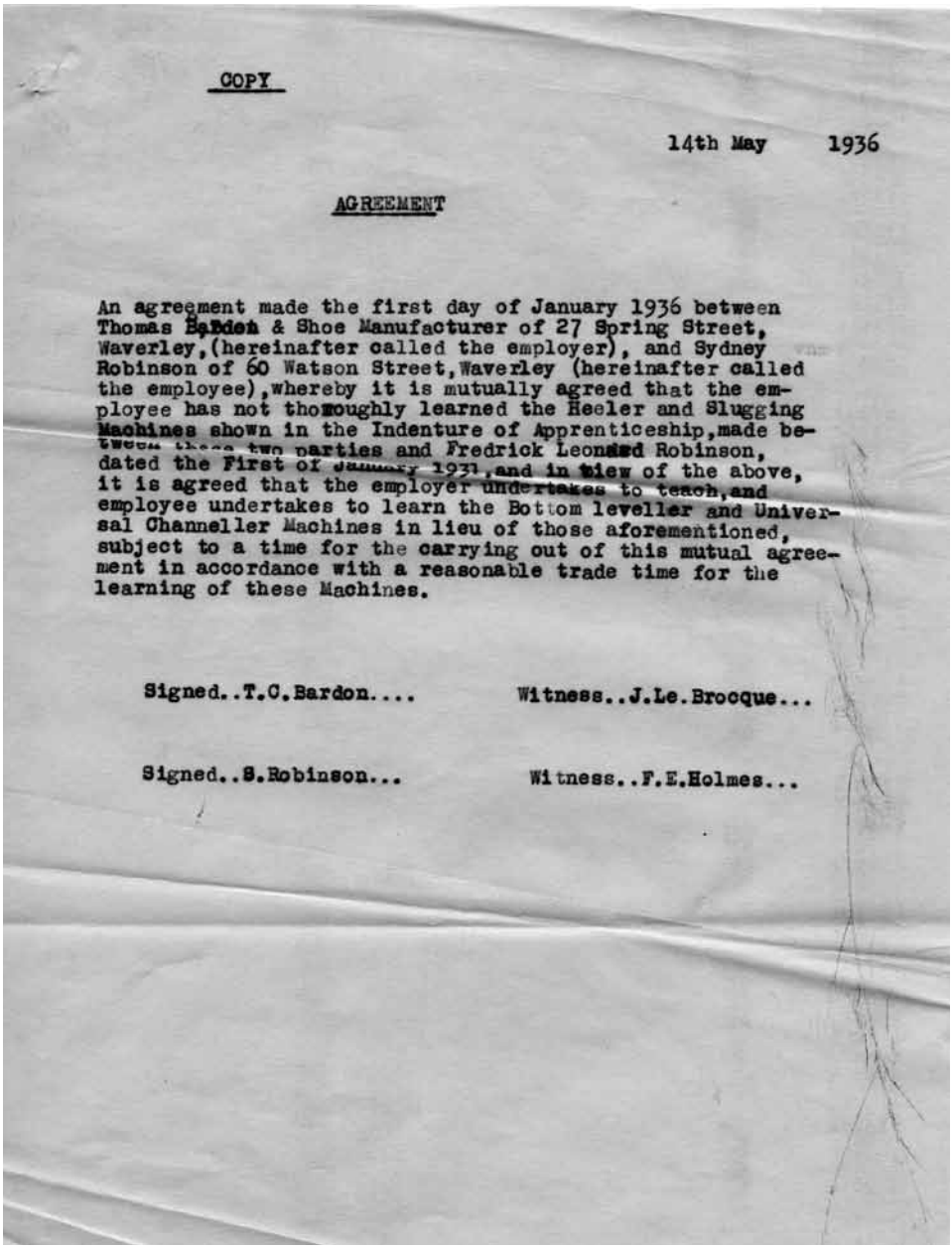
And for the true performance of all and every of the said covenants and agreements each of the said parties bindeth himself to the other by these presents.

SIGNED SEALED AND DELIVERED by the said—

Employer— Thomas Bardon — Witness— [illegible]
Apprentice— S Robinson — Witness— W. Duffy
Father or Guardian— F. L. Robinson — Witness— J. A. Wallace.

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

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 1924[251], 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 1925[253] 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.