A Woman’s Place:
A Critical Assessment of Working Women and
Australian Wage Fixation

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# Table of Contents

<table>
<thead>
<tr>
<th>Chapter Title</th>
<th>Page No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Contents</td>
<td>2</td>
</tr>
<tr>
<td>Abstract</td>
<td>4</td>
</tr>
<tr>
<td>Chapter One: Introduction</td>
<td></td>
</tr>
<tr>
<td>Aims and General Outline of Thesis</td>
<td>5</td>
</tr>
<tr>
<td>Wage Fixation</td>
<td>6</td>
</tr>
<tr>
<td>Methodology</td>
<td>9</td>
</tr>
<tr>
<td>Chapter Structure</td>
<td>11</td>
</tr>
<tr>
<td>Chapter Two: Literature Review</td>
<td></td>
</tr>
<tr>
<td>The “Established Tradition”: Australian History</td>
<td>14</td>
</tr>
<tr>
<td>“A Woman’s View of Australian Labour History”</td>
<td></td>
</tr>
<tr>
<td>The National (Male) Identity and Women</td>
<td>14</td>
</tr>
<tr>
<td>Women and the Workforce</td>
<td>19</td>
</tr>
<tr>
<td>Women and the Wage Determination System</td>
<td>21</td>
</tr>
<tr>
<td>Conclusion</td>
<td>25</td>
</tr>
<tr>
<td>Chapter Three: Context</td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>28</td>
</tr>
<tr>
<td>Part One: The Commonwealth Court of Conciliation and Arbitration</td>
<td></td>
</tr>
<tr>
<td>Origins</td>
<td>28</td>
</tr>
<tr>
<td>Structure, Power, Function</td>
<td>29</td>
</tr>
<tr>
<td>Part Two: The Australian Fair Pay Commission</td>
<td></td>
</tr>
<tr>
<td>Origins and Rationale</td>
<td>33</td>
</tr>
<tr>
<td>Structure, Power, Function</td>
<td>36</td>
</tr>
<tr>
<td>Conclusion</td>
<td>38</td>
</tr>
<tr>
<td>Chapter Four: ‘Keeping Mum’: Working Women and the Harvester Judgement</td>
<td></td>
</tr>
<tr>
<td>The Decision</td>
<td>39</td>
</tr>
<tr>
<td>Implications and Conclusions</td>
<td>47</td>
</tr>
</tbody>
</table>
Chapter Five: ‘The Other Worker: The Australian Fair Pay Commission

The Decision 49
Implications and Conclusion 59

Chapter Six: Conclusion 61

Bibliography 66
Abstract

This thesis is a critical examination of the relationship between Australian wage fixation and women workers. One of the ways women’s participation in Australia’s labour market is recognised and valued is through minimum wage decisions. This thesis is an exploration of just how these wage decisions do recognise women workers. In order to narrow this broad topic, this thesis has chosen to look at two very important wage decisions in Australia, both signifying the introduction of industrial relations changes in Australia at different times in our history.

The first is the well-known Harvester Judgement, which was created in 1907 by Justice Henry Bournes Higgins. This decision determined what a ‘fair and reasonable’ wage was for a male breadwinner. It argues that this decision ignored the role and participation of women in Australia’s labour market in 1907. The second decision explored is the 2006 inaugural decision of the Australian Fair Pay Commission – a new body established at a period of Australia entering industrial relations change. It is argued this decision also failed to adequately recognise the working status of women. Through these two decisions – both historically significant – this thesis argued that, despite the century difference between each, no change has been made in the attitude of wage fixing bodies toward women workers.
Chapter One

Introduction

This thesis examines the relationship between wage setting and working women in Australia over the last one hundred years. It does so through an exploration of wage setting under Australia’s two minimum wage fixation institutions; and in particular the two inaugural decisions of these bodies. In 1904, the Commonwealth Court of Conciliation and Arbitration was established. In 1907, it created its first decision – and Australia’s first basic wage – which became known as the Harvester Judgement and was premised on the principle of what would be a “fair and reasonable” (Higgins: 1907) wage for a male breadwinner. In 2006, wage setting was transferred to a completely new institution – the Australian Fair Pay Commission – and its inaugural decision was made in October of that same year.

This thesis aims to look in particular at these decisions as they relate to Australian working women. It will explore the level of recognition given to female labour market participants; with the explicit aim of discerning whether or not, in the century gap between each decision and the differences in the structure and processes of the institutions, recognition of women workers has changed at all. In order to do so, the following two research questions will be posed and answered in the ensuing chapters:

1. What are the similarities and differences between the wage setting principles used in the first minimum wage decision of the Commonwealth Court of Conciliation and Arbitration in the 1907 Harvester Judgement, and the first decision of the Australian Fair Pay Commission, in 2006?
2. What are the assumptions and implications of these principles for working women?
This introductory chapter will set the foundation from which the differences and similarities in wage fixation as they apply to these two institutions will be looked at. It is divided into two parts. It will initially create a context for the history of wage determination and subsequent wage-fixing principles, particularly in regard to women workers, to the point where a new institution now performs this function. In creating this context, the chapter will explore why the processes and principles of minimum wage setting need to be re-examined in the context of their relationship to women employees. The second part of the chapter will outline the methodology and chapter structure of the thesis.

**Wage Fixation in Australia**

Wage fixation has traditionally been performed by the Australian Industrial Relations Commission (Wooden: 2006:81; Burgess et al: 2006:7; Andrews: 2005). This body was initially created by the *Conciliation and Arbitration Act* in 1904 to affect the industrial relations power of the Australian constitution enabling:

> conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state (Australian Constitution: s51xxxv).

Tying wage setting to dispute settlement was a remedy the Court employed to undertake this power (AIRC:2006), and initially it exercised both arbitral and judicial powers. This fundamentally changed in the 1956 *Boilermakers’ Case*, which established that it was unconstitutional to have one body undertaking both judicial and arbitral roles. As a result, the Court split and the Commonwealth Arbitration Commission took over the role of wage fixation (AIRC: 2006). Further changes in 1988 saw function changes take shape, and its name changed to what it is known as today – the Australian Industrial Relations Commission (AIRC: 2006; Creighton and Stewart: 2006:56; Mitchell: 1988:486).

In 2005, under the Howard Federal Government, amendments have been made which have changed the shape of wage setting in Australia. A new institution – the Australian Fair Pay Commission – has been created to affect this role. Its establishment came about amidst vast and broad ranging industrial relations changes more generally (Ellem et al: 2005; Hall: 2006). In 2004, after their fourth election victory, the Federal Coalition Government rigorously pursued a further dismantling of the traditional industrial relations framework (Ellem et al: 2005; Burgess
et al: 2006: 8-10) in order to create a system, which would lead, in the Government’s view, to greater simplicity, flexibility and choice within the workplace (Andrews: 2005; Howard: 2005a; Howard 2005b). This would enable a more competitive Australian economy and increase employment and productivity (Howard: 2005a; Howard: 2005b; Andrews: 2005b). Part of the new system included the creation of “an independent wage setting body” (Andrews: 2005b), which moved away from what was deemed the “traditional adversarial and legalistic approach to wage determination” (Andrews: 2005b) in order to, from the Government’s perspective, help achieve this flexibility and efficiency within the workplace. At this early stage, it is important to note Australia’s two wage setting bodies are completely different. Each has a different structure and process toward wage setting, impacting on how decisions are made. Wage setting then, must be viewed in relation to these differences.

Wage setting has arguably been one of the most important roles performed by the Australian Industrial Relations Commission. The Harvester Judgement of 1907 highlights this because it “centralised wage setting which for many years was to become...[both] distinctive and controversial...”(Creighton & Stewart: 2005:52). The Judgement in particular concerned an application by H. V. McKay of the Sunshine Harvester Plant in Victoria for an exemption from certain tariff duties under the *Excise Tariff Act* 1906 (Creighton and Stewart: 2005:51; Deery et al: 2003:131; Teicher et al: 2006:143). It required the President of the Court, Justice Henry Bournes Higgins, to assess what was a “fair and reasonable” wage that could be paid to employees (Creighton and Stewart: 2005:51; Deery et al: 2003:131; Teicher et al: 2006:143) to allow McKay exemption. In this assessment, Higgins took into consideration what a male breadwinner would need to allow him and his family to live in “frugal comfort” (Higgins: 1907), and based the decision upon such evidence as the cost of food, clothing, water and shelter. This effectively created a floor for employees to be paid; and established the importance of having an institution determine employee’s wages.

The Judgement also brought into focus the significance of wage fixing principles which are the grounds upon which a decision is made in the Australian industrial relations system. The principles used early on, such as in the Harvester Judgement, did not arise from the Constitution which enabled the legislation (O’Dea: 1969:42). In 1906, the year before Harvester was handed
down, then President Justice Richard O’Connor stated “the act has laid down no principle...[in regards to wage setting]" (1906: 1 C.A.R 1). Guidance came rather, from the Justices’ own assumptions. Thus, the Harvester Judgement and its principle was based upon what Higgins deemed necessary – that is, he saw that a ‘fair and reasonable’ wage should be one benefitting employees and not based on broader economic considerations or the capacity of employers to pay (AIRC: 2006; Hutson: 1971:2).

The significance of this and the Judgement itself are illustrated in the fact it was not only a controversial one in its own time, but the controversy has endured. Indeed, Harvester is still being debated in contemporary industrial relations. For instance, in 1986 Porter, from the HR Nicholls society argued:

were Higgins alive today, caring as he did for the social conditions of the workers, he would have difficulty in concluding that wage intervention had turned out to be a device for the common man (1986:117).

The decision remains controversial for a number of other reasons; including the implications it has seen to have had for working women. Whitehouse (2004) argues the decision favoured men over women as the principle was based on a male worker’s needs. This, Whitehouse (2004:237) argued meant it treated women as inferior and institutionally entrenched barriers to women in the way of gender wage equality. Challenges to this male breadwinner model were a long time in coming. Arguably, the first instance that it was challenged was in the 1969 Equal Pay for Equal Work principle and the subsequent 1972 Equal Pay for Work of Equal Value principle (Whitehouse: 2004:226-234; Rafferty: 1994:451; Bennett: 1988:534-549).

In 2006, wage fixation in Australia entered a new era. Unlike the Australian Industrial Relations Commission and its predecessor institutions including the Conciliation and Arbitration Court, the Australian Fair Pay Commission was been granted immense guidance and instruction from the Workplace Relations (Workchoices) Amendment Act (2005) in regards to the process of wage setting. Its over-arching objective was to “promote the economic prosperity of the people of Australia” (Workplace Relations (Workchoices) Amendment Act 2005 (Cth) s 20). The principles of wage setting under this body were first enunciated in 2006 with the Australian Fair Pay Commission’s inaugural decision. Given the decision was made only recently, there has been
little academic analysis of it; and thus an avenue of enquiry has opened up. It is the aim of this thesis to fill this void and examine how the decision and its principle recognise women workers.

These are the research parameters of this thesis. What this thesis will not be examining – because of the limited space available for the study – is each significant gender pay equity decision since 1907. The focus is just on the Harvester Judgement and the Australian Fair Pay Commission’s first decision because they represent the first decisions of their respective institutions. The decisions here were made in starkly different contexts and have been created by different institutions. Because of this, the inaugural decisions create an interesting point of analysis regarding what the similarities and differences are between the two in relation to working women.

Methodology

The methodology employed in this study utilises and celebrates the role history plays in helping us understand contemporary processes, institutions, structures and events (see Carr: 1965:25; Hexter: 1971; Thompson: 1980; Yin: 1984). This is a common approach among industrial relations scholars who take an historical perspective. These authors suggest that contemporary industrial relations cannot be understood without an acknowledgement of past influences (Patmore: 1998; Strauss & Whitfield: 1998:214; Cooper & Patmore: 2002:3-18; Jamieson: 2006:60-78). That is, the historical dimensions of an issue or a process are not merely ‘contextual data’ for the present but they actually help us to understand where we stand at the ‘present’. Jervis (1998), writing about the development of modern Western culture and civilisation, suggested that “modernity has been inseparable from the idea of history” (1998:7). Given the acceptance then that history is inextricably linked to our understanding of the past, one might approach the question of the operation of the Australian Fair Pay Commission in 2006 without reference to other earlier events but would this give us the full picture? It is the contention of this researcher that by looking at the Harvester Judgement, we are better placed to understand both the nature of the Australian Fair Pay Commission decision, changes and continuities in the context for both decisions over time.
This thesis relies upon a qualitative methodology. More specifically, a documentary analysis has been employed. The documents examined have been both historical in nature as well as contemporaneous to this research. This use of historical and contemporary documents is a strength of this research. Documents from the Harvester era have informed analysis of that period. Documents from the mid-2000s have helped to construct a study of the AFPC’s first decision. But both sets of documents have helped to inform the analysis in both periods. The researcher has successfully discerned the assumptions made about women in each decision, allowing for a comparison of these over time.

A hard copy of the Harvester Judgement, handed down on November 8th 1907 was located in the Commonwealth Arbitration Reports from the Sydney University Law Library. The transcript of the original proceedings was located in the Melbourne Archives Centre, also providing invaluable insight into the assumptions this judgement uncovered about women. The Australian Fair Pay Commission’s decision was publicly available for viewing and downloading from their website. These became the two primary sources of information upon which the further research for the thesis was based.

This research was supplemented by extensive examination of other primary sources, which allowed the researcher to access more vivid and rich data in relation to the two decisions. Initially, newspaper and media sources from both eras of the decisions were consulted to gather a sense of the reactions and outcomes to both decisions; as well to construct a picture of the process each institution went through to make their final decision. For the Harvester Judgement, the major daily spreadsheet newspapers were located on microfilm in the Mitchell Wing of the State Library of New South Wales. They included The Argus, The Sydney Morning Herald, The Daily Telegraph and The Age.

For the Australian Fair Pay Commission’s decision in 2006, articles from The Sydney Morning Herald, The Daily Telegraph and The Age were analysed, as were contributions in other publications such as The Australian Financial Review and The Canberra Times. Other media sources - AAP, The Bulletin and transcripts from the Australian Broadcasting Corporation radio and television news services – were accessed. This enhanced the ability of the researcher to
discern the process and expectations surrounding the Australian Fair Pay Commission’s decision. Media releases from the time of the decision issued by both the Federal Government and the Chair of the Australian Fair Pay Commission were also consulted for this analysis. The process the Australian Fair Pay Commission went through to make its decision was also extensively analysed in the submissions put to them by organisations with an interest in wage setting, such as employers, unions, the State, Territory and Federal Governments and Government agencies, community groups and individuals. The research commissioned by the Australian Fair Pay Commission on a range of wage setting matters, including the relationship between minimum wage setting and employment and the characteristics of the low paid was also accessed and assessed. Analysis of these submissions and the commissioned research helped the researcher to understand how the decision was made.

In relation to the position of women in Australia’s labour market in both 1907 and 2006, an array of sources was consulted and analysed. In 1907, primary data and information on female workforce participation was located in the official Commonwealth Census of 1911; T.A Coghlan’s *Labour and Industry* and a major women’s periodical of that time – *The New Idea*. Data on the 2006 position of women was sought from the Australian Bureau of Statistics and recent analyses of ABS data, including the Women’s Employment Key Status Indicators report (WESKI: 2006). Various secondary sources were also consulted in order to build understanding of the labour market position at both historical periods. This included an analysis of feminist scholarship which highlighted importance of women’s participation in the labour market, industrial relations and wage fixing in Australia (see Ryan & Conlon: 1975; Kingston: 1975; Curthoys et al: 1975; Dixson: 1975; Summers: 1975; Whitehouse: 2004; Bennett: 1988; Short: 1986). This was added to by an analysis of broader research on the historical operation of wage fixing in Australia (see O’Dea:1969; Hutson: 1971; Anderson: 1929).

**Chapter Structure**

The thesis is structured in the following way. Chapter Two is the literature review, which considers the relationship between women, the labour market and the wage fixation system in Australia as it is represented in the social histories of Australia. It has two main sections. First, it argues that the traditional labour histories of Australia, written by the old left, were produced
from a distinctly male point of view which resulted in the virtual ignorance of the contribution of
women on three levels – the development of the national identity, the labour market and finally
the wage fixation system. The second section argues that these traditional histories were
critiqued, particularly by a group of feminist historians, who sought to challenge this invisibility
of women on all three levels. In doing so the literature review suggests that some key themes
have emerged from the arguments of these feminist authors. The first is that women have been
subordinated and suppressed, not just intellectually but in these key areas of Australian society.
Secondly the inequality between men and women is embedded in the structure of the workforce
and in the wage determination system. This literature review lays the foundation for the research
undertaken in this thesis, providing a background for the relationship between women and the
wage determination system in this country.

A context for the research is established in Chapter Three which details the origins, rationale,
structure and processes of both the Conciliation and Arbitration Court at the time of the
Harvester and the Australian Fair Pay Commission in 2006. It is essential when looking at these
decisions to locate the contexts in which they were made in, to better understand how they were
made and the outcomes that resulted. In doing so, this will create a contextual platform from
which a detailed analysis and discussion in ensuing chapters will follow.

Chapter Four is the first chapter to provide analysis of the primary research accessed and
analysed in the thesis. Building on the background established in the both the literature review
and the context chapter, this chapter examines the process the Conciliation and Arbitration Court
went through to make its inaugural decision in 1907 and how the Judgement considered women
workers. In order to do so, it draws upon the methodology outlined in detail above. The findings
suggest a mismatch between the Harvester decision and the labour market position in 1907.

Chapter Five analyses the Australian Fair Pay Commission’s 2006 decision. The chapter draws
upon the literature review and the context, and the method outlined above. This chapter finds
little evidence of change in relation to women’s ‘invisible’ treatment by wage fixing institutions
in the one hundred years between this and the Harvester decision.
Chapter Six draws together the findings of the thesis, presents the conclusions of the study and makes suggestions for future research.
Chapter Two
The Literature Review

This chapter sets out and analyses literature which is relevant to answering the research questions which guide this thesis. The questions are; first, what are the similarities and differences between the wage setting principles used in the first minimum wage decision of the Commonwealth Court of Conciliation and Arbitration in the 1907 Harvester Judgement, and the first decision of the Australian Fair Pay Commission, in 2006? Secondly, what are the assumptions and implications of these principles for Australian working women?

This chapter explores the research on the relationship between women, the labour market and wage fixing. This has two elements. First, it will argue that, within the traditional ‘old left’ labour histories of Australia – written by a group of Australian male historians – the themes and points of views raised surrounding the development of Australian society were produced from a male point of view and as such, resulted in the invisibility of acknowledging women’s participation in this development. Women however, did participate and do deserve a place in these histories. The second strand of this literature review will therefore secondly, examine where women are placed in the histories of Australia, through identifying the feminist authors who emerged alongside the ‘new left’ – a group of historians, including feminists, who challenged the traditional views of the old left. These feminist authors challenged this invisibility of women and offered their own versions, themes and debates about Australian labour history.

The “Established Tradition”: Australian Labour History
Before undertaking this exploration of the depiction of women in various histories it is necessary to examine the tradition that is Australian labour history and the patterns and schools of thought that have emerged. In doing so, we can illustrate why the ‘old left’ appeared as a predominant, orthodox view of labour history in Australia and then why this was challenged. Two arguments
will emerge. First, studies in Australian labour history have come together largely as a reactive process – that is, different schools of labour historians with particular focuses and arguments came about because of what they believe previous groups of historians failed to write. This has implications for their subjects of study. Second, all schools of labour historians, up until the emergence of the ‘new left’, despite their disparate chosen foci, excluded women in their painting of Australian history. The dearth of analysis in these histories surrounding women and their contribution to society – and in particular the working life – meant that women were in no way considered as participants or contributors in Australia’s development. This gives grounding as to why feminist historians, who emerged as part of the new left, materialized and focused on women.

Australian labour history, up until the emergence of the old left labour historians in the 1930s had a very narrow focus. Because of this, the old left surfaced to draw attention to certain aspects of the working sphere in Australia and their belief that the labour tradition was linked to the broader social, cultural, religious and political characteristics of Australian society. This gives weight to the argument that Australian labour historians have come into view as a reaction to what, in their view, was invisible to previous historians of this genre. Robin Gollan, writing as one of the most prominent of these historians in the first edition of the Labour History Journal in 1962 helps to create a picture of what labour history did not focus on prior to the old left:

    Good work has been done in Australian labour history but it is all within quite narrow limits. It has been confined largely to biography and political history...there is still no satisfactory general political history of the labour movement; the politics of labour in a number of critical periods and regions have not been studied at all...where work has been done there is plenty of room for different interpretations. (1962:3)

This illustrates that the old left had a set agenda for readdressing labour history. They added a new depth and perspective on an integral aspect of Australian history because its focus was on the institutional structures and movements supporting the labour movement, such as unions and the Labor party, and how these all contributed to a development of a unique Australian pattern of labour (Gollan: 1962; Wells, Cited in Head and Walter: 1988; Garton, Cited in Irving: 1994). It was reflective of a desire to:

    place the labour movement...at the centre of the historical stage...it was impossible, as so many historians had done before, to overlook the history of labour (Garton, cited in Irving: 1994:45).
However, despite this importance and focus, what these – and other historians writing prior to them – still did not address was the role and place of women. Labour history in this sense, was written from a very masculine point of view and women and their role in society – particularly the labour market – were invisible. Despite this, the female portrayal of women’s role in the labour history in Australia did appear (Lake: 1999). It did so as part of a wider critique of the traditional views of the old left by a new group of historians – the new left. Garton (1994) argues this new school of historical labour enquiry was poised to challenge the “narrow focus” (1994:50) with which the old left were concerned about “formal policy, foreign policy...significant ideas and events” (1994:51). Feminists historians in particular would add here that the old left were pre-occupied with a ‘male’ view of the world (Kingston: 1994; Patmore: 1991:161; Lake: 1999); with Patmore arguing “historical orthodoxy emphasised the role of ‘great men’ in exploring and building a nation” (1991:161).

Both Garton (1994) and Patmore (1991) make an interesting point that this feminist intellectual challenge to history in Australia came alongside the wider international civil rights movements (1994:50). Patmore (1991) states this feminist critique emerged:

against the backdrop of the world-wide [movements] in the early 1970s and the new left critique of labour history... feminists began to challenge the male domination of
Australian history...because prior to the 1970s Australian [labour] historians wrote little about women (1991:162)

Feminist historian Kingston (1994) also states that women, until the 1970s had:

received scant attention while Australian history was preoccupied with mateship and national stereotypes...[women’s] responsibilities for the home cast them in traditional roles irrelevant to the national historians (Kingston: 1994:85).

Hence, the emergence of some key authors and texts in Australian labour history that have sought to reposition the traditional view of the development of Australian labour, from a more female perspective.

These key feminist authors, their texts and response to the “male domination of Australian history” (Patmore: 1991), challenge three particular aspects of traditional labour history. The first is a general look at the place of women in the forging of a national identity. This ‘national
identity’ was a central motif in the work of the old left because they believed it was carved out of the working class and the labour tradition in Australia. The characteristics of what made the typical Australian and the national consciousness sprang from the way labour developed and settled in Australia. Two key feminist authors, Anne Summers (1975) and Miriam Dixson (1976) critique and explore the invisibility of women in this identity. They look at the theme of the subordination of women as a key reason for why women have been left out of this largely male identity.

This lays the foundation for two other aspects of Australian labour history challenged by these feminists; the second of which is the structure of the labour market in Australia, the work undertaken and in particular undertaken by women. These feminist historians argue that in the traditional old left histories, women and their participation in the workforce has been ignored. More than that however, they argue Australia has historically had a highly gender segregated workforce which has posed a challenge and struggle for women who have tried to achieve equality. This links strongly to the third and final aspect explored by these feminist historians, the relationship between women and the wage determination system. The themes of gender segregation and inequality between women’s and men’s work are similar to women’s and men’s wages. Furthermore, the struggle to gain not only equality in the workplace but also in the wage determination system is also similar. These aspects and the themes that emerge in them will now be explored in detail.

A Woman’s View of Australian Labour History

The National (male) Identity and Women

One of the primary themes of the old left histories was the development of a national identity which came out of the characteristics displayed by the working class. The historian Russell Ward and his book *The Australian Legend* (1958) in particular pinpoint the development of a national legend with the worker in Australia. This typical worker however was male and as such, provides the first point of critique by the feminist historians because, as will be argued below, such an exclusion of women in a dominant avenue of labour history has implications for the recognition of women in other areas of labour history, such as the labour market and by the wage determination system. The following explores the influential work of Anne Summers (1975) and
Miriam Dixson (1976) who sought to reposition this traditional view of the Australian consciousness – the main themes coming out of this include the subordination of women by men and the impact this had on women’s position in society.

Anne Summers’ *Damned Whores and God’s Police* (1975) and Miriam Dixon’s *Real Matilda* (1975) both provide invaluable insight into where women fit in the largely male construction of the national identity. Both challenged what had become a preoccupation of many different male writers in Australia spanning a vast number of years. Not only did Ward (1958) detail precisely what this orthodox school of thought consisted of but this can also be attributed to literary writers such as Joseph Furphy and Henry Lawson, as well as the official World War One historian C.E.W Bean (Garton: 1994). These authors combined present a very dominant, male construction of the Australian identity, which is characterised as someone who is an itinerant, hardworking bushman, socialist, loyal to his mates, rebellious against authority and determined to give everyone a “fair go” (Ward: 1958). A woman in no way featured in the development of the national identity and thus, was a highly male view of society.

It was Dixson (1976) and Summers (1975) who questioned where women fitted into this Australian character, essentially critiquing this male construction. In their analysis, the theme of subordination is picked up, bringing about the argument that women did not feature in this national identity because they were viewed as inferior to men. Both Summers (1975) and Dixson (1976) effectively illustrated this point by going back and examining the days of settlement and the perceptions which developed around this time of convict women and their role in this society. They argue these perceptions had a lasting impact on the way women were viewed in terms of their contribution to the building of the nation’s psyche.

The convict women, from the point of view of both authors, were treated with denigration and oppression by their male ‘brothers’. Summers (1975) and Dixson (1976) explicitly describe the sexual and physical abuse of women on the ships sailing to Australia and in the new colony, and suggest that their prime role in this new settlement was as “damned whores” (Summers: 1975). The male authorities of the colony, as quoted on Dixon’s work, saw these women as “to the disgrace of their sex, far worse than the men...”(Hunter, Cited in Dixson: 1976: 130).
Dixson (1975) and Summers (1976) build on this theme by suggesting the male convicts, who disliked the position they were in as prisoners in a new land and answerable to higher authorities, projected their frustrations and anger on female convicts. This ensured women had a lower status than them in the hierarchy of the settlement society (Dixson: 1976; Summers, 1975). The theme of subordination goes some way toward explaining why women did not, in the eyes of male historians, possess any of the necessary characteristics that contributed to the development of a stereotypical Australian. Because of the inferior view men took toward women, they were virtually ignored in the intellectual development of a national character.

Both authors argue this suppressive treatment of women had a lasting impact on how women have continued to be viewed by men in society. They claimed that, as Australia developed and settled, this attitude embedded itself deep in the national psyche and became a defining feature of the patterns and relations between men and women. However more than this, Summers (1975) and Dixson (1976) suggest women are not considered to possess the necessary characteristics that were needed to be part of Australia’s identity. They suggest, quite simply, that it was a working male who was the typical Australian. Women were invisible and were only there for the benefit of men and to provide the next generation of Australian workers.

A Woman’s View of the Workforce

The male view of the national identity and the critique of it by Dixson (1976) and Summers (1975) provides an inroad to the second challenge of other feminist historians to the traditional labour histories of Australia – namely the gender segregated nature of the Australian labour market. There are a number of key themes that emerge in this critique.

The first and most prominent theme identified in the work of feminist historians is the gender segregated nature of Australia’s workforce, and the impact this had on women. Beverly Kingston (1975), Belinda Probert (1989), Susan Eade, Peter Spearritt and Ann Curthoys (1975) and Edna Ryan and Anne Conlon (1975) explore the history of working women in Australia and the jobs they undertook. Underlying this exploration is the argument that this workforce has been
segregated along gender lines, with women confined to certain jobs that were deemed ‘acceptable’ for them.

Interestingly, they point to the British attitude toward what work women and men could perform as influencing the shape and nature of the Australian labour market. They argue this was a legacy transferred to the new colony which then became the basis for the way the Australian pattern of work subsequently unfolded. Ryan and Conlon (1975) suggest that:

the younger country accepted British concepts about women and their work to the extent that it is difficult to point to a new single Australian idea on the role of working women (Ryan and Conlon: 1975:17).

Briefly, this attitude must be explained as it helps to identify exactly what roles in the workforce women did undertake. Ryan and Conlon (1975) state “muscular strength was considered a man’s province and child-bearing imposed disabilities, taboos and restrictions upon women” (1975:1-2).

Through descriptions of the work Australian women undertook, with a particular emphasis on urban women, these authors provide evidence to support the theme that the workplace in Australia has been gender segregated. Kingston (1975), writing about the work of urban women in Australia until the 1930s, suggests that factory work, domestic service and, for the middle and upper class women volunteer and social work, were highly female dominated industries. A subversive theme that emerged in these works is that the work women undertook was confined so they would not pose a threat to the male’s jobs. Probert (1988) illustrates this idea by arguing:

women [were relegated] to second class status in the workforce...[as a] possible solution to the threat experienced by male workers (1988:93).

This builds on the analysis of the national identity and the theme of subordination of women – by keeping them at an inferior status in the workplace they would not threaten the very masculine ideal that went into forging the national identity.

At this point, another key theme arises which suggests that the workplace allowed the social roles of both men and women to play out. In particular, men were seen as the breadwinners and women the domestic carers and teachers of morality. The jobs undertaken by men and women therefore needed to reflect these defined social roles and expectations. Probert (1988) suggests
that “if husband and wife both found [equal] work this had the potential to undermine the man’s authority [as breadwinner]” (1988:92). The aforementioned description by Kingston (1975) of the various jobs women could undertake were linked to their social roles. Kingston (1975) as well as Curthoys (1975) depict that it was the plight of the unmarried women, for example, to undertake work in factories or as domestic servants until they got married when the males would become the sole breadwinner and they would be expected to take care of the house (Curthoys, Cited in Eade et al: 1975:92; Kingston: 1975). This, they argue, was for much of the 20th century in Australia a defining expectation and as a result, a further illustration of the segregated workforce.

A third and final related theme emerged here: the segregated workplace became the scene for equality and for an eradication of the traditional attitudes and ideas toward women. There were defining moments in the last century that presented a challenge to the traditional construction of the workforce. The depression of the late 1920s and early 1930s and World War Two in particular, served as a catalyst for women breaking the traditional segregated mould they had been cast into (Ryan and Conlon: 1975; Probert: 1988). At these times, women needed to undertake the work of men whilst they were partaking in war duties or faced unemployment (Ryan and Conlon: 1975; Probert: 1988) Women, these authors argue, displayed enormous capability and preference for these ‘male’ jobs yet when the men returned or the depression ended they were expected to return to their previous duties (Ryan and Conlon: 1975). It is the descriptions of the development of campaigns and mobilisation around the gaining of equality in the workforce that illustrates this theme. These authors also suggest that, at the time of their publications in the 1970s, women were increasingly taking part in paid work due to changes taking place in the traditional workplace mentality.

*A Woman’s View of the Wage Determination System*

The relationship then, between this system and working women makes for the third and final critique by feminist authors of the traditional labour histories. The same themes explored above – namely segregation, the link between social roles and the work undertaken by men and women and the struggle for equality – are also identified in this critique.
The first theme emerging in the reflections of the wage determination system and women is the fact that it represented the gender segregated nature of the workforce in decisions made. This led to, in the first half of the last century, the suppression of equal wages between men and women. This theme is effectively explored by Whitehouse (2004), who argues it “reflected, rather than directed, the patterns of labour market segmentation” (2004:217). This suggests that as a system it merely formalised the wider social attitudes and developed decisions on wages as a result of these public attitudes. The aforementioned social roles linked to the type of jobs that men and women were divided into meant that the wages paid reflected this division of labour, as well as enforced the notion that men’s work was more representative of the breadwinner status than women’s jobs were.

In illustrating this, Ryan and Conlon (1975) and Whitehouse (2004) draw upon the Harvester Judgement of 1907 as illustrative of embodying and cementing “prevailing social attitudes” (O’Donnell and Hall: 1988:35) in regards to men and women at work. In particular, they argue the Judgement embedded the idea of only males as breadwinners (Ryan and Conlon: 1975:91; Whitehouse: 2004: 223) and virtually ignored the working status of women. The implication of this, Whitehouse (2004) argued, was that it was to “bar the progress of women’s pay rates for over half a century” (Whitehouse: 2004), and furthermore, “formalised women’s inferior status in the labour market” (Whitehouse: 2004:217) and gives weight to the theme of the subordination of women in the labour market.

Whitehouse (2004) and Ryan and Conlon (1975) continue the theme of the segregation of women and men as represented in pay decisions with their analysis of the 1912 Fruit Picker’s Case. This decision was the first to formalise a wage rate for women but these feminists are highly critical of it. They suggest that such a wage rate was only awarded to curb what Justice Higgins’ called “the problem of female labour” (1912) and further they suggest he awarded the same rate to men and women working in this industry so as to not to allow women to act as a threat to men’s labour. If women were awarded the same rate as men in this industry they would not be hired over men for a cheaper rate. It was a decision merely preserving the sanctity of men’s labour. Ryan and Conlon (1975) state:
where women were employed in women’s work they were paid a women’s rate, when they competed with men however they were paid the male rate to prevent men from being squeezed out of jobs (1975: 99-100).

This decision then reflected the social attitudes toward the workforce and the position of women in it.

Whilst the wage determination system represented not only a place of inferiority for women, the literature also suggests it represents itself as a place for the gaining of equality and eventual eradication of the traditional attitudes surrounding women’s participation in the workforce. In contemporary times – that is, from the 1970s onwards, research suggested significant shifts have been made from the wages system in relation to their views on women workers (Jamieson: 2002; Whitehouse: 2004; Bennett: 1988; Short: 1986). This has taken shape at both a state and federal level, with the former more forthcoming in recognising women. Changes in attitude at the federal level, the research suggests, came about largely as a result of endogenous factors.

At a federal level, the beginning of a move toward equally recognising men’s and women’s participation in the labour market is effectively illustrated in the research by drawing on the two equal pay decisions of 1969 and 1972. However, whilst Whitehouse (2004), Bennett (1988) and Short (1986) argue the wage system did slowly begin to recognise more equally women’s labour market role, they still offer a highly critical view of these achievement in the wage determination system.

Whitehouse (2004), Bennett (1989), Short (1986) and Ryan and Conlon (1975) argue that, in keeping with the trend begun by the state tribunals to grant equal pay to women, the Federal Commission decided on the principle in 1969 of Equal Pay for Equal Work. These authors argue that the significance of this decision cannot be underestimated because it effectively overturned the entrenched male breadwinner principle made in the Harvester Judgement and gave due recognition to the fact that women did partake in the labour force and did perform some of the same jobs as men. However they argue this decision had its shortcomings. Whitehouse (2004) suggests it placed specific limits on the scope of equal pay claims which could only be made for: adult males and females working under the same determination or award, employed in work normally performed by both males and females and of ‘the same or like nature’.
These restrictions only allowed a narrow concept of ‘equal pay for equal work, and effectively bypassed the majority of women who were employed in the female-dominated occupations.

Short (1986:318) similarly argues that this principle in fact was a reiteration of the 1912 Fruit pickers Case because it stated women should be entitled to equal pay where they worked in ‘male occupations’ and performed the same jobs.

The equal pay for equal work principle therefore had significant limitations. Its success in terms of broad based application was also limited. Whitehouse (2004:227) states that this decision only covered 18% of the female workforce. Because of this, a second equal pay case was held in 1972 with the intention of broadening the scope of the principle from equal pay for qual work to equal remuneration for work of equal value. The literature charts the initial success of this principle. Whitehouse (2004:233) states that during the decade of the 1970s, women’s minimum weekly wages rose from 73% to 93% of men’s. This suggests the advances women had gained under these watershed decisions by the Commission. It also illustrates in the literature the theme of equality that was struggled for under the wage determination system.

However, the literature also points out that, since these two landmark equal pay decisions by the federal tribunal, progress stalled for women in gaining effective recognition of the principle. Bennett (1988) and Short (1986) are highly critical of the Commission in the period after the 1970s, as they believe it did not effectively follow through with applying the principle, thus barring progress by women in gaining total recognition of equal pay. Short (1986) argues that, whilst on the one hand advances were made, this was highly theoretical as the issue of undervaluation of female labour was not given adequate attention, even after the commitment by the Commission in 1969 and again in 1972. Whitehouse (2004) also argues “the undervaluation of female-dominated work has not been adequately resolved” (2004:236). One of the most prominent illustrations the research draws on is the Private Hospitals and Doctors Nurses (ACT) Award (1986 300 CAR 185) which took place under the Accord between the federal Labor Government and the Australian Council of Trade Unions. Here, the applicants – nurses – sought a revaluation of their work on the basis of comparable worth (Whitehouse: 2004; Bennett: 1988; Rafferty: 1994). The Commission however explicitly rejected the notion, due largely to the fact
they believed such an undertaking would be “inconsistent with the Australian approach to wage fixation” (Whitehouse: 2004:236). This rejection also came on the grounds that the Commission simply had not changed its ethos to take into consideration such issues as equal wage cases, a criticism that Short (1986) and Bennett (1988) aforementioned argued. Whitehouse states:

the claim failed, in part, because it was presented in a way that ignored the constraints under which the Commission operated (2004: 236).

The major theme then, of this research is highlighted - the quest for equal recognition by women within the wage setting system particularly at a federal level is still present; and women are still struggling for complete recognition of their participation in the labour market.

At a state level, the research suggested women have gained more in the way of equal pay. In NSW since 1996 especially, gender pay equity has had positive results for women (Jamieson: 2002). A pay inquiry commissioned in 1997 found undervaluation of women’s skills was still the major barrier toward achieving full pay equity (Glynn Report: 1998). Child carers, hairdressers, librarians, seafood processing workers and clothing machinists were undervalued compared to their male colleagues (Glynn Report: 1998). Coming out of this report were the recommendations that both legislative reform and the adoption of an equal remuneration principle was needed. This was followed through, with Jamieson (2002) illustrating that a new principle of equal remuneration was adopted in 2000 and it was successfully put to the test in the state librarians’ case (NSWAR: 2002) in which these workers were granted a 16% pay rise (Jamieson: 2002). What this suggests is that, whilst barriers today still exist for women, advances have been made and the wage system has increasingly played an important role in shifting its attitude toward women at work. Hence, this research embodies the themes of the literature, suggesting the wages system has slowly moved toward granting equality but pay equity is still an important one to consider.

**Conclusion**

The chapter has sought to provide a review of the research surrounding the relationship between women, the labour market and the wage setting system in Australia, as represented both by the traditional ‘old left’ labour historians and feminist historians. In this review, it was identified that the latter group of historians emerged to challenge the old left’s conservative views on Australia.
This review followed a very specific approach. The feminist histories were drawn upon to
discover and challenge what these traditional, conservative views of the old left were, and what
elements of Australian labour history they focused on. These feminist histories argued that
women were invisible in these histories because the old left histories were highly gender biased
in their depiction of Australia’s working class and the labour tradition. It was the feminist
literature that challenged this invisibility by producing their own versions of Australian labour
history.

It was identified that the feminist historians challenged in particular three specific focuses of the
old left, through which key themes emerged throughout their work. The first was the relationship
between the national identity and the working class man. The emergence of such an identity, it
was argued, was tied to the male and his working class attributes. In critiquing this, the feminists
argued that women were invisible in this national identity, largely because they were seen as
subordinate and essentially unworthy of featuring in such a representation. This challenge posed
in relation to the identity of Australia, and who the national character was, provided the
foundation for two other more specific critiques by the feminist bodies of literature.

Women’s representation in the workforce and the relationship between women and the wage
determination system emerged as the other two areas of focus for these feminist authors. Some
key themes also emerged here. Namely, the gender segregated nature of the workplace and how
this impacted on the work women historically undertook in Australia as well as the recognition
they received by the wage determination system. The second key theme that emerged was the
struggle for equality women undertook in both the workplace and in the wage determination
system to eradicate these subordinate views of women. Despite some advancement in terms of
gender equality, the literature points out that total equality is still an elusive concept.

The chapter has set up a foundation for an analysis of both the Harvester Judgement and the
Australian Fair Pay Commission’s inaugural decision. It has done so by identifying the themes in
the literature which can be applied to both these decisions. Specifically, these concern the
subordination of women by the wage setting system and the struggle for change in this
subordinate attitude. This will essentially be done by applying these identified themes in this
review to the two decisions. In the Harvester Judgement of 1907, which will be examined first, the exclusion of women in this decision will be explored, with the intention of looking at what implication this had on working women. It will be argued that the theme of subordination, explored in this review, runs parallel to the Harvester Judgement, as the principle this decision was made on related only to ‘male breadwinners’, thus ignoring women.

In exploring the Australian Fair Pay Commission and its inaugural decision, the research reviewed regarding contemporary wage setting will be built upon in the analysis of this decision. In particular, the idea presented here regarding the wages system at a federal level still ignoring the participation of women in Australia’s labour market, and the theme of women struggling to gain equality and overturn traditional views of their participation in the workforce is still very much present. It will be argued that this decision does not resolve the issue of gender wage inequality. This analysis will commence in the next chapter, which establishes the context for wage fixation in Australia, before turning attention in the following chapters to the first decisions of the Conciliation and Arbitration Court and the Australian Fair Pay Commission.
Chapter Three

Context –
The Conciliation and Arbitration Court 1904 and
The Australian Fair Pay Commission 2006

Introduction
This chapter provides the context for the research presented in Chapters Four and Five of the thesis. It explores the composition of both the Conciliation and Arbitration Court and the Australian Fair Pay Commission to the point of their inaugural decisions. It discusses the structure and operation of both institutions, the key people at work within them, as well as the rationales of each institution’s creation; in order to ‘set the scene’ for ensuing exploration of the assumptions and outcomes of the momentous first decisions of each body.

The chapter is divided into two parts. Part one will focus on the Conciliation and Arbitration Court in 1904 and part two examines the Australian Fair Pay Commission in 2006. Here, parallel themes will be discussed, including the origins, structure and processes and the political rhetoric surrounding the creation of both bodies. These sections highlight the apparent and obvious differences between both institutions but will also illustrate they each share an important similarity: each was the product of much larger industrial relations changes going on in their respective eras.

The Commonwealth Court of Conciliation and Arbitration
The Commonwealth Court of Conciliation and Arbitration was formed in 1904 out of “felt need” (Higgins:1968; Dabscheck: 1981:211) to bring peace to the relations between capital and labour, in the aftermath of the preceding tumultuous decade. The following section will examine this
origin, the rationale behind the Court, its structure and how wage setting became one of its most important functions.

Origins

1890-1904 – A “Watershed” Time in Australian Industrial Relations

The 1890’s was a turbulent time in Australia – nowhere more so than in the industrial relations arena – due to the ‘great strikes’ which took place throughout the decade. Although they caused bitterness and much discontent, these disputes proved the catalyst for changes in the regulation of the employment relationship in this country. As we shall see, such changes were to underpin Australia’s industrial relations system for the next century.

The cause of the strikes was ‘freedom of contract’ (Markey: 1988; Markey: 1985; Macintyre and Mitchell: 1989). Employers aggressively pursued managerial prerogative over labour as a result of the dire financial situation which unfolded in the colonies during this decade, arguably leading to the worst depression Australia had ever seen. Wool, the main export of the colonies, had plummeted by 36% by 1894 (Deery et al: 2001:125); the ‘bank smash’ of 1891 led 17 out of the 28 banks in Sydney and Melbourne to collapse, as did 41 land and finance companies in the two major cities (Deery et al: 2001: 126; Macintyre: 1999:123; Craven: 1992: 234). Unemployment reached mammoth proportions by 1894 – 29% (Macarthy: 1967:101-102) and wages dropped by over a third (Buckley and Wheelwright: 1988:196). One of the worst droughts on record ravaged the pastoral industry from 1895-1903 (Macintyre: 1999: 129). On the eve of the new century, the country was in the midst of a grave and serious depression.

Facing economic annihilation, capital wanted to exercise managerial prerogative in these ominous economic circumstances, particularly in regard to wages (Butlin: 1958:23; Macintyre: 1999:130). Unions vociferously rejected this ‘freedom of contract’. They had established collective bargaining as a tool for improving the conditions, including wages (Deery et al: 2001:125; Markey: 1988; Butlin: 1958:23) and sought to protect both this process and its outcomes. Ultimately therefore, given this difference in opinion, the strikes ensued. Lasting six years and having the most profound consequences in the maritime and pastoral industries, they
resulted in what Deery et al (2001:130) have argued was “near civil war”. This came about largely because of the uncompromising support employers received from the colonial state; as police, defence forces and the Courts were given powers to break picket lines, safeguard employers’ property and arrest strikers (Hagan & Turner: 1991:8-9; Ebbells: 1960:148-149).

As a result of this support, employers were victorious. Workers and their representatives were overwhelmed at the power of capital. The might of the state had been put on display and it was clearly on the side of employers. Unionists began to seek out to change this situation. Foremost in their minds was the formation of a workers’ political party. By 1900 all mainland parliaments had a Labor Party representing the interests of workers (Macintyre: 1989; Hagan & Turner: 1991:8-9; Ebbells: 1960:148-149). Once established, these parties sought to implement a ‘fairer’ industrial relations system in which both parties presented to a neutral arbitrator (Markey: 1989:164). Calls subsequently began for the establishment of arbitration mechanisms. The mood of the day was later captured by H.B Higgins:

> the process of conciliation and arbitration in the background is substituted for the rude and barbarous process of strikes and lockouts (Higgins, Cited in Rickard: 1984:121).

By 1901, all colonies had established such a mechanism, adopting what became a uniquely Australasian system.

‘We are one’: Federation, the Constitution and Industrial Relations

At the time of the great strikes there was already talk of federation. During the many forums and conventions held on how federation would take place and the content of the constitution (Craven: 1992), industrial relations was debated as a necessary inclusion, given the circumstances. What power the Commonwealth should have became the focus of many arguments (Craven: 1992; Deery: 2001: 134; Rickard:1984:72-75). Given the successful adoption by the colonial Governments of their own systems of conciliation and arbitration, argument was in favour of the Commonwealth having limited powers. Higgins advocated for the Commonwealth having power to act only if the dispute extended beyond the limits of any one state (Rickard: 1984:74; Rowse: 2004) and at the last minute, this was included. The constitutional power read:

> Conciliation and Arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state (Australian Constitution: s51.xxxv).
The significance of this working is that the Commonwealth was only ever designated residual power in relation to industrial relations (Craven: 1992; Deery: 2001: 135); a point of contrast to be discussed in relation to current trends in industrial regulation.

The first Commonwealth parliament made manifest this Constitutional power. In 1904, it passed the Conciliation and Arbitration Act 1994 (Cth). The most important part of this Act was the power of to establish a federal tribunal, based along similar lines to the state tribunals. In 1904, the Commonwealth industrial relations tribunal was established: the Commonwealth Court of Conciliation and Arbitration. This institution was based on a tri-partite system of regulation – that is, employers and employees were to have equal levels of recognition and participation with the state acting as neutral arbiter. This became a key rationale – such a system was clearly needed so the disruptive industrial unrest of the previous decade was not repeated. As Justice Higgins proclaimed when reflecting on this debate:

there should be no more necessity for strikes...the Arbitration system is devised to provide a substitute for strikes and stoppages...(Higgins: 1919:205).

Hence, this characterises the rationale for the establishment of the Conciliation and Arbitration Court.

The First Court: Structure and Function

The preceding discussion has described how the Conciliation and Arbitration Court was established by examining the historical events taking place in Australian industrial relations at the turn of the 20th century. We now move to an examination of the two other characteristics of the context for the Court –the structure and functions of the Court in the early days of its operation.

Structure

Under the Act, the Court was designed for arbitration in default of amicable agreements between parties, for states to refer industrial disputes, to facilitate and encourage the organisation of representative bodies of employers and employees and to provide for the making and enforcement of industrial agreements (Commonwealth of Australia 1904 (Cth) s 2). This alludes to the rationale discussed above regarding the level of state regulation. The Court’s personnel
consisted of a President – a Justices of the High Court – appointed for a seven-year term. They were eligible for re-appointment and could be removed by Parliament if proven they had ‘misbehaved’ (Higgins: 1968:2; Dabscheck: 1981:216; Deery et al: 2001:131). The first President was Justice Richard O’Connor. Deputy Presidents could support, but this was not done until Justice Higgins became the President in 1907, where he was aided by two deputies.

It must be noted at this point that the Court’s early work did not proceed at a cracking pace. In 1905 it presided over five cases, three of which were dismissed on the grounds of lack of jurisdiction. It was not until 1907, when Justice Higgins, in his first year as President, directed the Court to undertake what was to become one of the most important and controversial roles – wage fixation. As Rickard states: “[wage fixing] was the rock on which Higgins built his Court” (1984: 175).

Function: The Court as Wage Setter

Our attention now turns to the Court as wage setter, given wage fixation became pivotal in the functioning of the Court. Justice Higgins acknowledged that wage fixing was one of the remedies the Court could employ to resolve industrial disputes and Rickard (1984), states:

once formally appointed...he [had] the opportunity to place his immediate stamp on the theory of wage regulation...which was not an exercise in Conciliation and Arbitration...but which characterised the [nature of the Court] (171).

It can be assumed then that wage fixation was not the primary role of the Court. This is further illustrated in the idea that wage setting was not defined in any formal authorities. The Conciliation and Arbitration Act (Cth) 1904 did not give guidance on the way wage setting was to be undertaken. Because of this, it was necessary for the personnel of the Court to look beyond the legislation for direction on wage setting. Higgins, in making the first wage decision approached it from a very social welfarist perspective, and he “referenced human needs” (Rickard: 1986:174) to declare “a sacrosanct minimum wage” (Rickard: 1984:174). Out of this comes the implicit assumption that wage fixation “has been entirely the work of the Commonwealth Court of Conciliation and Arbitration” (O’Dea: 1969:47) and, building on this Hutson (1971) argues “the Australian basic wage was purely the personal creation of Justice Higgins” (1971:46).
The idea of principle also emerged as necessary in making and justifying wage decisions. In the scholarly works on Australian wage fixation, O’Dea (1969), Hutson (1971), Anderson (1929) and even Higgins himself (1968) acknowledge the development of principle as being integral to wage fixing in Australia, as “principles, [have] become the established way of setting minimum wages by the court” (Higgins: 1968:6). This once again was not promoted in any legislation, and this it was developed by Higgins who “felt confident that he was free to evolve what principles of wage fixation he considered appropriate... (O’Dea: 1969:46). This therefore has illustrated definitively the role wage fixation played in the functioning of the Court.

The Commonwealth Court of Conciliation arose out of the actions taken by various parties – unionists, the Labor party and the drivers of federation – to put an end to decades of unrest in the country. Its initial formulation was to support what the states had already devised in the way of compulsory conciliation and arbitration boards. In order to facilitate dispute resolution, wage fixation became a primary function of the Court. As described, the Court was given very little guidance on how wages were to be set. Despite this, it became an integral function of the Court and – in its various incantations – the Court became embedded with this role until 2006, when a new institution, the Australian Fair Pay Commission, was established to take over the role of wage fixation.

The Australian Fair Pay Commission
The Australian Fair Pay Commission (AFPC) established in 2006 was, like the Conciliation and Arbitration Court, established in the context of larger changes. This section reviews the reasons for the AFPC and Work Choices’ establishment. We begin by looking at the origins and rationale of the Commission.

Origins and Rationale behind the Australian Fair Pay Commission: A Political Perspective

Political Rhetoric
The AFPC was founded as part legislative changes detailed in the Workplace Relations Amendment (Workchoices) Act (Cth) 2005. This Act became effective in 2006, and represented a move by the Federal Coalition Government to dismantle the unique, century-old tri-partite
industrial relations framework established a century earlier. As well as the establishment of a new wage-fixing body, the AFPC, the changes also included the removal of many of the traditional features of the industrial relations system: the stripping back of awards and the narrowing of so called ‘allowable matters’, the promulgation of individual contracts, vast restrictions upon union action and the removal of unfair dismissal protection for many employees of companies (Andrews: 2005a, 2005b; Baird et al: 2005:14-15).

These changes were associated with a particular rhetoric of justification. Pollard and Liebeck (1994) state that part of the skill of rhetoric – which allows people to justify certain actions (Gill & Whedbee: 1997:168; Fairclough: 1995) – is the “art of using words impressively” (1994:687). The Government, in justifying Work Choices, has adopted the term ‘deregulation’. Deregulation has been a central part of the industrial relations debate over the last two decades (Isaac &Lansbury: 2005). It is commonly assumed a taking a deregulated approach allows for less regulation, ‘freeing up’ the labour market and leading to measurable economic benefits (Isaac: 2002:5). It was not until the 1980s that deregulation began to take shape in Australian industrial relations. Recommendations were made by employer groups (the Business Council of Australia in particular), and think tanks like the HR Nicholls society to dismantle the existing industrial relations system (Callus & Buchanan: 1993; Isaac: 2005:2; Ellem et al: 2005:15, Hancock: 1985; Bray et al: 2005; 82; Blandy & Niland: 1986) and to replace it with a system which would allow for more flexibility, choice, global competitiveness and ultimately productivity. (Hancock: 1985).

Despite the arguments of advocates for ‘deregulation’, Callus & Buchanan (1993) argue that deregulation is often a misused term because it actually means ‘reregulation’. That is, regulation is not removed but replaced with other forms of regulation. If we view recent industrial relations changes through this prism it becomes clear that Work Choices is a reregulation of the industrial relations system (Ellem et al: 2005), away from a tri-partite system to more “enterprise and...individual bargaining” (Isaac: 2005:2); with the Government arguing the laws are designed to:

create a more flexible, simpler and fairer system...to improve productivity, increase wages, balance work and family life and reduce unemployment (Howard: 2005a, 2005b).
Furthermore, critics also argue that deregulation is not the right phrase to describe the changes – rather the changes made to industrial relations since 1996 and indeed in 2005 have been to de-collectivise and de-centralise (Ellem et al: 2005:16) away from the state. Ellem et al argue:

the new proposals are a...break from the past because under the guise of deregulation they de-centralise and de-collectivise the regulation of work (2005:16).

Hence, to appreciate the changes made to industrial relations in Work Choices, we need to view it as a re-regulation of industrial relations and the degree to which it moves from centralisation to decentralisation. This lays the foundation for an examination of why the AFPC has been established.

**The Rationale**

One of the most controversial changes made under Work Choices was the establishment of the Australian Fair Pay Commission (AFPC). The reasons for the AFPC’s creation are hard to decipher (Burgess et al: 2006), although we can discern a number of assumptions about its creators motives. Critics of the AFPC’s establishment argue:

The state of the economy and labour market does not provide any prima facie support for the claims the AIRC has abrogated its wage fixing responsibilities...(Burgess et al: 2006:7).

However given this, a new body was created and the arguments from the Government and business sector, despite telling only one part of the story, give us the best indication as to why this was so. One of these fundamental arguments is that the Australian Industrial Relations Commission (AIRC, which evolved from the Court) was becoming inefficient and irrelevant in the way they made wage decisions (ACCI: 2006). Burgess et al state:

the rational appears to be in part related to the procedures associated with the hearing of safety net wage increases before the [AIRC] (2006:6).

The Australian Chamber of Commerce and Industry submission to the Senate inquiry into Work Choices argued that AIRC’s wage fixing measures were “unacceptable and unsuited” (ACCI:2005) to the contemporary world of work. The Government supported this with the statement that it wanted to move away from the “traditional legal and adversarial nature of wage setting” (Andrews: 2005a). Hence, this argument suggests the AFPC’s establishment was to eradicate the outmoded and ineffective AIRC.
The Australian Government has drawn parallels between the AFPC and the British Low Pay Commission (LPC) in justifying the institution’s establishment. The Minister for Employment and Workplace Relations in 2005, Kevin Andrews, argued in a speech to the National Press Club:

> the UK’s Low Pay Commission [appears] to strike the right balance between the needs of the low paid and the unemployed... (Andrews: 2005b).

However such a comparison seems largely unfounded (Workplace Express: 2006a) and these arguments have been critiqued by both Australian and British scholars. For instance, Professor Willie Brown from Cambridge University has argued:

> It would be hard to imagine more different origins over the past century. The Australian commission is another stage in the gradual unpicking of the most regulated pay-fixing system... Its British counterpart...is a belated acknowledgement that largely unregulated free collective bargaining has failed...(Brown: 2005:12).

May (2005) suggests the Government, in attempting to make the comparison between the AFPC and the LPC, is merely trying to ameliorate the criticisms of its “harsh, ideologically driven agenda and the lack of evidence in favour of the proposals” (May: 2005:102).

What this political rationale behind the AFPC specifically and *Work Choices* more generally suggests is indeed a contrast between this era of industrial change and that characterising the Court in 1904. As illustrated in the previous section, the Court came about because of a need to have a high level of state intervention in industrial relations; what the AFPC represents is the opposite to this. What emerged however is a similarity between both – they both represented bigger changes taking place to the industrial sphere in their respective eras.

**The Structure and Function of the Commission**

Attention will now focus on the structure of the AFPC and what its functions and powers are. Section 7(G) of *Work Choices* grants the provision for the establishment of a Fair Pay Commission. The purpose of the AFPC is wage setting, with its specific functions including the exercise of wage setting reviews; adjusting standards and the rates pay for junior, disabled or trainee employees periodic and piece rates and casual loadings [cited here but not sure how]. In order to set the federal minimum wage the Government has laid certain parameters within which
the AFPC can act. There is an overall objective for the AFPC to “promote the economic prosperity of the people of Australia” (AFPC:2006) when setting wages. To do so, they must give regard to the capacity for the unemployed and low paid to be employed, the employment and competitiveness across industry; providing a safety net and minimum wages for junior, disabled and trainee employees (Workplace Relations (Workchoices) Amendment Act (Cth) 2005 s 20).

Decisions are made within the AFPC by five key personnel – a Chairman and four Commissioners (Burgess et al: 2006:10; Teicher et al: 2006:150; Workplace Express: 2006b). Under s. 29 of Work Choices the Chair is appointed by the Governor-General for five years and must be someone with high levels of skill and experience in business or economics. The inaugural chair was Professor Ian Harper, a Professor of Economics from the University of Melbourne (Burgess et al: 2006a). He is supported by four Commissioners, who come from varied backgrounds. They are required to have experience in business or economics, community organisation or workplace relations. The four inaugural Commissioners include Mr Hugh Armstrong, Mr Patrick McClure, Mr Mike O’Hagan and Professor Judith Sloane. The Commissioners are supported by a Secretariat (AFPC: 2006), designed to undertake the administrative functions of the AFPC including consulting with stakeholders and evaluating the impact of the AFPC’s decisions. The Commission is also given full discretion to the timing and frequency of wage decisions. At the time of writing it was revealed that the AFPC had decided that wage reviews would take place annually in July to be implemented each October (AFPC: 2007). The AFPC is also under no obligation to make their decisions public.

The above discussion has illustrated why and how the AFPC was established. The discussion also interrogated the rationale for the AFPC’s establishment. While deregulation has been the stated aim of the Government, critics have argued that reregulation and decentralisation is a clearer and more appropriate description of the context for the establishment of the AFPC specifically and Work Choices more generally. Critics have argued, on the other hand, that the creation of the AFPC is “curious” (Burgess et al: 2006). Despite this, we now have a new wage setting body in Australia.
Conclusion

This chapter has presented the context for the research presented in this thesis. It has focused on establishing a context for the formation of both the Conciliation and Arbitration Court in 1904 and the Australian Fair Pay Commission in 2006. It did this by examining why both were formed, their structures and processes, they key people involved and the political rationales supporting their respective creations. It illustrated that, the structure and processes with which both make decision are in vast contrast to each other. What this chapter then has created is a foundation from which detailed analysis will take place in Chapters Four and Five of the first decisions of both institutions and the implications of these decisions, and their principles, on working women. The decisions will be discussed and then an analysis will ensue as to how they have implicated Australian working women who are still, even today, struggling to gain adequate, equal recognition of their participation in the labour market.
A Woman’s Place: A Critical Assessment of Australian Working Women and Wage Fixation

Chapter Four

“Keeping Mum”: Working Women and the Harvester Judgement

Introduction

A century ago, one of Australia’s most important wage fixing decisions was handed down. The Harvester Judgement of 1907 determined the first basic wage in Australia. In creating such a decision, not only did Justice Higgins fashion a precedent upon which future wage decisions would be made but he also propelled wage setting to become a central focus of the federal tribunal. The Harvester Judgement has been described as “sacrosanct” (O’Dea: 1969:48) and a “watershed” (McCarthy: 1969:26). In a reflection of the excitement such an unprecedented decision generated, The Argus reported that “no judicial decision has aroused greater interest than that given by Mr Justice Higgins” (1907:6). Indeed, such a decision still arouses interest today and, as a result its importance cannot be underestimated. As Rickard (1984) states “the Harvester Judgement has won its place in Australian history books as a symbolic part of the making of the Australian nation” (1984: 171). Part of the significance and influence of the decision is that its impact was far-reaching and has proven to be long-lasting. Although it explicitly addressed a very narrow group of wage-earners in Australian society (namely male workers), it indirectly affected other participants in the labour market. One of the most important groups this decision indirectly, but nonetheless significantly, concerned was working women.

It is the aim of this chapter to draw together the primary research undertaken by the researcher to answer the questions originally posed in Chapter One, regarding the assumptions and implications of the Harvester Judgement for working women in 1907. The main argument which will filter throughout the assessment of the Harvester Judgement presented in the chapter is that it did not consider women as workers but as wives and caretakers. It will argue this recognition was premised on broader ideas about racism and gender which preoccupied Higgins’ mind as a nation-builder in 1907. The Harvester Judgement institutionalised a minimum wage based on the principle of the needs of a male breadwinner, and in doing so this also entrenched the ‘ideal’ role
of women. This chapter will also look at the implications of such a decision, suggesting it cemented barriers for working women in the way of achieving pay equity for the 20th Century. As detailed in Chapter One, this thesis builds upon both primary and secondary research, including an analysis of the decision and transcript. Extensive supplementary secondary source material has also been used.

**The Harvester Judgement**

The Harvester Judgement arose as a result of what has come to be known as ‘new protection’ and the provisions laid out in the *Excise Tariff Act* (1906). At the turn of the 20th Century, the Australian Government wanted to protect domestic industries – such as manufacturing – so that employers would not be undercut by cheaper imports and employees would be protected in their employment by profitable industry (Macintyre: 1989a:21; The Age: 1907:20; SMH: 1907:23; The Argus: 1907:6). In order to adhere to these ideas, the Commonwealth applied a tariff onto manufactured imports thereby giving the local manufacturer a price advantage (McCarthy: 1969: 24; Macintyre: 1989a:21; The Age: 1907:20-22; The Argus: 1907:6). This ‘new protection’ was linked to the conditions, in order to keep employment in Australia safe-guarded (Macintyre: 1989a:21; McCarthy: 1969: 23-24; The Age: 1907:20-22; SMH: 1907:23). It aimed to do this by producing an excise duty on the local product that would be waived if ‘fair and reasonable’ wages were paid to employees (Higgins: 1907; The Age: 1907:20-22; SMH: 1907:23).

It was on the premise of this exemption and the determination of whether the wages being paid to employees were ‘fair and reasonable’ that the Harvester Judgement occurred. The agricultural-machinery industry was the first chosen to implement new protection and between 1906 and 1907 (The Age: 1907; SMH: 1907:19; Daily telegraph: 1907:34), Justice Higgins received many applications from employers in this industry for such exemptions. He chose however an application for consideration by Hugh Victor McKay (The Age: 1907; SMH: 1907:19; Daily telegraph: 1907:34), the owner and operator of one of Australia’s largest harvester manufacturing plant (The Age: 1907; SMH: 1907:19; Daily telegraph: 1907:34), based in rural Victoria. Higgins’ justification for choosing this application was that “the factory was one of the largest; and had the greatest number and variety of employees...”(Higgins: 1907).
To illustrate more specifically, the plant employed at its peak around three thousand employees who worked as iron-moulders, turners, iron-machinist, blacksmiths, wood-workers, painters and engine drivers (The Age: 1907; SMH: 1907:19; Daily telegraph: 1907:34; Ryan and Conlon: 1975; 55; McCarthy: 1969). These employees were, notably, all male (The Age: 1907; SMH: 1907:19; Daily telegraph: 1907:34). In 1907, the plant was recognised as the largest of its kind in the industry, and had a reputation for its innovative management practice. McKay, himself a forward thinking employer, implemented effective contemporary management strategies with a desire to reduce costs but maximise output in order to remain the leader in the industry (The Age: 1907; SMH: 1907:19; Daily telegraph: 1907:34; McCarthy: 1969). Being bound by government regulation, such as having to pay excise on tariffs, was not part of this strategy and hence, McKay willingly submitted his application to the Court to avoid such a duty (McCarthy: 1969). Having chosen this application, it thus became the duty of Higgins to “ascertain whether the conditions of remuneration [in the plant] submitted to me are fair and reasonable” (Higgins: 1907).

Before Higgins was able to discern whether McKay’s wages were ‘fair and reasonable’, he needed to define and identify exactly what was a ‘fair and reasonable’ wage. Wage setting, as the previous two chapters have illustrated, had never been attempted before in Australia and Higgins was thus given very little guidance in his deliberations. As he pointed out very early on in the decision “the Act left me free to inform my mind as best I could” (Higgins: 1907; The Age: 1907:20). Higgins also acknowledged that this freedom came in the way of a challenge, stating: the...difficulty that faces me is as to the meaning of the Act...the legislature has not indicated what it means by “fair and reasonable” – what is the model or criterion by which fairness and reasonableness are to be determined (Higgins: 1907).

Rickard, Higgins’ biographer, states this allowed him a “creative opportunity” (1984:84) in relation to determining what was ‘fair and reasonable’ and consequently he was able to “place his immediate stamp on the theory of wage fixation” (1984:171). This “stamp” (Rickard: 1984:171) came in the form of wage fixation from the point of view of employees and their needs. Higgins stated:

the provision of fair and reasonable remuneration was obviously meant for the benefit of the employees in the industry (Higgins: 1907; The Age: 1907:20).
These words explicitly illustrate Higgins’ tendency toward setting wages that aided employees, rather than employers. This is more overtly highlighted in the following words, which illustrate that, regardless of whether an employer could afford to pay or not, wages must be paid:

the remuneration of the employee is not made to depend on the profits of the employers. If the profits are nil, then fair and reasonable remuneration must be paid; if the profits are 100% it must be paid (Higgins: 1907; The Age: 1907).

Wage setting then, in this sense, was seen by Higgins as:

meant to secure for [employees] something which they could not get by the ordinary system of individual bargaining with employers (Higgins: 1907; The Age: 1907)

This illustrates Higgins believed the whole system was designed to create for employees a ‘floor’ from which no employer could pay, and employees would not be exposed to negative economic issues such as the inability of employers to pay or inflation. Adding to this, a fair and reasonable wage that benefitted employees was, Higgins believed, to be quantified based on:

the normal needs of the average employee, regarded as a human being living in a civilised community (Higgins: 1907; The Age: 1907).

What all of this leads to is the conclusion that the justification for his decision was based on the idea of a wage grounded in social welfare and the ‘needs’ of the average worker. As McCarthy (1969) states:

no longer should the unskilled man’s living standard be conditioned by ‘economic’ criteria...instead the fundamental premise [is] social welfare (1969:17).

Higgins felt it his duty, as wage setter, to:

safeguard the living standard of those who, for a variety of reasons, might periodically slip below that level which society thought adequate to reasonable living (McCarthy: 1969:31).

In this way then, Higgins’ role as wage setter came from his concern for the well-being of the average worker.

It is in looking closely at these words that we can begin to critique Higgins decision. We can start to see that the “average employee” Higgins was applying his verdict to did not include women. Higgins, in making such a statement, was referring to the average employee as male.
The words “marriage was the normal fate of a normal man (Higgins: 1907; The Age: 1907) acutely demonstrate this even more, as does the idea that this male had, on average, three children to support (Higgins: 1907). What he was thus annunciating was the idea that the male was the breadwinner. But in doing so, Higgins was making a very big assumption – namely that men were the only breadwinners in society in 1907 and therefore the only wage earner this decision should cover. However such an assumption is not true: many women did work and, more than this were also breadwinners.

That women did participate in the labour market is supported well. In 1911, the first official Commonwealth Census of the federated nation was taken. Some of the data collected related to labour market participation and it is in this we can get a glimpse of female labour market participation during the first decade of the 20th Century (Cth: 1911:352). Of the female population in Australia at this time, 18.61% of women participated in the paid workforce; and were classed in the census as ‘breadwinners’ (Cth: 1911:350). What this represents is that almost a quarter of the Australian female population was the primary income earner in their households at this time and thus did undertake some form of paid work.

The Census also reveals that the remaining 81.39% of women were ‘dependants’ (Cth: 1911:350) in Australia. However we cannot assume that this ‘dependent’ status meant they did not all work – it could be argued that some ‘dependent’ women did in fact undertake paid work but not as breadwinners – as a second income earner to support the primary family income, which was not recorded or acknowledged in any official data collection. O’Brien (1988) supports this argument by stating that in Australia at the turn of the 20th Century there was an undercurrent of unrecorded female labour. These women workers were often forced into taking on extra tasks for money when the “adult male breadwinner dies, deserts [the wife and family], becomes ill or loses his job” (1988:90-91); however such work was not officially counted. This only supports the idea that part of the 81.39% of women classed as dependents may in fact be counted among these and thus was not the official breadwinner. Hence, working women was in fact a reality in Australia in 1907.
The 18.61% of women who were breadwinners is broken down even further by the census as it illustrates what kind of jobs these women undertook in the labour market. Out of almost half of all women counted as being in paid employment, 7.19% worked as domestic servants (1911:352); a further 5.10% (1911:350) worked in industry (manufacturing, factory work); 2.34% (1911:352) were commercial workers (banking/finance etc) and 2.49% (1911:352) worked as professionals (teachers, nurses, government workers and others) (1911:352). The remaining 1.49% of working women undertook miscellaneous occupations (1911:352), such as rural jobs. It is interesting to note that, of the 5.10% of women who worked in industry, 40.85% of them worked in factories, producing tobacco, hats and textiles (1911:354). Further primary evidence supports this.

The 1911 NSW Royal Commission into the general conditions of female and juvenile labour in factories and shops highlighted that factory work in particular was common among girls for producing either a supplement or breadwinner wage and was described by A.B Piddington – Commissioner – as a “salient feature of factory work” (1911:669). The popularity of this work is also well supported by feminist authors Ryan & Conlon (1975:49) and Kingston (1975:56). The concentration of a large number of women in manufacturing was despite the Royal Commission detailing the abhorrent conditions for workers – specifically because “women workers are entirely unprotected by unions or wards of any industrial agreement” (1911:669) and therefore were paid very little for the long hours hot and sweaty conditions (1911:770-777) they endured. Further evidence suggests however, women dominated this type of work. The major women’s periodical of the time, *The New Idea*, in 1903 ran an investigative journalist piece “sketching the working life of the Australian girl” (Davis: 1903:527) in factories around Australia. Entering a tobacco factory, journalist Helen Davis (1903:618), commented that although the age group of women working varied, there was certainly a large proportion who were married and the primary income earners, with the owner of the factory stating “you will find there’s a good few married women in the room. Their husband’s...can’t support them” (1903:618). Furthermore:

they have not themselves alone to think of but half-dozen hungry-mouthed children at home and, maybe a husband out of employment, waiting for them to bring the bread (1903:530).
This represents the fact that many women simply needed to work in order to support their family by supplanting the main income or providing the only income for their dependents.

This illustrates that also suggests something else about the nature of work women undertook at this time and makes for an interesting comment about the manufacturing industry Higgins deliberating on. Whilst the Sunshine Harvester Plant employed male workers, the above evidence suggested some sections and industries of manufacturing – particularly textiles, cigarette making and food – had more female than male workers, and there was even intra-industry female domination – for instance within textiles, women completely dominated hat making (Ellem: 1989). According to feminist authors, such as Kingston (1975), Probert (1988) and Ryan and Conlon (1975), women tended to cluster in these ‘softer’ manufacturing sections because it allowed them the opportunity to step out of their domestic roles and find companionship.

All of this evidence regarding women and work in the 1900s appears to contradict Higgins’ clear assumption that all employees in 1907 were in fact male. Higgins’ assumption that women were not participants in the labour market was built upon the belief that a woman’s role was in the home, fulfilling their roles as wives and mothers, whilst men earned an income. Some authors have suggested that this gendered conception Higgins had was built upon a desire to create and foster white, Anglo-Saxon hegemony (Hearn: 2006; Dabscheck: 1986). It was thought the way to achieve this was to have clear, gendered roles whereby women performed reproductive duties at home and men supported the family. In fact, this was not a true assumption and the reality, as the above evidence demonstrates, was far different – women did participate in the labour market and many were also breadwinners. Because of this assumption therefore, Higgins’ judgement represents a clear misrepresentation of the reality of women in Australia in 1907 – the ideal Higgins was describing and institutionalising was erroneous and women were indeed very real participants in the paid labour market. Institutionalising such an assumption however “formalised women’s inferior status in the paid labour market” (Whitehouse: 2004).

These gendered roles Australian society was creating for men and women, and which Higgins was describing in his judgement, is reinforced by looking at the evidence Higgins drew upon. In
particular, Higgins called upon witnesses from the ‘shopfloor’ (CRS C2274:1907) who undertook the type of jobs in McKay’s factory, as he “felt it necessary to have some evidence” (Higgins: CRS C2275:1907:426). The witnesses were also union officials. They were not workers from McKay’s Sunshine Harvester Plant because, as McKay’s lawyer stated doing so meant the men would have to “leave the establishment” (CRS C2275:1907:426) thus inferring work would cease whilst they were giving evidence. Witnesses were therefore chosen from “outside” (CSR C2275: 1907:426) the factory but who undertook jobs of a very similar nature to McKay’s factory, so Higgins could create a picture of their working lives as well as discover the necessary cost of living for workers of this nature.

The average cost of living was deemed from “many household budgets drawn which were drawn up by... the house-keeping women of the labouring class” (Higgins: 1907; The Age: 1907). More specifically, nine of the male witnesses’ wives had created budgets which laid out the average weekly costs of living in their respective households. The words of one witness states “I got the wife to make a list...my wife told me she could not live decently on less than that shown in the list...”(CRS C2274: 1907:429). What this helps to explicitly emphasise is the assumption that the home was the realm of the women. Whilst this evidence did enable Higgins to quantify “a condition of frugal comfort estimated by the current human standards...’ (Higgins: 1907; The Age: 1907), which helped him decide what was a ‘fair and reasonable’ wage as they attested to all the necessities of living – that is, the cost of rent, food, the cost of gas and wood (CRS C2274:1907); they in fact highlight more so that women were viewed by Higgins in this judgement primarily as homemakers and caretakers, not as workers.

Having thus worked through the evidence and examining what the concept of a ‘fair and reasonable’ was and that it pertained to benefit the average employee who had needs; Higgins came to his conclusion on November 8th, 1907. He pronounced McKay’s wages as not ‘fair and reasonable’. The Argus (1907:6) stated “Mr Justice Higgins has decided that the wages paid by Mr McKay are not ‘fair and reasonable”. In contrast to the wages McKay paid, Higgins actually believed and decided that:

in Melbourne, the average necessary expenditure in 1907 on rent, food and fuel in a labourer’s household of about five persons, was £1 12s. 5d (Higgins: 1968:3-4).
Reasoning that this would lead to a minimum of only 3s 7d for such expenses but arguing that more was needed to cover the lifestyle of the average worker and his family, he settled for a minimum weekly wage of seven shillings a day, or forty-two shillings a week (Higgins: 1907; The Age: 1907:22; Daily Telegraph: 35; SMH: 1907:20; The Argus: 1907:8). This “notable judgement” which The Age (1907:20) described has thus become known as the Harvester Judgement.

Implications and Conclusion
The Harvester Judgement is arguably the pre-eminent decision in the history of Australian wage fixation. Its importance is linked to the fact that it created the precedent for wage setting and established a central function for the federal tribunal for close to a century. But this judgement’s significance is to a large extent tainted by the way it treats (and indeed excludes) women workers. In this decision, Higgins was institutionalising the then widely held view that a woman’s place was in the home, to play the role of wife and mother, and that undertaking paid work was not an acceptable activity for them. The role of breadwinner was exclusively a male domain. Other writers have added to this gendered dimension that racism, and the desire to instil and maintain a dominant Anglo-Saxon state in which men and women played very separate but distinct roles, helped fuel Higgins’ exclusion of working women from the judgement because women were seen as the reproducers of the next generation of white, Anglo-Saxon Australians. But these assumptions represent an idealised society, not the reality of women’s roles at the turn of the 20th Century. A substantial group of Australian women did work; they did have a public role as participants of the labour market. The primary evidence illustrated this. Women contributed to the economy and thus, it is simply misguided of Higgins to exclude these workers in his ground-breaking decision.

The decision and its assumptions regarding women have had important implications. Such implications have not just affected women and the nature of their employment in the labour market, but have also impacted upon wage fixation and industrial relations policy as a whole over the last century. This suggests the decision is indeed undeniably important for understanding how such processes and polices have operated in Australia, particular to the detriment of women. Initially, the decision forged a precedent that future wage decisions were to
follow – little or not recognition of the public roles women undertake in the labour market. The effect of this has been that, over the 20th Century, women have had to struggle to gain adequate attention and recognition for this participation. This suggests that, for most of the last century, wage fixation as a whole in Australia has been based on Higgins’ male breadwinner model. Extending beyond this further, industrial relations, under which wage-fixation comes, can be argued to also sway slightly more toward benefiting men rather than women, as participants in the labour market. Ultimately, therefore, this decision represents far more importance other than fashioning how wage fixation was to be undertaken.

The next chapter investigates whether a new wage setting body, created in 2006, treated women differently in its inaugural decision. Under a new legislative framework, wage fixation in now the task of the Australian Fair Pay Commission, and in doing so, the next chapter will examine and endeavour to answer the research questions of this thesis as they pertain to the Commission – specifically, just what are the assumptions this new body holds toward women workers and, given this, what are the implications of such assumptions? Have women, in the 21st Century, gained more recognition for their public roles or is this Commission perhaps tainted with the legacy such an important decision as the Harvester Judgement left?
Chapter Five

The “other worker”: Working Women and the Australian Fair Pay Commission

In October 2006, the Australian Fair Pay Commission (AFPC) made its inaugural federal minimum wage decision. This decision represented the beginning of a new era of wage setting in Australia because, as has now been well-established in this thesis, with changes made to industrial relations under the Workplace Relations (Workchoices) Amendment Act (2005), minimum wage fixation was removed from the AIRC and placed into the hands of the newly created AFPC. As a result of this altered wage setting circumstance, the first decision created by this new body was significant because it outlined nature of how this newly created body operated; and the assumptions it held regarding the function of wage setting.

To date, no thorough scholarly analysis has been undertaken of the important decision. Thus, it is the aim of this chapter to provide such an analysis, focusing specifically on how the decision was made, and – again – answering the two research questions posed at the beginning of this thesis as they pertain to the AFPC; that is first, what are the wage setting principles used in this decision and secondly, what are the assumptions and implications of these principles for working women. The argument of the chapter is that the AFPC’s inaugural decision was of some benefit to low-paid employees as they achieved a somewhat unexpected wage rise but despite this, in relation to women workers it failed to adequately recognise their participation in the labour market.

The chapter is structured as follows. The initial section discusses the decision, the outcomes and reaction to it. It will also examine how it was made through analysing the wage review process undertaken; and assessing how the evidence gathered in this process was both used by the AFPC and how it influenced the final decision. Next the chapter moves onto a discussion of the assumptions made in the decision about women workers. This intention of the research presented
here is to shed light on the workings of the AFPC and from this, the broader implications of its role. As outlined in Chapter One, the research for this chapter has focused primarily on gaining and assessing a considerable amount of primary documentation relating to the AFPC and its inaugural decision.

**The Australian Fair Pay Commission**

The decision made by the AFPC in October 2006 granted a substantial pay increase to the existing minimum wage (Skulley: 2006:1; Tingle: 2006:7; Wooden: 2006:82; Long: 2006:17; Workplace Express: 2006a; MacKinnon: 2007:407; Harper: 2006) which had not been adjusted for a considerable period of time. Specifically, the AFPC granted a $27.36 increase, bringing the weekly rate to $511.86 (AFPC: 2006:63). A media release on the day of the decision by Professor Harper, the Chair of the Commission, stated it was “balanced and fair and provided a real increase for low paid workers” (Harper: 2006). Professor Harper argued that the wage rise his Commission delivered was justified on a number of grounds including:

- the 18 month period since the last pay increase, the sensitivity of low-paid employment to changes in wage levels, as well as the incentives for individuals to seek and remain in employment, the fact the economy and labour market have performed strongly, although not uniformly, movements in consumer prices as well as incipient inflationary pressures (including on interest rates) and the requirements to provide a safety net for the low paid (Harper: 2006).

Because this represented the AFPC’s inaugural foray into wage setting, and due to the magnitude of the rise, the decision generated heated interest from across the political spectrum. Businesses claimed it was “excessive” (Skulley: 2006:4; Norrington: 2006:2) and erred “very much on the high side of expectations...” (Skulley: 2006:4), and that the “wages bill for employers would increase by $2 billion” (Norrington: 2006:2). Conversely, unions “welcomed” (Norrington: 2006:2) the increase, believing it was a “victory for the low paid and a fair decision” (Skulley: 2006:4). The Federal Government’s response was that it was “genius” and “very clever economically” (Norrington: 2006:20); with journalist Laura Tingle arguing it was an outcome the government “could only dream about” (2006:7), given the criticism of its *Work Choices* legislation and the widely held expectation that the AFPC would deliver a substantially smaller increase.
The decision was not only controversial but it was far reaching in its effects. It delivered wage increases to approximately 20% (ABS: 2006a) of the Australian workforce who are reliant upon awards for their wages and conditions. Exploring just how the AFPC came to its decision is an important part of this analysis presented here. As was discussed in detail in Chapter Three, the *Workplace Relations (Workchoices) Amendment Act* (2005) detailed the structure, power and functions of this new wage setting body. One of the key powers of the AFPC arising from this legislation was the ability to “conduct wage reviews” (*Workplace Relations (Workchoices) Amendment Act* (2005) s.20) for the purpose of determining whether or not it should grant increases to the existing minimum wage.

The wage review process for this decision incorporated “active and constructive [evidence] from individuals and organisations representing the community, the business sector, government and trade unions” (AFPC: 2006b). This evidence came from a range of different sources. First, public submissions from an array of interest groups, businesses and individuals were called for via advertisement on the AFPC’s website and through newspapers and media outlets like *Workplace Express*. In response, in total the AFPC received one hundred and eighty two submissions. This included thirty-four from employer association and peak industry bodies such as the Australian Chamber of Commerce and Industry (ACCI), Australian Industry Group (AiG), Employers First, the Australian Hotels Association (AHA), the National Retail Association (NRA), the National Farmers Federation (NFF), the Master Builders Association (MBA) and, Restaurant and Catering Australia (R&CA). Eleven submissions were submitted by individual and peak union organisations including the Australian Council of Trade Unions (ACTU), Unions NT, Unions WA, the CFMEU (Construction and General Division) and the Association of Professional Engineers, Scientists and Managers Australia (APESMA), the Shop Distributive and Allied Distribution Union Queensland Branch (SDA) and the Textile, Clothing and Footwear Union (TCF). A further thirty-five submissions were received from community and advocacy groups, including faith-based organisations including the Uniting Care Australia and the Australian Catholic Council for Employment Relations, and many women’s lobby groups such as the Women’s Electoral Lobby (WEL) and the National Pay Equity Coalition (NPEC), What Women Want (WWW), National Working Women’s Centres (WWC); four research groups submissions, including from Women in Social and Economic Research (WiSER) based at Curtin University.
In addition, thirteen Government submissions were received by the AFPC, coming from both federal and all State/Territory Governments. Submissions were also received from government agencies such as the Human Rights and Equal Opportunities Commission (HREOC) and finally eighty submissions from private business and individuals.

As part of the process of constructing their decision, the AFPC’s secretariat also undertook consultation meetings in thirteen locations across Australia which focused on gathering information from and about indigenous, youth, migrant, disabled, apprentice and junior and culturally and linguistically diverse (CALD) employees. That is, groups who predominate among the low-paid. They also commissioned research projects from various research bodies in Australia, such as the Melbourne Institute of Applied Economic and Social Research, the Australian Centre for Research in Employment Work (ACREW), the Centre for Labour Market Research (CLMR) and the National Centre for Social and Economic Modelling (NATSEM). Each of these research groups focused on different issues related to minimum wage setting such as the characteristics of the low paid, the tax-transfer system, and minimum wages and employment. The Commissioners argued that this rigorous yet important process enabled: ordinary Australians, particularly those most affected by minimum wage decisions to place their views before the Commission...and aided the Commission’s base of knowledge (AFPC: 2006:6a).

For the AFPC itself, the wage review process represented the ability to discern the key issues associated with wage setting, which led to the final decision. In particular, it allowed the AFPC to consider detailed economic and social aspects of wage setting and information regarding whom they are setting the minimum wage for and how it impacts various stakeholders. Through assessing the evidence presented on these key issues the AFPC was thus able to create a decision which, according to Burgess et al (2006) was “plainly not in favour of the interests of employers...[and] carefully reflected the economic evidence” (Burgess et al: 2006). The following will now examine how this was achieved.

One of the most important issues the AFPC needed to familiarise itself with was who they were setting the minimum wage for, as they are required “take into account the impact of [their] decision on...the low-paid” (Workplace Relations (Workchoices) Amendment Act (2005) s.20.
Because of this, characterising who the low-paid were was one of the most prominent themes addressed in the evidence to the AFPC by virtually all submissions and indeed much of the research they commissioned (McGuiness et al: 2006). The evidence suggested that the low-paid were women, indigenous, disabled, and migrant workers; they work in small business and tend not to be unionised. These workers dominate accommodation, cafes and restaurants, the retail trade and community service industries. They are reliant upon the award system for their wages and conditions of work. Because of these many demographic and labour market characteristics, they are in very weak labour market bargaining positions (HREOC: 2006:3; NSW Government: 2006:45; Vic and NT Government: 2006:41; Tasmanian Government: 2006:13; QLD Government: 2006:41; ACOSS; 2006:11; ACTU: 2006:24; ACCI: 2006; AFPC: 2006:67; McGuiness et al: 2006). The AFPC regarded the importance of this evidence as being “useful in updating knowledge about groups most affected by its decision, especially [those who are pay-scale reliant] (AFPC: 2006:69). Many submissions urged the AFPC to continue researching these low paid groups to shed light on their experiences and how they might best be addressed (ACTU: 2006; ACOSS: 2006).

In discussions regarding the economics of wage setting a number of themes were raised, particularly by employers, State and Federal Government and unions who often presented opposing evidence and polarised views. The first of these themes was raised by the business community who argue that the “capacity for the low paid and unemployed to remain in employment” (Workplace Relations (Workchoices) Amendment Act (2005) s.20) should be a primary concern of the AFPC when assessing the impact of minimum wages on employment. Essentially, business group submissions and the Australian Government’s approach in its submission supported the neo-classical view that a ‘high’ minimum wage increase would reduce employment opportunities. For instance, Employers First argued “all models of the labour market will predict that a high enough minimum wage will reduce employment” (2006:17); suggesting that employment of the low-paid and unemployed may be adversely impacted if the AFPC increased the minimum wage substantially. The Australian Government submission (2006) cited evidence from fifty international studies undertaken on minimum wage adjustment and employment, two thirds of which supported the conservative view. One of the commissioned
research projects from the Centre for Labour Market Research (CLMR) concluded “the evidence is very clear...rises in real wages will reduce demand for labour” (Lewis: 2006:27).

Conversely, the AFPC also considered a very different approach to the neo-classical view put forward by many employers. This view – that high minimum wages does not lead to reduced employment opportunities or other negative consequences – challenged the conservative argument about minimum wage, minimum wage fixation and (un) employment. The ACTU’s submission expanded on this theme and the AFPC drew upon their submission in their judgement. The ACTU who had argued that there was no:

negative relationship between wages and employment and no evidence from the past that safety net adjustments have had any significant adverse impact on employment (AFPC: 2006:73).

The ACTU’s evidence drew heavily upon an OECD study undertaken in 2006 which stated that “there is considerable uncertainty concerning how many jobs might be lost due to minimum wages” (OECD: 2006:96). Similarly, the NSW Government argued that “a large number of empirical studies have not made the link between wage increases and unemployment” (2006:22). Clearly then, there was considerable variation between submissions on the basis of their understanding evidence and the view regarding minimum wages and employment.

Unsurprisingly then, the recommendations as to the size of the increase in the wage reflected these opposing positions.

There was a substantial range of recommendations from employers, employees and the governments as to the quantum of an increase. Within each of these different groups, approaches differed as to whether or not an explicit dollar amount was recommended or if it was merely alluded to. From the employers, the AiG was the only submission to recommend a specific amount, suggesting a $14 a week increase would be sufficient. Other submissions in this category – the ACCI, MBA and NFF – merely urged the AFPC to set a ‘moderate’ and ‘reasonable’ wage increase. This approach was also common among the employee submissions, which, although they urged for higher increases than employers, did not go as far as to specify an amount. The ACTU was the only employee representative to do so – they also happened to recommend the most out of any submission with a $30 a week recommendation. State and
Territory Governments were quite similar in their stated amounts, with NSW, Victoria and the NT and WA each calling for a $20 increase. Queensland was also close with a $19.40 increase. Community groups, such as the Women’s Electoral Lobby and the National Pay Equity Coalition suggested a $21 increase.

This economic theme was an important consideration for the final decision and the AFPC recognised the controversy in their decision:

the Commission acknowledges that high minimum wages may induce employers to reduce the number of employees they hire and/or retain. By the same token those without jobs and in low-paid employment will weigh up the net benefits of work relative to being without work” (AFPC: 2006:80).

Finally however the wage outcome they recommended was much closer to the position put by the unions.

Other economic issues – beyond employment considerations – were considered by the AFPC. The Act directed the AFPC to ensure wage setting did not impact the general position and competitiveness of the economy. This concerned examining the position of the economy and if a wage increase could be economically sustained. Submissions from all interested groups including – employers, unions, the Federal and State Governments – all illustrated in detail the fact the Australian economy had performed strongly over the previous decade (AiG: 2006:13-18; NFF: 2006:21; ACCI: 2006:105; MBA: 2006:4 the Australian Government: 2006:29-34; ACTU: 2006:93; Tas Government: 2006:3 Vic and NT Government: 2006:13 QLD Government: 2006:21-22; ACT Government: 2006:7; WA Government: 2006:6). However, employers and the Federal Government argued that this strong economic growth was not forecast to continue, and suggested the AFPC should not grant a substantial wage increase; with the ACCI (2006:105) and AiG (2006:5) citing higher commodity and oil prices, low productivity, high inflation and Australia’s trade deficit as foreseeable barriers to future economic growth. Peak industry body submissions, particularly the Restaurant and Catering Australia submission, also argued “a blanket increase in the minimum wage... negatively impacts in [this] industry” (2006:12); highlighting the pressures of a wage increase for low-paying sectors despite a strong economy.
Conversely, unions and the State Governments stated that this strong economic growth should guarantee an increase. The ACTU argued “there is no better time to provide a wage increase” (2006:93), citing strong GDP growth from 0.6% in the March quarter of 2006 to 2.8% by the end of 2006 (2006:94) as justification for recommending their claim. This was supported by State Government submissions who reported strong state economies, contributing to the overall strong national economy which should thus ensure an increase (Qld Government: 2006:22-23; WA Government: 2006:7; Vic and NT Government: 2006:14; NSW Government: 2006:9). Unions WA agreed, arguing “it is undisputable that the WA economy has the capacity for an increase in the minimum wage” (2006:3). For the AFPC once again, as the economy was a key consideration in this decision, and the evidence presented regarding the strength of the economy was central. This became a key justification; embodied in the words “the fact the economy and labour market have continued to perform strongly” (2006:63), illustrating ultimately the Commissioners agreed the economy could afford the increase.

The AFPC also considered its role as “providing a safety net for the low paid” (Workplace Relations (Workchoices) Amendment Act 2005 (Cth) s 20) in constructing their decision. The AFPC needed to assess an increase in light of the cost of living for low-paid workers, recent tax cuts for the low-paid and government benefits and pensions. Employer group submissions – particularly the AiG (2006) and ACCI (2006) – suggested that the recent tax cuts had targeted to low-wage employees and that, combined with the 2006 changes to family assistances payments, the AFPC would not need to increase substantially the minimum wage. The AFPC however, argued that a combination of all three – tax cuts, changes to family welfare payments and a pay increase for low paid workers –would deliver “a real increase in the living standards of low-paid employees and their families” (2006:93).

Alongside the economic issues of wage setting, the AFPC also needed to consider the social aspects of this function. In particular, discrimination and pay equity were raised – mostly by community and advocacy (particularly women’s lobby groups) submissions, the State/Territory Government submissions and the HREOC submission. All of these submissions suggested that indigenous employees, women, CALD workers and disabled employees were the most vulnerable in wage decisions (HREOC:2006; NWWC:2006; WEL & NPEC:2006; WWW:2006;
SA Government:2006; Tas Government; Vic and NT Government:2006; NSW Government:2006). The key concern raised by the AFPC was that:

any decision...will affect vulnerable groups disproportionately and therefore the AFPC should consider the equity implications before making such adjustments” (AFPC:2006a:133).

Submissions also identified however, that equity may go unaddressed because – in their view – they were not granted the power via the legislation to address such issues (HREOC: 2006; NWWC: 2006; WEL & NPEC:2006; WWC:2006; SA Government: 2006; Tas Government:2006 Vic and NT Government:2006; NSW Government:2006). Not surprisingly, employer groups took a different stance on the issue of pay equity, illustrated most stridently in the ACCI submission. They argued that pay equity is “not a concern of the AFPC...it is beyond the scope of just one body to deal with it...” (2006:265-267).

The AFPC acknowledged in this decision – with thanks to the evidence presented from union and community submissions – that pay equity is an important issue associated with wage setting. Yet at the same time, the decision made no mention of concerns raised in this area with the justification being that pay equity was not within their arena of power. This suggests that the decision contained a key flaw in terms of a broader social approach to wage fixing. The decision did not ensure that the vulnerability of low-paid workers was eliminated, or at the very least, reduced.

The discussion to this point has assessed the process by which the AFPC set the minimum wage, has highlighted how important the wage review process was for the AFPC’s decision and outlined the ways in which this review process influenced the outcomes of the decision. It concluded that the decision was clearly economic, and gave an increase to the low-paid based on the idea that the economy could sustain an increase, and that it did not harm the ability for the unemployed and low-paid to remain in employment. Fairness and equity issues were considered by the AFPC, however the issue of equity was viewed as being beyond the ambit of the Commission. As a result, equity considerations are not a major consideration of theme if the decision.
Our attention now turns to examining how the AFPC considered the labour market experience of women workers in this first decision. The key point to be made here is that women were not given adequate specific recognition or attention in this decision.

Working women in Australia represent the majority of the low-paid (WiSER: 2006) and are thus disproportionately clustered at the lower end of the labour market. The highly gender segregated workforce in which women in 1904 participated in, and which was illustrated in Chapter Four, has not abated in 2007 (WiSER: 2006). However the participation of women in the workforce has increased markedly. In October 2006, the month when the AFPC handed down its decision, 57.6% of women participated in paid employment of some kind (ABS: 2007). These women participated in a highly gender segregated labour market. Almost half of all women work in five industries – accommodation, cafes and restaurants, cultural and recreational services, health and community services, personal and other services and retail trade (ABS: 2006b). These industries are characterised by their dependency on minimum conditions, with 20% (ABS: 2006b) of all employment conditions determined by awards. Women still carry the burden of most unpaid work undertaken in the home and community, and this constrains their choices in the labour market (HREOC: 2006; WiSER: 2006). Only 19% of women were union members in 2006 (ABS: 2006b). All of these characteristics of women’s labour market participation in 2006 suggest that they are still in a vulnerable position and lacking in money and power.

Despite this very particular labour market experience, the inaugural decision of the AFPC did not give commensurate recognition to these realities. There are a number of points to be made with regards to this issue. The AFPC went as far as to conclude women are over-represented in low wage employment (AFPC: 2006:67). However, what the AFPC did not do and did not recognise is far more significant.

The AFPC did not recognise that women are one of the most vulnerable low-wage earners in Australia. This was in effect spelt out by the State and Territory Government, government agency and community group submissions. These groups not only pointed out women are vulnerable but also argued for greater recognition of this vulnerability of women by the AFPC. The AFPC, then, did not initiate any of their own research or gathering of information to discern...
how or why women are vulnerable. This illustrates that, in the eyes of the AFPC, gender pay equity is not enough of a concern to warrant attention and thus, the proper recognition of women’s participation in the labour market was not given by the AFPC in this decision. The priority given to gender equity issues is made obvious by the fact that gender equity issues are mainly placed in the decision’s Appendices. In the decision proper, only three pages are dedicated to a general discussion of labour market vulnerability which makes no specific reference to the position of women or to gender equity. It is not surprising then that the AFPC has not presented any definitive strategies or actions aimed at addressing this issue.

Interestingly, this lack of attention and action directed at addressing gender pay equity and the vulnerable labour market position of women was reinforced in the second decision made by the AFPC, handed down in July 2007. Even after explicit calls to include pay equity – in all its forms including gender equity – in wage decisions (see for instance WiSER: 2007). In its second decision, the AFPC made even less reference to women. It seems clear from the 2006 (and ensuing 2007) decision that the achievement of gender pay equity and ensuring that women’s wages are improved remain under prioritised by the AFPC.

**Implications and Conclusion**

*The more things change, the more they stay the same*

The AFPC’s inaugural decision is significant within the history of wage setting in Australia; because it represents wage fixation under a new institution at a time of the reframing of the industrial relations architecture and processes of this country. In making their first decision, the AFPC granted a substantial rise in the existing minimum wage in Australia – a decision which was arrived at after undertaking a rigorous wage review process. However despite the wage increase, the decision did not recognise women for their engagement in paid work. Perhaps it was wishful thinking to hope that a new wage setting institution, the AFPC, might do something to address and even remedy the vulnerable situation in which women found themselves in the labour market at that time. In fact the AFPC failed to adequately recognise female participation in the labour market and indeed the gender inequity which is intimately associated with this participation. This ‘invisibility’ stems partly from the legislation that does not grant the AFPC
power to address pay equity generally and gender pay specifically, but also reflects an unwillingness of the AFPC to exercise agency in this arena.

There are several implications arising from this decision for women workers. The first is that, as in 1907, women today are still not seen by bodies such as the AFPC in their roles in the paid labour market. The fact remains that women’s labour market experience is different to men. Women predominate among the low-paid. Women primarily work in industries and occupations and jobs which attract low status and women lack bargaining power. It is worrying that, given these labour market realities that the new institution of minimum wage fixation has chosen not to challenge the implicit assumption of male breadwinner ideology. It seems that perhaps the more things change, the more they stay the same.
This thesis asked two research questions:

1. What are the similarities and differences between the wage setting principles used in the first minimum wage decision of the Commonwealth Court of Conciliation and Arbitration in the 1907 Harvester Judgement, and the first decision of the Australian Fair Pay Commission, in 2006?
2. What are the assumptions and implications of these principles for working women?

It answered these questions through a detailed study of documents and primary research material, outlined in detail in the methodology section of Chapter One. In particular, the decisions were examined and analysed along with supporting evidence to gain insight into the similarities and differences in minimum wage setting at two very different moments in history. It established that over last century, Australia has had two different wage setting institutions, created on the cusp of greater industrial relations changes taking shape. Despite the ‘watershed’ circumstances in which these decisions were made, they were both in fact rather conservative in their approach to women workers.

In 1907 the Conciliation and Arbitration Court was required to determine what constituted a ‘fair and reasonable’ wage to be paid to the employees of H.V McKay’s factory. Justice Higgins, in determining the rate of this wage, did not have precedent or legislative guidelines to inform the creation of the basic wage. As a result, he largely relied upon his own interpretations of the Excise Tariff Act (1906) and what he himself believed to be fair and reasonable. His decision,
subsequently, set the first minimum wage in Australia, and marked the beginning of a central role for wage fixing in the operation of the Court.

When the AFPC made its decision some one hundred years earlier, it had substantially different criteria to use in setting and adjusting the federal minimum wage. Extensive guidelines and parameters were marked out in the Workplace Relations (WorkChoices) Amendment Act (Cth) 2005 which allowed the AFPC to formulate and deliver its decision. The AFPC underwent a significant review process to help it determine the rate of the minimum wage. Despite these differences in ‘powers’ and process, both decisions share a similarity. They both made the first minimum wage decision of their respective institutions in their respective eras.

Through a thorough analysis of the available primary documentation, and supplementing this with extensive secondary source material, it was concluded that was no discernable change in the way the institutions tasked with forging the minimum wage treated or analysed women workers in the period between 1907 and 2006. Women participants in the labour market in Australia at these times were denied adequate recognition for the paid work they performed. Chapter Four illustrated that the Harvester Judgement of 1907 – which although is still one of the most significant wage decisions made in Australia – virtually ignored the breadwinning and indeed working status of women. It instead identified women more in their roles as wives and mothers rather than as workers, effectively enforcing the male breadwinner model. The evidence presented in that chapter showed however, that women did work in Australia in 1907, and added to this that many women were also breadwinners with dependents who relied upon them for their survival.

Chapter Five argued that even in 2006 women were not given proper consideration for their paid work. The AFPC’s decision of 2006 saw no significant shift in attitude toward women participants in the labour market, regardless of the massive increases in women’s paid work participation. Therefore despite the enormous labour market change and a change in the institutions setting the minimum wage, the attitude toward women’s participation in the labour market had remained the same.
The literature review in Chapter Three provided a background to position of women historically in Australian society, and explored why women have been seen as inferior to men both in the labour market and Australian society more generally. In particular, the position of women in the labour market and in the eyes of the wage determination system was made clear. This helped to gather information regarding why women have traditionally had limited, if any, recognition for their participation in the workforce of Australia. The literature review had two elements from which specific arguments and themes emerged. It first argued that in the traditional histories of Australia, women had been written out, and not acknowledged for their contribution to, and development of, many aspects of Australian life. The second element of the chapter argued these traditional histories were, in the latter part of the 20\textsuperscript{th} century, critiqued strongly by feminist authors who produced their own versions of Australian history that did include women’s roles. Here, women were identified as workers and significant contributors to Australian society generally and the labour market specifically.

The themes of the literature review helped to inform the ensuing analysis of wage fixing decision, provided in the research Chapters Four and Five. Specifically, in reviewing the traditional histories of Australia in which women were excluded, the theme of the subordination of women and the gender segregated development and nature of the Australian labour market were identified and used as a pillar from which the decisions were analysed, and the arguments of the chapters sprang. The theme of the workforce and the wages system embodying struggle for women in relation to achieving recognition for their participation became an embedded argument of the research chapters, as both chapters highlighted that women have been ignored in these significant decisions, despite the fact they have done and do take part in the working sphere of Australia.

The research presented in Chapters Two and Three suggest that in the space of one hundred years, there has been significant change in wage fixing and industrial relations. Despite the passage of time and quite significant changes including the creation of an entirely new wage fixing body, there is significant evidence of continuity. Women are still not recognised enough for the work they undertake in the labour market. Women are still viewed more as wives and mothers than as workers, a legacy of the days of settlement in which women were viewed
primarily as the populators of the newly formed nation. In 1907, the fact that women actually undertook working roles and contributed to the development of the nation was not seen as significant and they were not aptly rewarded for this. Whilst in 2006 we have seen some advances toward gender pay equity, women are still nowhere near receiving the level of recognition they deserve for the work they undertake.’ The more things change the more they stay the same’ is a clear finding of this research.

Rather than conclude on a pessimistic note the researcher would like at this point to pose some research and policy considerations to readers. Future research is vital. The questions posed for this thesis can be used again in other research to discover more about the relationship between wage setting and women. More qualitative research needs to be undertaken, with interviews and case studies concerning women’s experience under the newly created wage fixing system. Building on this, more questions could be posed and answered, uncovering the experiences of women to build a bigger picture regarding the implications of this decision and new wage system. This would effectively build on the analysis done in this thesis.

In terms of policy recommendations it is clear that the Federal Government must amend the Workplace Relations Act (Cth) 1996 to make the AFPC explicitly consider women’s labour market experience in their deliberations. They must directly address the inequity between men and women’s wages and men’s and women’s labour market experiences.

This thesis has contributed to our understanding of an area which has assumed an important place in Australian industrial relations for over a century. That is, the relationship between women, the labour market and wage fixation. Women’s role in the labour market has been a point of contention in Australia, as recognition has not been given to the roles they perform and the contribution they have made. Australian wage fixation is understood historically as a process which has created a safety net and floor for minimum wage earners as well as providing a way to recognise the work the low paid undertake. However these two issues do not correspond and women have struggled under the wage fixing system to gain proper attention for their paid work. This struggle has lasted a century and this thesis has suggested that, even with Australia entering a new era of minimum wage fixation, women are still facing barriers to pay equity. This must
change. Given the importance of both wage fixation in Australian industrial relations and women’s participation in the labour market, we must continue to study this relationship in an effort to bring about an end to this inequality.
Bibliography

Commonwealth Acts of Parliament
Commonwealth of Australia Constitution Act 1900 (Imp) 63 & 64 Vict, c 51, s. 35
Conciliation and Arbitration Act (Cth) 1904
Excise Tariff Act (Cth) 1906
Workplace Relations Amendment (Work Choices) Act (Cth) 2005

Decisions and Transcripts
Ex Parte H.V McKay (1907) 2 CAR 1
Wage Setting Decision, October 2006(a), The Australian Fair Pay Commission
Transcript of Proceedings in the matter of the Excise Tariff Act (1906), Commonwealth Record
Series C22874, Melbourne Archives Centre

Media Releases and Speeches

Newspaper and Magazine Sources
Brown, W (2006), ‘Mother England has lessons on fair pay’, in The Age, the Business Section, on 24th November


‘Harvester Excise Applications for Exemption: Evidence Concluded’ in The Argus, on 8th November, 1907, 5, microfilm roll no. 169 RR Oct 1-Dec 31 1907

‘The New Protection’, in The Age, on 9th November, 1907, 20-23, microfilm roll no. 400 131, Sept 2-Dec 31 1907

‘Industrial Legislation Excise Court Decision State Contemplates Intervention’, in The Argus, on 11th November, 1907, 6, microfilm roll no. 169 RR Oct 1-Dec 31


‘Fair Pay decision is a fair cop’, in The Canberra Times, on 27th October, 2006, 16

‘Our Fair Pay Failure’, opinion, in The Australian, on 27th October 2006, 19


Submissions
Association of Professional Engineers, Scientists and Managers Australia, Submission to the Australian Fair Pay Commission, July 2006

Australian Chamber of Commerce and Industry 2005 Submission to Senate Workplace and Education Committee, Workchoices Legislation. Canberra

Australian Chamber of Commerce and Industry, Submission to the Australian Fair Pay Commission, July 2006

Australian Council of Social Services Submission to the Fair Pay Commission on Minimum Wages, July 2006

Australian Council of Trade Unions Submission to the Australian Fair Pay Commission, July 2006

Australian Hotels Association, Submission to the Australian Fair Pay Commission Concerning Minimum Wages, July, 2006

Australian Industry Group, Review of Minimum Wages Submission, July 2006

Construction, Forestry, Mining and Energy Union (Construction and General Division), Submission to the Australian Fair Pay Commission, July 2006

Employers First, Submission to the Australian Fair Pay Commission, July 2006

Human Rights and Equal Opportunities Commission Submission to the Australian Fair Pay Commission, July 2006

Master Builders Association of Australia, Submission to the Australian Fair Commission, July 2006

NSW Government, Submission to the Australian Fair Pay Commission on behalf of the New South Wales Government, 28th July, 2006

National Farmers’ Federation, Submission to the Australian Fair Pay Commission, July 2006

National Retail Association Submission to the Australian Fair Pay Commission, 28th July, 2006

National Working Women’s Centres Submission to the Australian Fair Pay Commission: Minimum wage Decision, 2006
Restaurant and Catering Australia, *Submission to the Australian Fair Pay Commission, July 2006*

Shop, Distributive and Allied Employees Association (Qld Branch), *Submission to the Australian Fair Pay Commission, July 2006*

South Australian Government, *Submission to the Australian Fair Pay Commission on behalf of the South Australian Government, 28th July, 2006*


Textile, Clothing and Footwear Union of Australia, *Submission to the Australian Fair Pay Commission, July 2006*

Unions NT, *Submission to the Australian Fair Pay Commission, July 2006*

Unions WA, *Submission to the Australian Fair Pay Commission, July 2006*

Victoria and Northern Territory Governments *Joint Submission by the Victorian and Northern Territory Governments in response to: Australian Fair Pay Commission, 28 July, 2006*

What Women Want Consortium, *Submission to the Australian Fair Pay Commission, 2006*

Women in Social and Economic Research (WiSER), *Submission to Australian Fair Pay Commission Inquiry into the Minimum Wage Determination, July 2006*

Women in Social and Economic Research (WiSER), *Submission to the Australian Fair Pay Commission, 2007*

Women’s Electoral Lobby (WEL) and National Pay Equity Coalition, *Submission to the Australian Fair Pay Commission, 2006*

**Government Statistic Sources**


Australian Bureau of Statistics (2006a), *Employee Earnings and Hours Catalogue 6306.0,* Canberra: Australian Bureau of Statistics

Australian Bureau of Statistics (2006b), *Employee Earnings, Benefits and Union Members, Catalogue 6310.1*

Unpublished Theses and Unpublished Commissioned Research


Published Material – Books and Articles

Australian Industrial Relations Commission (2006), Historical Overview – The Australian Industrial Relations Commission, Australian Industrial Relations Commission


Commonwealth of Australia Census (1911), Melbourne: Commonwealth Bureau of Census and Statistics,


Dabscheck, B. (1986), “‘The Typical Mother of the White Race”, and other Origins of Female Wage Determination’, *Hecate*, 12 (1/2), 147-152


71


Higgins, H.B. (1968), A New Province for Law and Order, London: Dawsons of Pall Mall

Hutson, J. (1971), Six Wage Concepts, Australia: Union Printing Pty Ltd


Kingston, B. (1975), My wife, my daughter and poor Mary-Ann, Melbourne: Thomas Nelson


New South Wales Parliamentary Papers (1911-1912), *Report of the Royal Commission into the alleged shortage of labour in NSW*, vol. 2


73


74