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IN THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

Conciliation and Arbitration Act 1904

NATIONAL WAGE CASE - JUNE AND SEPTEMBER 1979 QUARTERS - DECISION NO. 2

In the matter of an application by The Association of Professional Engineers, Australia to vary the

METAL INDUSTRY AWARD 1971 - PART III - PROFESSIONAL ENGINEERS [163 CAR 388]

(C No. 1618 of 1979)

And in the matter of an application by The Australian Public Service Association (Fourth Division Officers) to vary the

AUSTRALIAN TELECOMMUNICATIONS COMMISSION CLERICAL, MANIPULATIVE AND OTHER GRADES (SALARIES AND SPECIFIC CONDITIONS OF EMPLOYMENT) AWARD 1977 [Print D3584]

(C No. 1626 of 1979)

And in the matter of an application by the Electrical Trades Union of Australia and others to vary the

METAL INDUSTRY AWARD 1971 [Print D1611]

(C No. 1637 of 1979)

in relation to wage rates

SIR JOHN MOORE, PRESIDENT
MR JUSTICE WILLIAMS
MR JUSTICE ROBINSON
MR JUSTICE LUDEKE
MR DEPUTY PRESIDENT ISAAC
MR COMMISSIONER STANTON

SYDNEY, 28 MARCH 1980

REASONS FOR DECISION

As explained in the decision delivered on 4 January 1980 [Print E1681] we were unable at that time to give final consideration to all issues raised by the parties in relation to the Principles. Decision No. 1 was therefore confined to quantum, the next half yearly review and certain observations on the immediate application of Principle 7(a). The Principles in their present form have continued in operation pending the outcome of this decision. In the earlier decision we pointed out that all those appearing before us wished to maintain a centralized system of wage fixation but there was no agreement on its structure. We said:

"Despite the absence of consensus on the structure of a system and on the principles which should govern its operation, we have been influenced not only by the universal desire that a centralized system should continue but also by the suggestion that there has been a significant narrowing of differences between many of the parties."

We also said that we would discuss details of the submissions about the centralized system in this decision and this we now proceed to do.

Some participants proposed radical changes to the system, others proposed less drastic changes. The private employers proposed what was a wholesale revision of the Principles. They confirmed the view of wage determination which they have consistently taken both before and since the introduction of the present system. The economic basis of the employers' policy was that wage increases must be matched by productivity if price stability is to be achieved, and the award of increases unmatched by economic capacity to sustain them will in the long run harm wage earners because they will contribute to increasing inflation and unemployment.

The private employers affirmed their belief in an orderly system of wage fixation and supported the concept of the national wage case as the primary mechanism for distributing the fruits of increased economic capacity. They put forward a set of principles "aimed at equitably treating all wage and salary earners whilst recognizing the realities of the economic constraints which exist." Central to their proposal was a return to annual national wage cases in which movements in prices would be a factor, but not a dominant factor in wage fixation.

The Australian Council of Trade Unions on the other hand suggested a less radical approach. It made proposals about individual principles which will be discussed later. On the issue of commitment it pointed out that its position was no different from that of other participants, none of whom had expressed total support and total commitment to the existing system. The ACTU also stated that the measure of commitment to the centralized system was demonstrable by the fact of its application before the Commission in an environment where unions have settled on relatively small increases.

The Commonwealth proposed subject to an acceptance that there would be no wage or other labour cost increases outside the Wage Fixation Principles and a cessation of industrial action in support of such increases, that the Commission would automatically adjust its award wages and salaries every six months in line with the last two quarterly movements of the Six Capitals Consumer Price Index, such movements to be discounted for all price increases resulting from Commonwealth Government policies. It was proposed also that Principle 7(a) be amended in order to subject claims for wage increases to more rigorous examination and to emphasize the need to pay particular regard to questions of skill and responsibility. Under the proposal, there would be no productivity hearing before October 1980. It also indicated it was willing to discuss variations of its proposals. To demonstrate the flexibility of its approach and in accord with its expressed wish to assist the development of consensus, the Commonwealth said *". . . subject to the other parties making a positive change to their positions and in the light of the nature of that change, the Commonwealth would be prepared to seriously consider supporting a set percentage of the CPI movement to be granted automatically"*.

While the employers did not comment in detail on the Commonwealth proposal, what the Commonwealth was suggesting did not fit into the pattern of their proposals.

The ACTU found the Commonwealth proposal quite unacceptable. It spelt out in some detail its objections to the package concluding that what the Commonwealth is seeking "is clearly more severe than that contemplated by the Commission's guidelines". It indicated however that *"a significant step forward would be to provide for full automatic indexation every second quarter with a hearing every other quarter"*.

The optimism of the Council of Australian Government Employee Organizations has already been referred to in our Decision No. 1. The attitude of the Council of Professional Associations was that the Commonwealth's proposals represented a positive contribution, although it had reservations concerning the required commitment that there should be no wage or other labour cost increases outside the Principles. The affiliates of CPA had *". . . all abided absolutely by the Wage Indexation Principles to the present time"*, but CPA had difficulty in entering into a commitment which it might not be possible to keep. CPA also found difficulty with the Commonwealth proposal that under its scheme, the level of discounting would be a matter for the Commonwealth to decide. These objections were also shared by the other peak councils.

The Australian Public Service Federation rejected the proposal put forward by the Commonwealth but expressed reservations about the package in its present form. It preferred the reintroduction of quarterly adjustments with full indexation but if the present Principles were continued Principle 1 should be strengthened. It also asked for a provision to extend generally the approximate $8 increase which has gone to certain sections of industry.

New South Wales described the Commonwealth's new position as a significant move towards consensus. Although there were some aspects of the Commonwealth package which were unacceptable, in particular the proposition that CPI movements should be discounted for price increases resulting from Commonwealth Government policies, New South Wales made it clear that it considered there was room for further discussion of the proposals.

Victoria regarded the maintenance of an orderly and centralized system of wage fixation as imperative. The State reiterated its support for wage indexation and while acknowledging the desirability of consensus, stated its belief that consensus was not indispensable, and urged the Commission to again decide the Principles to apply in the future. Victoria remained opposed to any system involving automatic adjustment and to any system involving automatic deductions on the *"certificate"* of the Commonwealth Government. The State declared its conviction ". . . that the overall interests of the community are best served with the present system whereby at regular intervals there is full public debate before this, the major national arbitral tribunal, of the various considerations for and against wage increases against the background of full examination of the state of the national economy".

South Australia affirmed its commitment to a centralized, orderly system based upon an equitable sharing of burdens and benefits and welcomed the Commonwealth's initiative as a step towards an environment in which an acceptable system could operate.

Western Australia regarded it as essential that there be an orderly centralized system of wage fixation which provides a fair and even-handed treatment for the parties involved while at the same time having regard for the general good of the national economy.

Tasmania found it heartening that the parties and interveners were desirous of retaining a centralized system of wage fixation, despite the lack of consensus on major issues, Tasmania submitted that it was crucial to the retention of the system that the participants be prepared to forego certain of their demands.

Queensland expressed its support for the present system and could see no viable alternative. The State was unable to endorse the Commonwealth package primarily because of the proposal for automatic adjustment of the CPI movements.

The Northern Territory submitted that a centralized form of wage determination should continue, with changes generally in accordance with the Commonwealth's proposals. The Territory suggested that some modification of the proposals was desirable, and submitted that actual compliance was more significant than the notion of commitment. There were other aspects of the proposals which the Northern Territory considered could best be examined in conferences conducted by the Commission.

The Master Builders' Federation of Australia stated that ever since the introduction of wage indexation in April 1975 it has consistently supported the Commission in its wage fixing package. The Federation reaffirmed its support, and welcomed the Commonwealth proposals, which it considered should be further discussed in conference.

Having considered the submissions which have been outlined and the submissions which we deal with later, we consider that industrial harmony will best be achieved by not taking a step as radical as that proposed by the private employers but by continuing the form of Principles which now exists with such modifications as will appear from our discussion of the Principles. In our Decision No. 1 we said:

> *"Apprehension expressed by all participants at the prospect of abandonment of a centralized system and the apparent narrowing of differences between many of them must be regarded as considerations of significance. Further, as a number of parties have pointed out, no viable alternative has been put forward".*

As to the consensus which the Commonwealth was seeking we propose that a conference should be convened which can consider the proposals put forward by the Commonwealth and any suggestions which may be made by other parties. We will also at the end of these reasons make some observations which might well be discussed at that conference.

We should draw attention to our concern that the whole concept of consensus and indeed of the future of the package may be put in jeopardy by the type of action recently taken by wool storemen and packers. Defiance of Full Bench decisions and indeed of other decisions made properly in accordance with the guidelines, must weaken the whole system of wage fixation.

We turn now to consider the details of the package.

SUBSTANTIAL COMPLIANCE

In its decision of September 1978 on the Principles, the Commission discussed at some length the question of substantial compliance which it characterised as *"the keystone of any rational system of wage fixation"*. The Commission pointed to the difficulty of a precise definition of substantial compliance and said that ultimately the Commission must exercise its judgment and *"consider the facts which are presented in evidence in the light of its broad industrial knowledge"*. The Commission made the following observations to assist the parties:

> *"(1) The material about either disputes or wage movements may be sufficient to persuade the Commission to grant something less than the full increase, not to grant an increase at all or indeed to say that the whole system has come to an end.*
>
> *(2) A qualitative as well as a quantitative view may have to be taken of disputes, i.e. it may not be the number of people involved which is significant. There may be circumstances in which, although substantial compliance may be satisfied in terms either of the number or the size of disputes, the severity of the economic costs of such disputes might nevertheless have to be taken into account by the Commission when assessing the amount of national wage adjustment.*
>
> *(3) The Commission would be reluctant to withhold an increase from the working community generally if an identifiable section was creating problems. However, we see no reason why individual members of the Commission given appropriate circumstances should not withhold increases in particular industries or establishments.*
>
> *(4) The Commission will not restrict itself to the precise period under review. A situation which for one period may not seem significant may gain greater significance if it continues. This will not constitute double counting."* [Printing D8400 at p. 8]

We reaffirm that substantial compliance is the keystone of any rational system of wage fixation. But experience in assessing substantial compliance on material presented to the Commission has highlighted the need for further refinement in the analysis of strike statistics and other data.

Thus in measuring the extent of stoppages, the Commission would be assisted if the parties could more accurately identify industrial action which is in pursuit of pay and conditions in violation of the principles and action related to other matters. Such a distinction will allow a fairer assessment to be made of substantial compliance.

We should emphasize, however, that substantial compliance does not relate only to industrial disputes. Prima facie, movements in actual wages substantially in excess of award wages could reflect deviation from the Principles. Despite statistical difficulties, these wage movements should continue to be monitored in considering substantial compliance.

It should also be understood that the economic effects of stoppages from whatever cause cannot be ignored in deciding on the amount of national wage increase. Even small strikes can impose severe costs on the economy such as to reduce its capacity to sustain the existing real wage and some discounting for such costs may need to be applied despite the fact of substantial compliance.

PRINCIPLE 1

Principle 1 was the subject of considerable discussion in the 1978 Wage Fixing Principles Case and on that occasion the Principle was altered to provide for six-monthly adjustments instead of quarterly. Prior to that it had remained unaltered since April 1975.

It now reads as follows:

> *"The Commission will adjust its award wages and salaries every six months in relation to the last two quarterly movements of the six-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment."*

As on other occasions the unions sought full automatic adjustment on a quarterly basis. Various other parties and interveners supported the return to quarterly adjustments. On the other hand the Commonwealth's package envisaged six-monthly adjustments. The retention of six-monthly hearings was supported by some States and the Master Builders' Federation. The set of principles put forward by the private employers was based on annual reviews.

No one, apart from the unions, argued for full automatic adjustment on all occasions. However the Commonwealth's package provided for automatic adjustment on a six-monthly basis subject to a firm and continuing commitment by all parties, discounting for all price increases resulting from Commonwealth Government policies and a tightening of Principle 7(a). Whereas some aspects of the Commonwealth's package received support there was little enthusiasm for automatic adjustment on the basis proposed by it.

As to periodicity, the unions supported their claim for a return to quarterly adjustments by submitting that six-monthly hearings have contributed to industrial unrest and that they have generated uncertainty and reduced the degree of wage security inherent in quarterly adjustments. It was pointed out that the expected decline in the rate of inflation at the time when six-monthly hearings were introduced had not eventuated and reference was made to the cost savings to employers resulting from six-monthly adjustments which, it was stated, were at the expense of wage earners.

Six-monthly hearings have applied only as regards three cases and we indicated in our Decision No. 1 that we were not prepared to alter the Principle at that time. The next National Wage hearing will begin after the publication of the March quarter 1980 CPI figures.

Although our anticipation about a continued decline in inflation has not eventuated, and the hoped-for economic recovery has not taken place, industry is at present in the midst of a round of work value cases which will inevitably have a considerable cost impact on employers. This impact, in addition to the difficulty of predicting the overall economic situation beyond the time when the March quarter figures will be considered, leads us to the conclusion that we should not depart from the six-monthly hearings at this stage. The Principle will therefore continue to provide for six-monthly hearings.

While we will not alter the Principle to provide for full automatic adjustment we are mindful of the Commonwealth's proposal regarding CPI adjustments. Whereas its proposal received little support in the form originally put forward we point out that, as indicated earlier, the Commonwealth later stated that it would be prepared to "seriously consider supporting a set percentage of the CPI movements to be granted automatically". On the material before us we are not prepared to adopt the suggestion but in our view it is a proposition which merits consideration by the parties, particularly at the proposed conference regarding the Principles.

As an alternative to automatic adjustment the unions pressed for the wording of Principle 1 to be altered so as to *"enhance the expectation of wage and salary earners that their real wages will be maintained"* saying that this would increase confidence in the system. On the other hand in their Principles of Wage Fixation the private employers expressed the view *"movements in prices over the preceding year and the causes of those movements"* were only one of a number of factors to be taken into account at each annual review.

Particularly having regard to what we say later regarding discounting of the CPI we are of the view that the present wording of the Principle adequately expresses the onus which should lie on parties seeking less than the full CPI adjustment.

DISCOUNTING

In the debate on discounting, we were presented with three sets of proposals.

As part of its indexation package the Commonwealth proposed that the CPI should be discounted *"for all price increases resulting from Commonwealth Government policies, for example the effects of maintaining import parity pricing for petroleum, and indirect taxes. The Commonwealth would provide the Commission with the appropriate adjustment for discounting"*. The private employers suggested that Principle 1 should be reworded in effect to incorporate discounting as part of the process of determining capacity to pay. Thus, it was argued, price increases caused by import prices, devaluation and government budgetary measures, for example, do not reflect increased capacity and should not form the basis of wage increases.

The unions supported by New South Wales, on the other hand, were generally opposed to discounting in any form. The ACTU submitted that:

> *"The reduction in real wages resulting from discounting of the CPI is contrary to the original objectives of the wage indexation package and is contrary to the expectations of wage and salary earners as to the operation of the system. Continued meddling with the CPI breaks the nexus between prices and wages and in doing so considerably erodes the confidence of wage and salary earners in the ability of the system to consider their interests, as does the inequitable situation of concentrating the full impact of government measures on wage and salary earners."*

The proponents of a middle ground which opposed any automatic discounting included Queensland, South Australia, Western Australia and Tasmania. Queensland, for example, argued that:

> *". . . government policy induced prices increases cover a wide range of possible measures. There is uncertainty about the extent or nature of such policy increases in the future, hence, the best course is to consider each individual policy induced increase in the light of its own circumstances."*

The arguments before us do not persuade us to change the Commission's approach to discounting since indexation began, namely, that on each occasion when Principle 1 is under consideration any departure from full indexation should be decided on the merits of the case for such departure and in the light of the circumstances prevailing at the time. However, we endorse the view expressed by the Commission in the Wage Fixing Principles case of September 1978 that:

> *". . . While the implementation of government policy is, of course, a matter for government, our industrial knowledge leads us to the view that those policy options which call for substantial and repeated discounting impose a strain on what has aptly been referred to as a 'fragile package' and may lead to the breakdown of orderly wage fixation. The Commission could be placed in the position of either making a decision which is seen as frustrating government policy, or, by discounting, making a decision which may result in the collapse of orderly wage fixation with all the adverse economic consequences which could flow from that result. It is a moot point in these circumstances which course of action by the Commission leads to the frustration of government policy."* [D8400 at p. 15]

PRINCIPLES 2 AND 3

The Commission is quite aware of the desirability of giving its decision as early as possible but we have decided to keep these Principles in their present form.

PRINCIPLES 4 AND 5

There was no real debate about these Principles which will continue without alteration.

PRINCIPLE 6

This Principle is as follows:

"Each year the Commission will consider what increase in total wage or changes in conditions of employment should be awarded nationally on account of productivity."

The proposals put forward both by the Commonwealth and by the private employers contained suggested alterations to this Principle. The Commonwealth's suggestion was that any productivity hearing should not take place until at the earliest October 1980 and that only the movement in productivity which had taken place over the preceding year should be taken into consideration. The core of the employer proposals was for an annual hearing at which the anticipated movement in productivity for the year ahead would be taken into account along with the CPI and various economic considerations relating to capacity to pay.

On the material before us we do not consider that any alteration to the wording of the Principle is justified at this time.

PRINCIPLE 7(a) Changes in Work Value

In Decision No. 1 we said that the concern expressed in our June decision about widespread across-the-board wage increases based on Principle 7(a) had not abated and that these increases went against the expectations of all - the Commission, the parties and the interveners - when the Principles were formulated. Indeed, in reformulating the Principles in September 1978, the Commission saw fit to include at the end of the Principles the following note:

> *"N.B. The above Principles must be applied in the context of the following statement made by the Commission in the April 1975 National Wage Decision:*
>
> > *'Regardless of the reasons for increases in labour costs outside national productivity and indexation, regardless of the source of the increases (award or overaward, wage or other labour cost) and regardless of how the increases are achieved (arbitration, consent or duress), unless their impact in economic terms is 'negligable', we believe the Australian economy cannot afford indexation.'*

In considering whether we should discount for the work value wage increases which had occurred, we said in Decision No. 1:

> *". . . we have decided not to take action on account of these increases at this stage because the available statistical and other evidence does not permit a proper assessment of the overall magnitude and incidence of the work value wage increases, particularly as there are still many cases before various tribunals."*

Further increases have occurred since we reserved our decision.

The private employers blame this trend on the willingness of tribunals to apply "averaging" in determining work value, a practice which results in amounts or rates of increase being applied to classifications under an award without discrimination as between those affected by substantial, little and no change in work. The employers have supported the averaging principle only in relation to national wage adjustments. It was submitted that as presently being applied, Principle 7(a) *"most threatens the effective operation of any system based on national wage cases"*.

The employers proposed that 7(a) should be amended to embody three requirements to ensure that no work value averaging could occur: first that the change should be so significant that it would justify the creation of a new classification or a new allowance; second, that only those whose work has changed should receive an increase in pay; and third, that the valuation of change in any work should be based on the nature and value of that work and not by reference to other work.

The employers referred to the 1977 Air Traffic Controllers case [Print D3867] as providing the appropriate model in the application of 7(a). They were supported in this regard by the Commonwealth which also argued that averaging was inconsistent with the Commission's own guidelines in respect of the requirement that increases in labour costs outside national wage should be negligible, and that it "fails to give due regard to skill and responsibility". Victoria and Western Australia also stressed the essential requirement for negligible cost increases outside national wage.

On the other hand Queensland submitted that the "*existing guidelines governing work value claims are adequate and fair when applied firmly*" while the unions generally claimed that Principle 7(a) was working well. The ACTU welcomed the application of the averaging principle in 7(a) cases. CAGEO submitted that recent experience with 7(a) had done much to restore the confidence of wage and salary earners in the indexation system and that it had contributed to a more satisfactory balance between "*centralized and decentralized sources of wage increases under the wage fixation/wage indexation system*". And further:

> *". . . given the diffuse and decentralized nature of trade union structure in Australia it is simply not practical to expect that the degree of centralization in wage fixation evident during the life of indexation thus far could be sustained continuously . . .*
>
> *It is CAGEO's submission that widespread and incremental technological and organizational changes have taken place over the past 4, 5 or even more years that have lead to significant net additions to work requirements and the value of work. It has been granted under Principle 7(a). It is on this basis we say that the similar systematic application of 7(a) to other groups in the workforce, including the public sector that seek wage increases based on work value changes will help to consolidate the system of wage indexation.*
>
> *Such a process is necessary if the wage indexation system is to have sufficient flexibility to continue for the forseeable future, at least, as a focal point of wage determination."*

CAGEO submitted that "*movement back to a more appropriate balance between centralized and decentralized sources of wage increase may be appropriate and sustainable for a time. We do not say there is a standard or fixed level at which these must interact . . .*" It was also suggested that once the current wave of work value cases is determined, a return to greater centralization in the sources of wage increase would be expected.

CAGEO submitted that widespread accumulation over the last five years of technological and organizational changes has given expression to significant net additions to work requirememts thereby providing the basis for the recent wave of 7(a) cases which have resulted in across-the-board wage increases. While we agree with the ACTU that "*work value has not been based on productivity increases*", it would appear, nevertheless, that the changes in work have generally been accompanied by productivity increases. This development bears out in substance the employers' submission that productivity improvement has been obtained "by technological advance which involves on the part of the employers substantial capital investment and on the part of employees changes in the nature of the work".

Despite the qualification contained in 7(a) that general wage increases of this kind would be rare, the circumstances under which the various work value cases were processed made it difficult to identify their cumulative effect until a substantial part of industry had been affected. However, it is now clear that the scale of this development is inconsistent with the central concept underlying the indexation principles that increases outside national wage should be small. The operation of Principle 7(a) is potentially in conflict with Principle 6 as changes in work value, generally accompanied by increased productivity, are rewarded by higher pay. If Principle 6 is to be viable, Principle 7(a) can overall only be a small source of wage increases. The submission of the employers that productivity can be distributed only once without raising prices is undeniable.

We cannot, therefore, agree with CAGEO that the balance between centralized and decentralized sources of wage increases which is currently emerging is appropriate for the operation of the Principles as they are presently formulated. It is not possible to have across-the-board increases industry by industry under Principle 7(a) and national increases under Principle 6 and Principle 1 without substantial double counting and severe inflationary consequences although CAGEO did concede that it would be open to any party or intervener to argue for discounting of any double-counting in a national productivity case. In its National Wage decision of September 1975, the Commission pointed out that:

> *". . . changes in work and in the environment of work are a normal factor of industrial life and the principle of increasing the general wage level annually for increases in national productivity is partly at least in recognition of such changes."* [Print C2700 at p. 6]

We are also concerned that the averaging process will distort the relationship between work and pay as a result of uniform pay increases regardless of the relative changes in work requirements.

CAGEO has argued that:

> *". . . in order that we have a viable system of wage fixation, it needs to be flexible and there needs to be a number of tiers to that system .... the important test is not the number of tiers but the way in which these tiers interact and the level of money wage increases that they generate in toto."*

While we do not disagree with the theory of this statement, we would point out that experience has demonstrated beyond doubt the dangers in practice of too many tiers in wage fixation and the difficulty of preventing the tiers from having a cumulative effect on wages and an inflationary effect on prices.

We have come to the conclusion, therefore, that the application of the averaging process and across-the-board increases must be strictly controlled if the concept of a centralized and orderly system of wage determination is to survive. The proposal of the employers that 7(a) should be reformulated to stop averaging and across-the-board increases immediately and completely is unrealistic in view of the fact that a sizeable section of the work force has already had its pay adjusted on the averaging approach. The draw the line hard on current and impending 7(a) applications as suggested by the employers would be unjust and could strain the systen to breaking point, an outcome which no party desires. In respect of those awards which have not had the benefit of averaging and across-the-board increases under 7(a) we think it sensible to permit the averaging approach should work value changes be established.

However, in those awards which already have had such increases, any further increases to all classifications or to the substantial proportion of classifications or employees covered by any award, should no longer be granted under this Principle. But the Principle in its amended form will not preclude such a claim being taken to the Anomalies Conference as a special and extraordinary problem. Before proceeding with any application to increase rates in 7(a) cases a member of the Commission should be satisfied that the intention of the applicant is not to seek increases for all of the classifications or the substantial proportion of classifications or employees under an award.

To give effect to this new approach we will amend the first paragraph of 7(a) as follows:

> "*Changes in work value arising from changes in the nature of the work, skill and responsibility required, or the conditions under which the work is performed. Except for an award which has not been subject to averaging or across-the-board increases since 30 April 1975 it is not permissible under this principle to alter the rates of all classifications or the substantial proportion of classifications or employees covered by an award unless the Anomalies Conference has found that there is a special and extraordinary problem."*

We have given careful consideration to the employers' proposal for a provision which would require that for an application under 7(a) to succeed, the change in work would need to be such that a new classification or a new allowance would be warranted, and that only those the value of whose work has increased should be entitled to an increase in pay. In view of our decision to control the application of averaging and across-the-board increases we do not regard the provision suggested by the employers as necessary at this stage. Subject to the Anomalies Conference procedure only those classifications in which a significant net addition to work has occurred will receive a wage increase and the increase in wages will be related to that net addition.

The employers have also urged that the application of comparative wage justice should be entirely disallowed in the determination of the value of work change. In its decision of September 1978, the Commission emphasized that by itself comparative wage justice was not a reason for increasing rates of pay and defined a minor role of the doctrine as follows:

> "*We stress that in the examination of the work itself, reliance must not be placed on the doctrine. It is only after the tribunal has reached a conclusion that work changes of the prescribed character have occurred that comparisons might be made with other wage structures to ascertain an appropriate wage rate."* [Print D8400 at p. 27]

In the light of experience we believe that even greater care needs to be taken to limit the comparative wage justice doctrine in work value cases. There is merit in the employers' suggestion for a provision that in assessing work value, regard should be had to *"the previous work requirements the wage previously fixed for the work and the nature and extent of the change"*. But we believe that this provision would be unduly restrictive and would not allow the valuation of change in work to give any weight to the wages and work requirements of the hierarchy of classifications to which the work in question belongs in the award or to wage increases in the same classification in other awards. Such comparisons may be appropriate in work valuation in certain cases and should be allowed. Accordingly, we propose to refine the present 7(a)(iii) by varying it as follows:

"Where a significant net addition to work value has been established in accordance with this Principle, an assessment will have to be made as to how that addition should be measured in money terms. Such assessment should normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work. However, wherever appropriate, comparisons may also be made with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards."

Any award which has not been subject to averaging or across-the-board increases since 30 April 1975 would be subject to the limitations spelt out in Decision No. 1.

We should stress the importance of "significant net addition to work value" as the basis for any wage adjustment under 7(a). New equipment or a new method of organizing work or a new product or service, or the need to retrain employees to cope with these innovations do not in themselves constitute evidence of increased work value. The innovation should also make the work in question on balance significantly more demanding because of the nature of the work, skill and responsibility required or the conditions under which the work is performed.

PRINCIPLE 7(b) Catch-up of Community Movements

This Principle was introduced at the commencement of the indexation package in April 1975 in order to allow those awards which had not received the community movement of 1974 to do so. With the passage of time this Principle became redundant and in the September 1978 decision, the Commission imposed a time limit on it by providing that any 7(b) application had to be lodged before 31 December 1978. This Principle is, therefore, no longer applicable.

PRINCIPLES 7(c) and 7(d) Anomalies and Inequities

The original decision of April 1975 contained no provisions similar to 7(c) and 7(d).

In its decision of September 1975 however the Commission announced a method of dealing with anomalies, at the heart of which was a conference chaired by the President. The procedure which was spelt out was as follows:

"A procedure has been evolved whereby the peak trade union Councils namely, A.C.T.U., C.A.G.E.O., A.C.S.P.A. and C.P.A. bring to the Conference specific anomalies which they seek to have rectified. There is then a discussion with the employers concerned and other interested parties at the Conference are permitted to make observations. The broad principles of processing the anomalies which are raised are:

(1) If there is complete agreement as to the existence of an anomaly and its resolution and I am of opinion that it is a genuine anomaly I will make the appropriate order to rectify the anomaly.

(2) If there is the situation where there is agreement as to the existence of an anomaly but not as to its solution the matter will go to a Full Bench of the Commission to be dealt with.

(3) If there is no agreement at all one of two situations can arise. Either I will hold that there is no anomaly falling within the concept of this Conference which would mean an end of the matter as far as these Conferences are concerned or on the other hand I could hold that there was an arguable case which would then go to a Full Bench of the Commission for consideration.

This procedure can be departed from by agreement and with my approval and in the case of matters in the Australian Public Service they may have to be dealt with somewhat differently in order to comply with the provisions of the Public Service Arbitration Act." [Print C5500 at p. 14]

That decision also introduced the concept of *"special and extraordinary problems"*.

This continued to be the position until September 1978 when in its decision the Commission added the concept of *"inequity"* the alleged inequity to be processed in the same way as an anomaly [Print D8400].

It will be seen that both these provisions were intended as a safety valve in a situation which some thought too rigid. The procedures laid down for the Anomalies Conference are still followed and the Conference re-convenes whenever necessary. It had its latest meeting on 5 March 1980.

The ACTU put forward several suggested changes. It submitted as to procedure that Conferences should be permitted before individual members of the Commission and not confined to Conferences presided over by the President. It also submitted that the overall criterion of negligible labour costs should not prevent the resolution or prevention of an industrial dispute. In particular the ACTU complained that the third test in 7(d)(1)(iii) is too restrictive. It argued that the test had posed *"a formidable barrier to trade unions which have difficulty in understanding fully the intent of the test"*. We were reminded of the New South Wales proposal, upon which 7(d) was based, and it was submitted that the New South Wales wording was preferable because it was more positive and less restrictive.

In reply the ACTU modified its attitude somewhat. It said:

"We do not wish to overstate our submission in regard to this matter for, as we have explained, it is not a matter of priority. It was our view that the procedures which enabled direct access to the Commission via the normal channels would provide advantages. However, if the Commission believed that it could detract from an effective centralised and orderly wage fixation system then the ACTU would not pursue this issue at this point of time but would continue to monitor the attitudes of affiliates to the procedures adopted."

New South Wales agreed with the ACTU as to wording, pointing out that there had been few inequity matters brought to the Conferences, possibly because of the wording. It suggested the deletion of the second sentence in 7(d)(1)(iii) so that the discretion of the President or a Full Bench on reference would not be fettered. The draft submitted by New South Wales in September 1978 contained the sentence:

"An historical, geographical, employment or other nexus to exist between the similar and comparable classes of work may constitute a cogent factor."

In the principle the Commission said:

> *"An historical or geographical nexus between the similar classes of work may not of itself be such a factor."*

The Commonwealth submitted that 7(c) and 7(d) had worked as they were intended to work and that we should not change the situation.

The private enployers expressed apprehension that changes to the anomalies principle might lead to a greater use of comparative wage justice, and that the use of historical and/or geographical nexus contained the potential for *"opening up the flood gates"* of comparative wage justice. They opposed the procedural changes relating to the chairmanship of the Conference suggested by the ACTU because the present form of Conference has led to important co-ordination and consistency of decision making. They also opposed the suggestion that Principle 7(d) should be reworded to conform with the original New South Wales draft because they opposed the concept of *"inequity"* altogether. Their support for the continuation of the Anomalies Conference was conditional upon a continued refusal to use comparative wage justice.

We consider that both Principles serve a useful purpose, acting as a safety valve which became necessary after the Principles had been in operation for some time. The Conferences have worked quite successfully and we see no reason to change them. We think it desirable that any anomaly or inequity should continue to be processed through the peak union Councils and that the Conferences should continue before the President both for the sake of uniformity and because he has the sole power to refer under section 34. If Conferences were presided over by all members of the Commission the likelihood of uniformity would be diminished and a procedural step added to the present situation. The suggested rewording of 7(d)(l)(iii) seems to us to be unnecessary both because the Principle is working now and any rewording could be seen to appear that we have changed the Principle which is not our intention.

PRINCIPLE 8 Allowances

In its April 1975 statement of the Principles, the Commission made no specific mention of allowances and it was not until September 1975 that the Commission dealt with them. It then said:

> *"The question of the relevance of our guidelines to allowances has been raised. Our decision was not intended to preclude the adjustment of allowances from time to time where appropriate. However, this does not mean that existing allowances can be increased extravagantly or that new allowances can be introduced, the effect of which would be to frustrate our general intentions. Our view on this matter is equally relevant to all other award conditions. As we said on 30 April 'the Commission should guard against contrived work value agreements and other methods of circumventing our indexation plan'."* [Print C2700 at p. 8]

In its May 1976 decision the Commission formalized what it had said in September by adding the following words to Principle 8.

"Allowances may be adjusted from time to time where appropriate but this does not mean that existing allowances can be increased extravagantly or that new allowances can be introduced, the effect of which would be to frustrate our general intentions. Our view on this matter is equally relevant to all other award conditions]." [Print C5500 at p. 20]

In its decision in September 1978 the Commission referred to the Report of the Inquiry into the Principles of Wage Fixation and said:

> *". . . it was stated in the conclusion that whilst there was consensus that allowances could mean different things in awards and that the Commission should therefore be more precise about them there is no agreement as to how existing allowances should be dealt with or new ones created."* [Print D8400 at p. 33]

In order to create more precision about allowances the Commission then rewrote Principle 8 in a more elaborate form.

In the current proceedings the ACTU suggested that the Principle should be relaxed. Its policy on *"Wages and Working Conditions"* says *"Congress also believes that certain conditions of work should be reflected via allowances which may be introduced and varied from time to time in accordance with reasonable standards and the particular conditions of the industry or an award"*. It was submitted that the provision about allowances in the Principle was in its original form a much broader notion than it is now and sought to return to the original words.

On the other hand the private employers submitted that the Commission's decision in September 1978 had improved the Principles by clarifying the position about allowances.

The Commonwealth submitted that no case had been made out to change the Principle.

We are of the view that the Principle in its original form did cause some problems because of its imprecision, problems which were overcome by the more detailed form which resulted from our September 1978 decision. We are not persuaded to change its form.

PRINCIPLE 9 First Awards and Extensions of Existing Awards

There were no submissions put to us about this Principle and we propose to repeat it.

We also repeat the note which follows Principle 9 because it is fundamental to the proper working of the Principles.

PROPOSED CONFERENCE

The last general review of the Principles was conducted initially by private conferences of the parties and interveners chaired by the President. The conferences covered the period May 1977 to April 1978. Outstanding issues were argued before a Full Bench and the decision of 14 September 1978 altered the Principles in a number of significant areas.

Developments which have occurred since September 1978 include the proliferation of broadly based work value cases and a significant increase in industrial disputation. These factors, amongst others, led the Commission in the June 1979 decision [Print E267] to state its belief that the system of wage fixation based on indexation was not working.

In response to the Commission's concern the parties and interveners made various comments and suggestions which have been referred to earlier. The constructive nature of the debate on the proposals of the Commonwealth has led us to the conclusion that a further review initiated by way of conference would be worthwhile. We raise here a few relevant points for consideration by the Conference.

It should be obvious that the economic and industrial viability of any wage fixation system depends on a proper balance and interaction between its component parts. A change of substance in one part may require a balancing change or changes elsewhere because of economic limits to wage increases.

The variables relevant for consideration in a system of wage fixation include the following:

(a) periodicity of national hearings (quarterly, six-monthly, annual);

(b) degree of automaticity or onus appropriate to wage indexation of CPI movements (none, "residue" percentage after discounting for government induced price increases, fixed minimum percentage, *"unless . . . persuaded to the contrary"*, full);

(c) treatment of substantial compliance;

(d) treatment of work value, productivity and other monetary award or overaward claims and claims for new and improved conditions impinging on labour costs.

The Commonwealth has made a significant contribution by conceding the possibility of a fixed minimum percentage under certain circumstances. It was suggested in the course of discussion the minimum might be 80 per cent of the quarterly CPI movement. The balance of 20 per cent might be argued at six-monthly hearings or annually. What changes, if any, should be made by way of commitment of the parties or by way of variation to the Principles if a *"guarantee"* of this magnitude were adopted?

The relationship between work value claims and claims based on national productivity movements has already been discussed in relation to Principle 7(a). Our decision in the present case provides a mechanism which will monitor *"double counting"* applications in the future. Such a step is necessary to prevent a recurrence of possible conflicting priorities within the present system.

However, it is open for parties and interveners to consider a different set of priorities between work value and productivity claims with adequate safeguards built into the operation of such priorities to ensure that overall wage increases are kept within the limits of economic and industrial tolerance. CAGEO has argued in favour of work value rounds every three or four years which would give all concerned a break from a highly centralized system of wage reviews determining some 98 per cent or so of total award wage movements. This approach contrasts with the "simultaneous and equal treatment" approach of the present system. Would such an approach be workable in view of the strong pressure for such treatment by wage earners in the past? Would a periodic departure from centralisation undermine the viability of a return to centralized wage decisions? Would such an approach lead to the return of competing sectional wage claims and revive the spectre of 1974?

The Commission has been at pains to stress that all increases in labour costs, whether by way of changes to award wages, allowances or conditions or by way of private treaty outside the award must conform to some set of rules to ensure their economic and industrial viability. Whatever package is adopted, can the consideration of labour costs be ignored without putting the living standards of the work force at risk?

The proposed conference will provide a forum for a full discussion of alternative combinations of principles which may be available as a workable wage fixation package. It will be obvious that a workable package does not depend solely on any one component and that attention needs to be given to the interaction of the component parts and their overall consistency with the objectives of wage fixation.

The Commission has approached the formulation of principles with a flexible mind and it does so once again by calling a conference later this year to consider the future of the system.

We stress again what we said in Decision No. 1:

> *"Although the Commission will bear the responsibility for guiding the participants in the observance of principles, the future of a centralized system is very much a matter for the participants themselves. It will have been plain to all from the conflicting views debated in this case that at present there is no decision which the Commission can reach which would reconcile the various submissions, and it must follow that some submissions which represent substantive views will be refused. It should be apparent that a valid measure of genuine interest in maintaining the system is the extent to which it is accepted that some proposals cannot be accommodated."* [Print E1681]

The Principles we have determined are set down as follows:

PRINCIPLES OF WAGE DETERMINATION

In considering whether wages, salaries or conditions should be awarded or changed for any reason either by consent or arbitration the Commission will guard against any contrived arrangement which would circumvent these Principles. It would be inconsistent with the guidelines for wages, salaries or conditions to be awarded or changed extravagantly, the effect of which would be to frustrate the Commission's general intentions.

A prime consideration will continue to be whether there has been substantial compliance with the Principles.

1. The Commission will adjust its award wages and salaries every six months in relation to the last two quarterly movements of the six-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment.

2. For this purpose, the Commission will sit in October and April following the publication of the CPI for the September and March quarters respectively. We expect the time of such hearings to be short.

3. Any adjustment in wage and salary award rates on account of the CPI for the six month period will, if practicable, operate from the beginning of the first pay period commencing on or after the 15th of the month following the issue of the September quarter CPI in one case and the March quarter CPI in the other.

4. The form of indexation will be uniform percentage adjustment unless the Commission decides otherwise in the light of exceptional circumstances. It is to be understood that the compression of relativities which has occurred in awards in recent years does not provide grounds for special wage increases to correct the compression.

5. No wage adjustment on account of the CPI will be made in any six month period unless the movement in that six month period was at least 1 per cent. Movement in any six month period of less than 1 per cent will be carried forward to the following six months period or periods and an adjustment will occur when the accumulated movement equals 1 per cent or more.

6. Each year the Commission will consider what increase in total wage or changes in conditions of employment should be awarded nationally on account of productivity.

7. In addition to the above increases, the only other grounds which would justify increases in wages or salaries are:

Changes in work value

7(a) Changes in work value arising from changes in the nature of the work, skill and responsibility required, or the conditions under which the work is performed. Except for an award which has not been subject to averaging or across-the-board increases since 30 April 1975 it is not permissible under this Principle to alter the rates of all classifications or the substantial proportion of classifications or employees covered by an award unless the Anomalies Conference has found that there is a special and extraordinary problem.

(i) Prima facie the time from which work value changes should be measured is the last movement in the award rates concerned apart from National Wage and Indexation. That prima facie position can only be rebutted if a party demonstrates special circumstances and even then changes can go back only to 1 January 1970.

(ii) Changes in work by themselves may not lead to changes in the value of work. The change should constitute a significant net addition to work requirements to warrant a wage increase.

(iii) Where a significant net addition to work value has been established in accordance with this Principle, an assessment will have to be made as to how that addition should be measured in money terms. Such assessment should normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work. However, wherever appropriate, comparisons may also be made with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards.

(iv) The expression 'the conditions under which the work is performed' relates to the environment in which the work is done.

(v) Re-classification of existing jobs is to be determined in accordance with this principle.

Catch-up of community movements

7(b) Deleted.

Anomalies

7(c) The resolution of anomalies and special and extraordinary problems by means of the Conference already established to deal with anomalies and in accordance with the procedures laid down for them.

Inequities

7(d)(1) The resolution of inequities existing where employees performing similar work are paid dissimilar rates of pay without good reason. Such inequities shall be processed through the Anomalies Conference and not otherwise, and shall be subject to all the following conditions:

(i) The work in issue is similar to the other class or classes of work by reference to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is performed.

(ii) The classes of work being compared are truly like with like as to all relevant matters and there is no good reason for dissimilar rates of pay.

(iii) In addition to similarity of work, there exists some other significant factor which makes the situation inequitable. An historical or geographical nexus between the similar classes of work may not of itself be such a factor.

(iv) The rate of pay fixed for the class or classes of work being compared with the work in issue is a reasonable and proper rate of pay for the work and is not vitiated by any reason such as an increase obtained for reasons inconsistent with these guidelines as a whole.

(v) Rates of pay in mininum rate awards are not to be compared with those in paid rate awards.

(2) In dealing with inequities, the following over-riding considerations shall apply:

The pay increase sought must be justified on the merits.

(ii) There must be no likelihood of flow-on.

(iii) The economic cost must be negligible.

(iv) The increase must be a once-only matter.

(3) The requirements of (1) and (2) above shall be observed in the Anomalies Conference and by a Full Bench to which an inequities application might be referred. The peak union councils must initiate these claims and, in particular, assist in the resolution of issues as to possible flow-on.

Allowances

8. Allowances may be adjusted from time to time where appropriate but this does not mean that existing allowances can be increased extravagantly or that new allowances can be introduced the effect of which would be to frustrate the general intention of the Principles.

Existing allowances

8(a)(i) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

(ii) Existing allowances which relate to work or conditions which have not changed may be adjusted from time to time to reflect the movements in wage rates as a result of national wage decisions.

(iii) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7(a).

New allowances

8(b)(i) New allowances will not be created to compensate for disabilities or aspects of the work which are comprehended in the wage rate of the classification concerned.

(ii) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(iii) New allowances to compensate for changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7(a).

(iv) New allowances to compensate for new work or conditions will be determined in accordance with the relevant provisions of Principle 9.

Service increments

8(c) Service increments shall not be introduced or altered except in accordance with the following provisions:

(i) Existing service increments covered by federal awards may be adjusted in the manner prescribed in (a)(ii) of this Principle.

(ii) New service increments to compensate for changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7(a).

9. First awards and extensions of existing awards

(a) In the making of a first award, the long established principles shall apply i.e. the main consideration is the existing rates and conditions (General Clerks Northern Territory Award) [111 CAR 916].

(b) In the extension of an existing award to new work or to award-free work the rates applicable to such work will be assessed by reference to the value of work already covered by the award.

(c) In awards regulating the employment of workers previously covered by a State award or determination, existing rates and conditions prima facie will be the proper award rates and conditions.

N.B. The above Principles must be applied in the context of the following statement made by the Commission in the April 1975 National Wage Decision:

"Regardless of the reasons for increases in labour costs outside national productivity and indexation, regardless of the source of the increases (award or overaward, wage or other labour cost) and regardless of how the increases are achieved (arbitration, consent or duress), unless their impact in economic terms is 'negligible', we believe the Australian economy cannot afford indexation."

Appearances:

J. Marsh, R. Overall and I. Watson for the Electrical Trades Union of Australia and others.

R.L. Gradwell and G. McGill for The Australian Public Service Association (Fourth Division Officers).

G.D. John and S.O. Green for The Association of Professional Engineers, Australia.

B.J. Maddern, of counsel for the Metal Trades Industry Association of Australia and others.

B.A. Ryan for the Australian Telecommunications Commission.

K.D. Marks, Q.C., and A.R.O. Rowlands, of counsel, for the Minister of State for Industrial Relations (intervening).

M. Sweeney and M. Moore, of counsel, for Her Majesty the Queen in right of the State of New South Wales (intervening).

P. Dalton, Q.C., and F. Turner, of counsel, for Her Majesty the Queen in right of the State of Victoria and others (intervening).

J.E. Murdoch for Her Majesty the Queen in right of the State of Queensland (intervening).

M.F. Gray for Her Majesty the Queen in right of the State of South Australia (intervening).

A. Pearce for Her Majesty the Queen in right of the state of Tasmania (intervening).

J.G. Carrigg for Her Majesty the Queen in the right of the state of Western Australia (intervening).

F. Marks for Her Majesty the Queen in right of the Northern Territory of Australia (intervening).

L.P. Doyle and A. Djoneff for the Australian Public Service Board (intervening).

J.S. Luckman for the Master Builders' Association of Victoria and others (intervening).

J.R. Andrews and M. Burgess for the Australian Public Service Federation (intervening).

R.L. Gradwell and G. McGill for the Council of Australian Government Employee Organizations (intervening).

G.D. John and S.O Green for the Council of Professional Associations (intervening).

Dates and places of hearings:

1979.
Melbourne,
November 13-16, 20-23.
Sydney,
November 29, 30.
December 4-6.
Melbourne,
December 12-14.