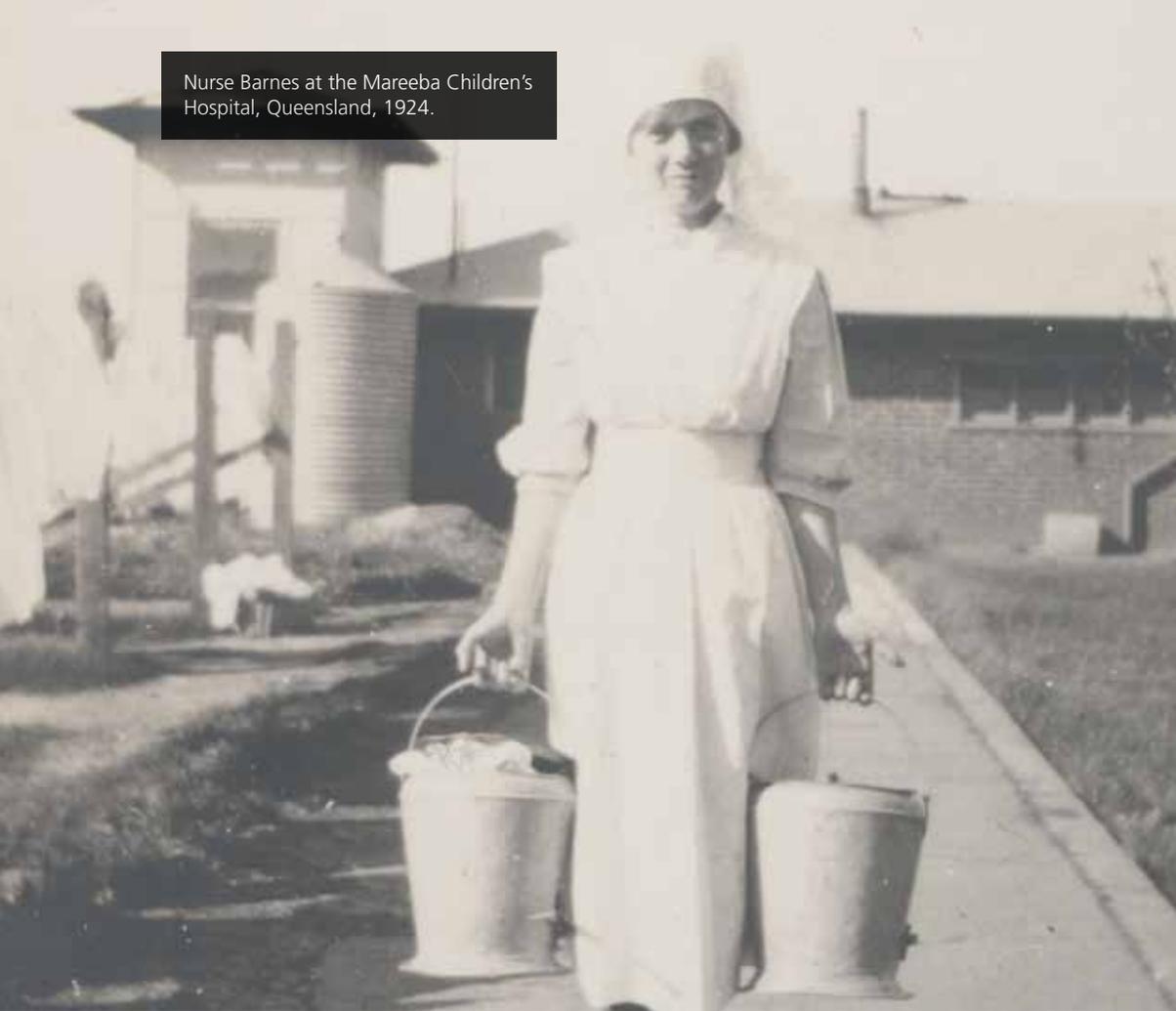


Nurse Barnes at the Mareeba Children's Hospital, Queensland, 1924.



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 48¾ 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.

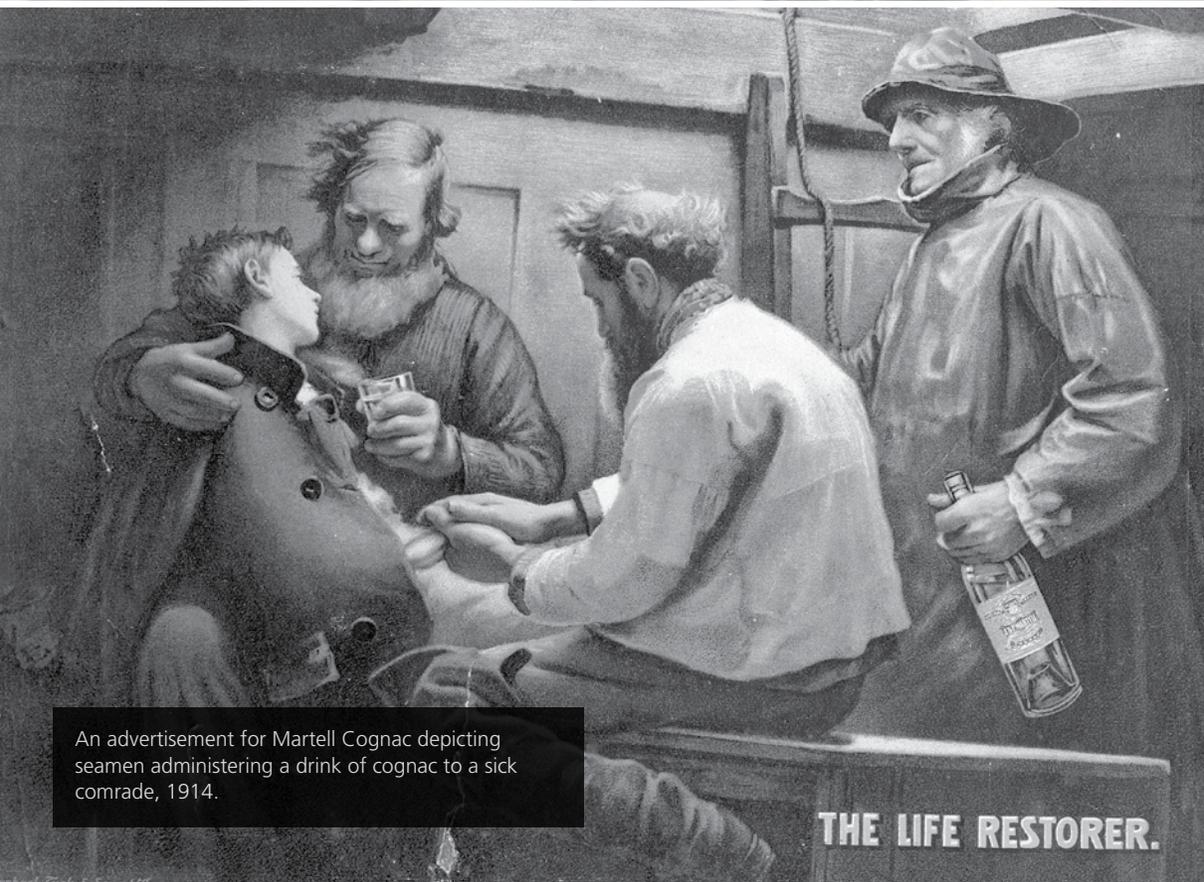


Promenading along the pier at Sandgate, Queensland, 1910.

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

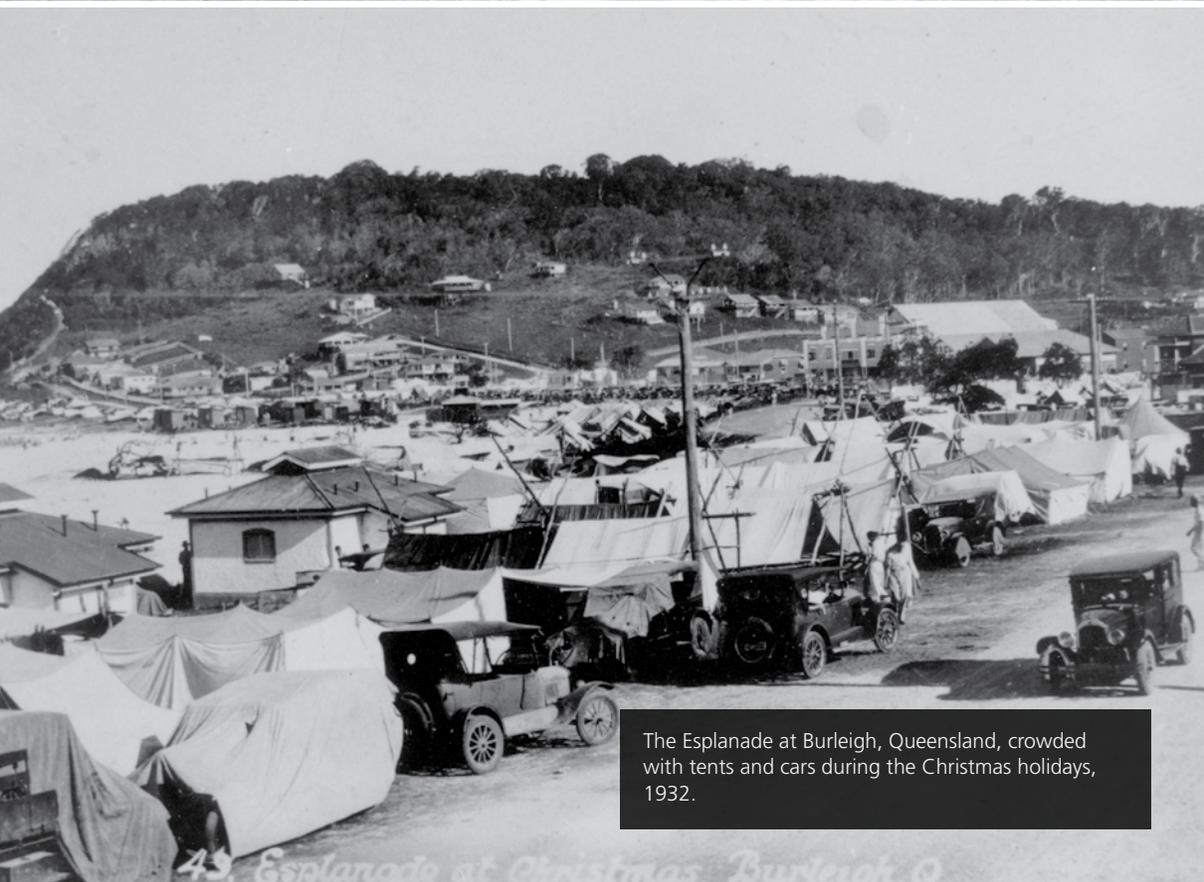
- 1973 Four weeks annual leave for public servant union members granted by the federal Labor Government.
- 1974 The New South Wales *Annual Holidays Case* of 1974²⁸⁵ resulted in four weeks annual leave becoming standard. In a test case arising from an application by the Australian Workers' Union seeking 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.

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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.

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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.

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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

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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

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1.1 *The great strikes of the 1890s*

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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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- 199 (1966) 113 CAR 651.
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- 223 G Whitehouse, op. cit., p. 213.

3.3 Minimum wages for adolescents

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- 227 *ibid.*, p. 8.

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- 233 *Australian Telegraph and Telephone Construction and Maintenance Union v. Public Service Commissioner*, (1916) 10 CAR 602.
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- 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.
- 238 *ibid.*, p. 13.
- 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.
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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.

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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).
- v Jack Howe, a 15 year old apprentice working on the construction of a merchant navy ship at the Naval Dockyard, Williamstown, Victoria, 1944. *Courtesy:* Australian War Memorial, reference 140213.
- viii Aboriginal family, Koonibba Mission Children's Home, 1900s. *Courtesy:* State Library of South Australia and with the permission of the Board of the Koonibba Aboriginal Community Council, Archival No. B 64269/1–71.
- 2 Mrs Theresia Pless, Cadbury Chocolate Factory, Claremont, Tasmania, 1958. From the collection of the National Archives of Australia: A12111, 1/1958/16/93.
- 5 Removing shearers during the 1891 Great Strike, near Hughenden, Queensland. *Courtesy:* National Library of Australia, PIC/702 LOC.
- 11 Swagman, "On The Wallaby". *Courtesy:* State Library of Victoria, H42015.
- 14 Norman Lindsay goauche. *Courtesy:* the Hamilton family.
- 17 The Illustrated Newspaper collection "Notes at the strike" (Illustrated Australian news and musical times), 1 September 1890. *Courtesy:* State Library of Victoria.
- 18 The Illustrated Newspaper collection (Illustrated Australian news and musical times), 1 September 1890. *Courtesy:* State Library of Victoria.
- 24 Charles Cameron Kingston (1850–1908). *Courtesy:* State Library of South Australia, Archival No. B 1848.

- 28 The Federal Constitutional Convention held in Adelaide in 1897. *Courtesy:* State Library of South Australia, Archival No. B 12572.

Group photo of members of the Federal Convention—
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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.
- 34 John Christian Watson (1867–1941). From the collection of the National Archives of Australia: A1200, L11176A.
- 34 Sir George Houstoun Reid (1845–1918). From the collection of the National Archives of Australia: A1200, L11178A.

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- 50 The front cover of the Conciliation and Arbitration Act of 1904. *Courtesy:* Sir Richard Kirby Archives, Fair Work Australia.
- 55 The Hon Henry Bournes Higgins (1851–1929). *Courtesy:* Sir Richard Kirby Archives, Fair Work Australia.
- 58 Harvester factory workers. *Courtesy:* Museum Victoria, image no. 015657.
- 62–3 HV McKay Sunshine Harvester Works. *Courtesy:* Museum Victoria.
- 64 Working class family early 1900s. *Courtesy:* Richmond Library Local History Photograph Collection.
- 72 Grape pickers, South Australia, 1919. *Courtesy:* State Library of South Australia, Archival No. PRG 280/1/15/824.
- 75 Children picking hops, Tasmania 1911–15. *Courtesy:* National Library of Australia, (an23779901).
- 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.
- 78 Women putting rubber lining in helmets and moulding rubber faces for gas masks. *Courtesy:* State Library of Victoria (Argus newspaper collection of World War II photographs).
- 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).
- 93 Sunshine modern harvester, Hurley negative collection 1910-62. *Courtesy:* National Library of Australia, (an23366879).
- 105 Equal Pay Demonstration, taken in 1969 by Edwin R Warden. *Courtesy:* Footscray Historical Society Inc.
- 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.
- 130 JH Howe Bootmaker, Adelaide, South Australia (approx. 1865). *Courtesy:* State Library of South Australia, Archival No. B 8004.

ILLUSTRATION ACKNOWLEDGMENTS

- 138–9 Indenture agreement with Sydney Robinson, dated 1 January 1931 and a further agreement dated 14 May 1936. *Courtesy:* Noel Butlin Archives Centre, Australian National University, Australian Boot Trade Employees Federation, T4/23.
- 145 “Barnes”, A nurse carrying 2 buckets, 1924. *Courtesy:* State Library of South Australia, Archival No. B 69879/5.
- 148 A new home in the suburbs of Adelaide, 1923. *Courtesy:* State Library of South Australia, Archival No. PRG 280/1/34/184.
- 151 Holiday-makers, Shorncliffe beach, Brisbane, 1911. *Courtesy:* State Library of Queensland, image no. 143649.
- 151 Promenading along the Pier at Sandgate, Queensland, 1910. *Courtesy:* State Library of Queensland, image no. 117218.
- 152 Medical check-up, 1945. *Courtesy:* State Library of South Australia, Archival No. B 48793.
- 152 The Life Restorer, 1914. *Courtesy:* State Library of South Australia, Archival No. PRG 280/1/16/62.
- 159 Picnic at Victor Harbour, South Australia, 1910. *Courtesy:* State Library of South Australia, Archival No. B 60628/14.
- 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.
- 163 Camping at Rottneest Island, Western Australia, 1920. *Courtesy:* State Library of Western Australia, Battye Library, Call No. 012784D.

- 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.

INDEX

8-hour day	147
38-hour week	147–8
40-hour week	147
44-hour week	147
48-hour week	67, 147

A

A new province for law and order	97
Aboriginal	
stockmen, Minimum wages for	115
Stockmen's Case	115
Absence without payment	154
Adjusting the Harvester minimum wage by movements in the consumer price index	81
Adolescents, Minimum wages for	127
Adoption leave, Test case	167
Adult women, Minimum wages for	109
Annual Holidays Case (NSW)	162
Annual leave	157, 161, 162
clauses, Early	157
Test case on	158
Apprentices, Boot trade	137

Apprenticeships	
Female	133
Length of	133
Low numbers of.....	142
Meat trade	140
The Harvester Decision and	134
Arbitration	29
Compulsory conciliation and.....	23, 36
systems, Other	25
Tariffs and.....	45
Voluntary conciliation and.....	22
What is	23
Associations, <i>see</i> Trade unions	
Australian	
Colonies.....	12, 13, 20
Conciliation and Arbitration Commission	3
Constitution	
and arbitration	29
s.51(35)	31, 71
experiment and other countries.....	27
Industrial Relations Commission	3
Parliament.....	12
Shearers' Union.....	19
Award entitlements, Other	169

INDEX

Awards	13, 52
introduce new entitlements.....	150
State.....	70
The court makes.....	100
B	
Banjo Paterson's Waltzing Matilda.....	10
Barton, Edmund	35, 36, 37, 46
Basic wage	57, 67, 87, 94, 110
Royal Commission on the.....	83
Bill	
Conciliation and Arbitration.....	35
First	37
Second	38
Third.....	44
The Kingston	22
Biographies	171
Boot trade apprentices.....	137
Boot Trades Case.....	132
Boys on steamships.....	136
Britain.....	27, 40, 44, 98
Broken Hill	70
1892 strike.....	15
Case.....	90
Budgets, Household	59, 60–1
Butchers Case.....	132

C

Campaigns for equal pay and minimum wages.....	105
Canada.....	27, 31
Case	
40 Hour Week	147
44 Hour Week	147
Aboriginal Stockmen's.....	115
Adoption Leave.....	167
Annual Holidays (NSW).....	162
Basic Wage.....	110
Boot Trades.....	132
Broken Hill.....	90
Butchers.....	132
Cattle Industry.....	115
Clothing Trades	77
Equal Pay.....	110
Family Leave.....	156
Family Provisions	156
Fruit Pickers.....	65, 71
Gas Employees.....	65, 87, 97
Glass Workers	109
Harvester	58, 60–1
Linesmen's.....	132
Maternity Leave	166
National Wage	72, 88
Paternity Leave.....	167
Personal/Carer's Leave Test.....	156

INDEX

Textile Workers	90
Case study	
The 1890 maritime strike	16
The 1891 shearers' strike	19
Castle, Gordon Harwood	49, 51
Casual employees, Test case establishes maternity and paternity leave rights for certain	167
Cattle Industry Case.....	115
Chinese labour	19
Clothing Trades Case.....	77
Colonial legislation on strikes.....	20
Colonies, Australian	12, 13, 20
Commonwealth	
Conciliation and Arbitration Commission	3
Court of Conciliation and Arbitration	3, 49
Statistician	81, 85, 91
Compulsory arbitration.....	23, 36
Conciliation and arbitration	
Act	1, 47
Bill.....	35
First Bill.....	37
Second Bill.....	38
Third Bill	44
Voluntary.....	22
What is	23
Constitution, Australian	29, 71
Constitutional Convention, Federal	28, 29

Consumer price index	81
Contract, Freedom of.....	21
Cost of living.....	59, 68, 74, 83
Court	
adopts Harvester	70
and Commission, Different names of.....	3
Early work of the	52
Establishment of the	49
limits industrial action	101
makes awards	100
of Conciliation and Arbitration, Commonwealth	1, 3, 49
rejects the royal commission amounts as unsustainable	85
D	
Daily and weekly wage	67
Deakin, Alfred.....	12, 19, 33, 35, 58, 99, 101, 175
Decision, Harvester	13, 36, 57, 107, 134
Disputes, Settlement of	29, 31, 47
E	
Economic growth, Indicators of	96
Economy, Harvester and the.....	97
Entitlements, Leave and other	145
Equal pay	72, 74, 88
Case.....	110
for women and Aboriginal stockmen.....	105

INDEX

Establishment of the Court 49

Evidence, Kingston's 26

ex parte H.V. McKay 58, 134

F

Fair Work Australia 3, 143

Family

 Food of a working-class 67

 Leave Case 156

 Provisions Case 156

 size 65

 wage 36, 59, 65, 87, 109

Federal

 Constitutional Convention 28, 29

 Election

 first 36

 second 44

Federation 12

Female apprenticeships 133

Fiji 29

First

 Conciliation and Arbitration Bill 37

 federal election 36

 Parliament 36

 registration of an industrial association 52

Food of a working-class family 67

Four-week standard	157
Gradual development of a	161
National legislation establishes a.....	162
Free Traders	36, 44
Freedom of contract	21
Freedom on the Wallaby.....	98
Fruit packing work.....	77
Fruit Pickers Case.....	65, 71, 109
Fruit picking work.....	74

G

Gas Employees Case.....	65, 87, 97
Glass Workers Case	109
Great Depression.....	67, 96, 98
Great strikes	29
How they came about	13
of the 1890s.....	9
The reformers respond to the	99

H

Harvester	
and the economy.....	97
Case.....	57, 60–1, 84
Decision.....	13, 36, 57, 107, 134
Analysis of	59
and apprenticeships.....	134
factory.....	58, 62–3, 67, 133, 135

INDEX

minimum wage.....	57, 67, 70, 81, 91
becomes the national minimum wage.....	70
wage too high?	92
wage too low?.....	97
Higgins, Henry Bournes.....	29, 35, 49, 55, 171
High Court of Australia	49, 51, 70, 101, 137
HV McKay, <i>see also</i> ex parte H.V. McKay.....	57, 58, 62
Hours of work.....	147
38	147–8
40	147
44	147
48	67, 147
Household budgets.....	59, 60–1
Hughes Government	83
I	
Income and expenditure presented to the Harvester Case	60–1
Indicators of economic growth	96
Industrial	
action, The court limits	101
registrar	49, 51
K	
Kingston	
Bill.....	22, 35, 37
model, How would it operate?	26

Charles Cameron	12, 23, 24, 29, 101, 174
Kingston's evidence	26

L

Labor Party	20, 36, 46
-------------------	------------

Labour

force of the time, The attitudes and.....	79
---	----

Chinese.....	19
--------------	----

Leave

Adoption	167
----------------	-----

and other entitlements	145
------------------------------	-----

Annual.....	157
-------------	-----

entitlements, Introduction to	149
-------------------------------------	-----

Maternity.....	165
----------------	-----

Parental.....	165
---------------	-----

Paternity	167
-----------------	-----

Personal/carer's.....	153
-----------------------	-----

Sick.....	153
-----------	-----

Legislation

National.....	156
---------------	-----

on strikes	20
------------------	----

Length of apprenticeships.....	133
--------------------------------	-----

Liberal Protectionists.....	36, 44
-----------------------------	--------

Linesmen's Case.....	132
----------------------	-----

Living wage.....	59, 65, 87, 109
------------------	-----------------

Lock-out?, What is a	15
----------------------------	----

Low numbers of apprenticeships	142
--------------------------------------	-----

M

Margins.....36, 79, 82
 and skilled employees.....88

Maritime
 1890 strike..... 15, 21, 26
 Award 13, 91
 strike, Case study, The 1890..... 16

Market, The65

Married women.....73, 79, 110

Maternity
 and paternity leave, Test case establishes
 rights for certain casual employees..... 167
 leave..... 150, 165
 arrangements, Sector-by-sector..... 166
 Test case..... 166

McKay, ex parte H.V..... 58, 134

Meat trade apprenticeships 140

Men
 married73
 single65, 80, 109
 and women65, 74

Minimum
 wage.....57
 wages for
 Aboriginal stockmen 115
 adolescents 127
 adult women71, 109

More information.....3
 Mrs Beeton’s cookbook..... 69

N

National legislation 156
 establishes a four-week standard 162
 National Wage Case72, 88
 New entitlements, Awards introduce 150
 New South Wales 9, 12, 19, 20, 25, 42, 98, 102, 161
 New Zealand..... 16, 25, 29, 42
 No social welfare system67
 Non-unionists9, 15, 17, 21
 Notes 183

O

O’Connor, Richard49, 51
 Origins of the
 7 shillings amount.....67
 Commonwealth Court of Conciliation
 and Arbitration5

P

Paid sick leave, Introduction and gradual increase
 in amounts of 154
 Parental leave..... 165
 becomes a national legislated entitlement..... 168
 Parliament
 Australian..... 12, 25, 31, 51

INDEX

First	36
Victorian.....	21
Paternity leave	150, 165
Test case	167
Paterson, Banjo	10
Personal/carer's leave.....	153, 156
Piecework.....	81
Powers, Charles	49, 178
President	35, 49, 52
First, of the Commonwealth Court of Conciliation and Arbitration.....	49, 51
Prime Minister	34, 35, 37, 38, 44, 46, 83
 Q	
Queensland	9, 16, 19, 121, 132
 R	
Reformers respond to the great strikes	99
Registrar, Industrial	49, 51
Registration	
and regulation of trade unions	23, 102
of an industrial association, First	52
Reid, George Houstoun	22, 30, 34, 35, 177
Royal Commission	
amounts unsustainable.....	85
into the Hours and General Conditions of Female and Juvenile Labour in NSW	79
on Strikes.....	21, 25, 42

on the Basic Wage.....83

S

Seamen's Union21

Sector-by-sector maternity leave arrangements 166

Settlement of disputes29, 31, 47

Shearers'

1891 strike..... 19

1894 strike.....9

strike, Case study 19

Shearing Award 13, 154

Sick leave and personal/carer's leave..... 153

Single men, Women and65

Skilled employees, Margins and..... 88

Slow worker permits..... 124

Social welfare system, No67

Soldiers 19, 98

Song about a strike9

South Australia.....9, 25, 29, 101, 132

State awards.....70

Statistician, Commonwealth.....81, 85, 91

Statistics84, 91, 94–5, 128

Steamships, Boys on 136

Strike

1890 maritime 16

1891 shearers' 19

1892 Broken Hill..... 15

INDEX

1894 shearers	9
A song about a	9
What is a.....	15
Strike-breakers.....	15, 98
Strikes	98
colonial legislation on	20
Royal Commission on.....	21, 25, 42
The great.....	9, 29
What were they about?.....	15
Sunshine Harvester factory.....	57, 62–3
Supported wage rates.....	124
Sweating.....	25, 43, 127, 147
T	
Tariffs.....	57, 70
and arbitration	45
Tasmania	25, 70
Telegraph employees must be paid as adults	135
Test case	
establishes adoption leave.....	167
establishes maternity and paternity leave rights for certain casual employees.....	167
establishes paternity leave.....	167
on annual leave	158
on maternity leave.....	166
on personal/carer's leave	156
Textile Workers Case	90

Third Conciliation and Arbitration Bill	44
Time line.....	6, 56, 106, 146
Trade unions	13, 20, 97, 100, 102
Registration and regulation of.....	23, 102
The Act encourages	102
Troopers.....	9, 17, 99
 U	
Unions	13, 20, 97, 100, 102
United Kingdom	31, 40, 93
United States of America.....	27, 31, 40, 87, 93
 V	
Victoria.....	9, 16, 20, 25, 27, 44, 70, 102, 131, 135
Victorian Parliament	21
Voluntary conciliation and arbitration.....	22
 W	
Wage	
Basic	57, 67, 87, 94, 110
Family.....	36, 59, 65, 87, 109
Living	59, 65, 87, 109
Minimum	57
rates, Early minimum	91
The daily and weekly.....	67
The end of a needs-based.....	87
too high?, Harvester	92
too low?, Harvester	97

INDEX

Waltzing Matilda.....	10, 12
A song about a strike.....	9
and the great strikes	5
Watson, John Christian	34, 35, 176
Western Australia	25, 29
What is	
a lock-out?	15
a strike?	15
arbitration?	23
conciliation?.....	23
Women	
and single men.....	65
Different minimum wage for	71
Married.....	73, 79, 110
Minimum wages for adult.....	109
The end of a separate minimum wage for	110
Work performed by.....	76
Women's minimum wage increases to 75% of male wages.....	110
Work	
Fruit picking.....	74
Hours of	147
performed by women.....	76
World War I.....	73, 92, 133
World War II.....	110, 153

