

IN THE COMMONWEALTH CONCILIATION AND ARBITRATION
COMMISSION.

In the matter of the *Conciliation and Arbitration Act 1904-1965*
and of

THE CATTLE STATION INDUSTRY (NORTHERN TERRITORY)
AWARD, 1951

(Nos. 397 and 553 of 1950).

(C No. 830 of 1965).

Variation of award—Application of award to aborigines—Conciliation and Arbitration Act 1904-1965 s. 34—Judgment delivered—Award varied.

On 21st January, 1965, an application was filed on behalf of the North Australian Workers' Union for an order varying the above award dated 4th May, 1951.⁽¹⁾

The application came on for hearing before the Commonwealth Conciliation and Arbitration Commission (Senior Commissioner Taylor), in Melbourne, on 19th February, 1965.

A. T. Brodney and *J. N. Button*, solicitors, for the North Australian Workers' Union.

J. H. Wootten, of counsel, *W. E. L. De Vos* and *H. C. Collins* for the Northern Territory Cattle Producers' Council.

A. E. Woodward, of counsel, for the Commonwealth of Australia (intervening).

On the same day the Northern Territory Cattle Producers' Council made application under section 34 (2) of the *Conciliation and Arbitration Act 1904-1964* that the application was of such importance that, in the public interest, it should be dealt with by the Commission constituted as provided in sub-section (1) of section 34, namely, by the Commission constituted by not less than three members of the Commission nominated by the President, at least one of whom is a Presidential member and one is, where practicable, the Commissioner concerned. On 25th February, 1965, the President made the direction so sought.

The application came on for hearing before the Commission (*Kirby C.J.*, President, *Moore J.*, Deputy President, and Senior Commissioner Taylor) in Sydney, on 7th July, 1965.

A. T. Brodney, solicitor, for the North Australian Workers' Union.

J. R. Kerr, Q.C., and *J. H. Wootten*, of counsel, for the Northern Territory Pastoral Lessees' Association and others.

A. E. Woodward and *J. Gobbo*, of counsel, for the Attorney-General of the Commonwealth of Australia.

On 7th March, 1966, the Commission delivered the following judgment and made the order hereinafter appearing:—

This is a case about aborigines employed on cattle stations in the Northern Territory. The stations range from hundreds to thousands of square miles in area and many of them are isolated and remote. These aborigines are full-bloods because virtually all those of mixed blood are treated as

1965.
MELBOURNE,
Feb. 19, 25;
March 19.

Senr. Commr.
Taylor.

1965.

SYDNEY,
July 7-9;

ALICE SPRINGS,
July 20-22,
26, 27;

SYDNEY,
Aug. 10, 11;
Sept. 20-22,
27-29;

BRUNCHILLY
and BRUNETTE
DOWNS,
Oct. 5;

ALEXANDRIA
STATION,
Oct. 6;

BRUNETTE
DOWNS,
Oct. 7, 8.

SYDNEY,
Oct. 18-22;

DARWIN,
Nov. 9, 12,
15, 16;

SYDNEY,
Nov. 18;

MELBOURNE,
Dec. 8-10,
13-17, 24.

1966.

SYDNEY,
March 7.

Kirby C. J.,
Moore J.,
Senr. Commr.
Taylor.

(¹) 71 C.A.R. 319

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whites on the cattle stations. Many can be described as semi-tribalised. Most of the adults have had no formal education, but a change is taking place among the children, many of whom are attending school. Generally speaking these aborigines live on the stations in their own communities on their old tribal grounds, but some of them live on settlements, that is, reserves run by the Commonwealth Government for aborigines. The latter use the settlements as a base and work on nearby cattle stations. None of the aborigines who work on cattle stations must be confused with mixed bloods or with aborigines who live on the fringes of towns and cities. It is important to emphasise from the beginning that this case is not concerned with all aborigines, not even with all aborigines in the Northern Territory.

Present Industrial Regulation.

For many years there has been an award for employees on cattle stations in the Northern Territory, but aborigines have been excluded from its operation. The current award (Cattle Station Industry (Northern Territory) Award) for white employees was made in 1951⁽¹⁾ and last varied in 1961⁽²⁾. However, the wages and conditions of employment of aborigines have, since 1933, been regulated by ordinance of the Northern Territory Administration. From 1933 to 1949 there was a minimum wage of 5s. per week, with provisions for food, clothing and tobacco. In 1949 the rates were increased to £1 a week for males after three years experience, with provision for rations, clothing and accommodation. In 1957 the ordinance was changed to provide for a minimum wage for these employees of £2 8s. 3d. per week, plus 15s. per week for clothing with provision for improved rations and accommodation. This ordinance applies to all aborigines in employment and also makes provision for first wife and first child. This is the current position. There is therefore the unusual situation in which award-free employees have their rates and conditions of employment provided for by ordinance.

Claims.

The union seeks to remove from the award the exclusion of aborigines. This would have the effect not only of prescribing higher rates of pay but also different conditions of employment and, in particular, provisions regarding accommodation and rations different from those under the current ordinance. The award includes some half-castes and excludes others, but for practical purposes all aborigines concerned in this application may be considered to be full-bloods.

The Commonwealth Government supports the union in principle but asks for a deferment of the implementation of the union's claim for a period of years, certain transitional provisions to apply in the meantime which would have the effect of introducing by degrees full award rates and conditions.

The employers do not oppose the application of the award to a limited number of aborigines who are relatively skilled. They ask first that the award be not applied to any aborigines other than these few, but in the alternative they ask that the Commission prescribe a series of rates related to the working capacity of classes of aborigines, the difference between rates being related to a capacity to perform work and to work without supervision.

(1) 71 C.A.R. 319

(2) 97 C.A.R. 713

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To understand fully the implications of the employers' alternative proposal it is necessary to set it out verbatim:—

- " (a) This award shall not apply to station managers, overseers, members of owner's family, exempt employees or domestic servants.
- (b) The rates and conditions prescribed by this award are fixed on the basis that an employee to whom the award applies is capable of carrying out the full range of duties normally required of the classification in which he is employed, and that he can be relied on to perform such duties when required consistently without constant supervision.

Employees who do not possess these qualifications shall be exempt employees.

Provided always that exempt employees shall be paid not less than the following rates:—

1. An employee who is capable of carrying out the major part but not the full range of duties normally required of the classification in which he is employed and who can generally be relied on to perform most of such duties when required consistently and without constant supervision—70 per cent. of the 'with keep' award rate for the appropriate classification.
2. An employee who is capable of carrying out the major part but not the full range of duties normally required of the classification in which he is employed, but who cannot be relied on to perform such duties when required consistently and without constant supervision—50 per cent. of the 'with keep' award rate for the appropriate classification.
3. An employee employed to do simple tasks not involving consistent effort (e.g. watering, weeding, outside cleaning up)—30 per cent. of the 'with keep' award rate for the appropriate classification."

All parties are categorically opposed to any discrimination based on race. The employers repeatedly emphasised that their claim for classifications is based not on racial grounds but on work value. They say that the value of the work of many aborigines is less than that of whites mainly for cultural reasons and because of lack of education. There are from 20 to 25 per cent. of aborigines now employed on cattle stations to whom the employers are prepared to pay current Northern Territory award rates. The issues to be resolved relate to the remaining 75 to 80 per cent. There are irreconcilable differences between the union, the employers and the Commonwealth Government as to the industrial fate of this remainder.

Conduct of Proceedings.

The union, as the applicant in this case, sought to have the case argued and decided in the South as a matter of principle and without evidence. From the beginning of the proceedings the employers submitted that the Commission should ascertain in detail the facts about this industry before the realities of the situation could be understood. They stressed the importance of inspections and hearings in the Northern Territory and the need for detailed evidence. We acceded to the employers' request and in the result we received a wealth of material, both oral and documentary. We were given information about aborigines generally (including expert anthropological and ethnopsychiatric material) and in particular, information about their work performance in this and other industries. The union called no evidence at all and the only witness called by the Commonwealth Government was the Director of Welfare at Darwin.

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At the request of the employers we both inspected and took evidence at the following stations—

Alice Springs District

Narwietooma
Napperby
Hamilton Downs.

Barkly Tablelands District

Brunette Downs
Alexandria
Brunchilly.

In addition the employers called witnesses to give detailed evidence about the following stations—

Alice Springs District

Jervois
Curtin Springs
Elkedra
Alcoota
Anningie
Milton Park.

Victoria River District

Victoria River Downs
Rosewood
Legune
Auvergne
Newry
Coolibah
Wave Hill
Limbunya
Waterloo
Mistake Creek
Kirkimbie.

Barkly Tablelands District

Avon Downs
Rockhampton Downs
Alroy Downs
Creswell Downs
Eva Downs
Walhallow
Helen Springs.

Darwin Gulf District

Tanumbirini
Elsey
Hodgson Downs
Roper Valley
Manbulloo
Nutwood Downs.

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The Commission also made inspections of and took evidence at the native settlements at Bagot, Snake Bay, Maningrida and Beswick, at Beswick Station and at the Lutheran Mission at Hermannsburg.

The inspections in the Northern Territory and the detailed evidence given have enabled us to understand the issues and problems involved in a way which would not have been possible if the case had been argued only as a matter of principle in the Southern States.

Historical Significance.

The union the pastoralists and the Commonwealth Government all submitted that this was a case of historical significance. Although it is not the first time that the question of the coverage of these aborigines by award has been before an arbitral tribunal, it was agreed that this was a case of considerable importance because of the growing interest in and increasing concern about aborigines, particularly in the Northern Territory. The Commonwealth Government, which has the direct responsibility for these aborigines, has in the more recent past been progressively more concerned about them and we were referred to various Ministerial statements about the desirability of assimilation. It is not proposed to set out all that has been said, but we repeat the statement made by Commonwealth and State Governments at an Aboriginal Welfare Conference in Adelaide in July 1965, which is as follows:—

“The policy of assimilation seeks that all persons of Aboriginal descent will choose to attain a similar manner and standard of living to that of other Australians and live as members of a single Australian community—enjoying the same rights and privileges, accepting the same responsibilities and influenced by the same hopes and loyalties as other Australians. Any special measures taken are regarded as temporary measures, not based on race, but intended to meet their need for special care and assistance and to make the transition from one stage to another in such a way as will be favourable to their social, economic and political advancement.”

In a statement to the House of Representatives on 10th December 1965 the Minister for Territories referred to the statement set out above and also said:—

“In the Northern Territory there are now no laws which discriminate against aborigines; they are equal at law with all other Northern Territory residents though some special benefits have been retained to them such as special rights to reserved lands, including royalties arising from those lands and the right everywhere to take natural game and to use natural waters.”

The employers agree with the basic national policy of assimilation of aborigines either as individuals or as groups, but suggest that the aborigines with whom we are concerned would best be assimilated by remaining in the cattle industry.

The Commonwealth Government, which is responsible for the welfare of aborigines, appeared before the Commission, made positive submissions, and made a positive proposal as to how the case should be resolved. The Commonwealth Government could achieve whatever industrial results it thought proper for these aborigines through ordinances in the Northern Territory. However, it desires that there should be applied to the aborigines employed on cattle stations in the Northern Territory the same law and procedures as are applied to members of the white community and accordingly

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it has asked the Commission to regulate the industrial conditions of these aborigines in the same way as it does for whites including giving aborigines the same rates and conditions. This is part of the equality at law referred to by the Minister in the passage quoted above.

Function and Methods of the Commission.

The Commission is by statute a body created to deal with industrial disputes, that is, disputes arising from the relationship of employer and employee. It is not a Government, nor does it have the powers and knowledge of a Government in the field of aboriginal welfare. Anything we do must be limited to our jurisdiction. Although what we do in the exercise of our powers may result in social changes, and may result in aborigines moving from one kind of life to another, we are not social engineers nor can we deal with the whole spectrum of aboriginal life. We can do no more than to attempt to achieve a just result in an industrial situation. We will not ignore the consequences of our acts, including what may happen to aborigines employed on stations, but we cannot attempt to mould a policy of social welfare for these people in the way a Government can. This is of significance when some of the benefits at present granted to aborigines by the Department of Welfare are considered; for instance, payments for second wives. If we grant full award wages for employees, we could not decide the question whether this payment should continue, nor could we deal with any problem which may arise concerning the accommodation of aborigines on settlements.

Because the Commission is an industrial tribunal and not a legislature concerned with the whole spectrum of aboriginal life, we propose to state the broad principles which are applied in this community by the Commission in the settlement of industrial disputes, and then to consider all submissions and in particular, the employers' submissions, in the light of those principles.

Much of the debate before us dealt with the amount to be paid to aborigines and this is the crucial issue. The normal standard of the Commission is that all adult male employees are entitled to a basic wage unless they are special cases such as slow workers. It is defined by section 33 as "that wage, or that part of a wage, which is just and reasonable for an adult male, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed." The basic wage is payable to all adult male employees covered by federal award (other than some slow workers) irrespective of the value of their work. However, most workers receive in addition to the basic wage a secondary wage or margin for skill or special conditions of employment.

It is in the fixation of the secondary wage or margin that questions of skill arise. There are some employees who have no margin at all for skill and therefore receive only the basic wage, but they are few. In this award the general station-hand has no margin for skill, and the stockman has a 10s. margin, but it is at least possible that these rates, which have not been altered for some years, may need adjustment. The employers ask us to apply a work value test to the whole wage, including the basic wage, as distinct from the Commission's normal practice of looking at work value only in relation to the secondary wage.

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They also ask us to assess the work value of aborigines, not by objective tests, not by looking at the nature of the work itself and fixing a rate for it, but by fixing for what is essentially the same work a lower rate for employees who either cannot do all the work or cannot do all the work without constant supervision. This in itself is an unusual approach to the fixation of wages by work value. It is normal for the Commission to fix a rate for a job and any employee who performs that job is entitled to that rate. If any employee cannot perform all the functions of the task required of him by the employer or is unable to perform them without constant supervision, the normal industrial practice would be for the employer to accept that situation and pay the normal award rate or to dismiss the employee. The Commission does not normally fix a lower rate for people who perform only part of a recognised job or who cannot do it without supervision.

The employers' case can properly be described as a request to apply to 75 or 80 per cent. of aborigines employed on cattle stations in the Northern Territory the kind of special provision to be found in clauses known as "slow-workers" clauses. Such a clause permits the payment of a rate lower than the prescribed rate "to any employee who is unable to earn the minimum wage prescribed". The clause is a reflection of the power contained in section 48 of the Act to "provide for the payment of wages at a lower rate for an employee who is unable to earn the minimum wage". Both the clause in the award and the section itself contemplate that this prescription shall apply to individuals and not to classes. Indeed, section 48 says "the Commission shall provide that the lower rate shall not be paid unless a person or authority specified by the Commission has certified that the employee is unable to earn the minimum wage". If the facts were that aborigines were covered by this award and there were only a few of them, the employers' problem might have been resolved by seeking slow workers' permits for the aborigines concerned. But the fact is that the aborigines for whom employers seek a rate lower than the award rate are in considerable numbers. The Commission has to contemplate the extension from individual employees to classes of employees of the principles applying to slow workers set out in the Act and in this award. Assuming for the moment that the Commission is not prevented from so extending the principles by the words of section 48 it would be a big step to make a prescription for classes instead of individuals.

We were asked by the Commonwealth Government to indicate a view that the inability to earn the minimum wage referred to both in clause 10 of the award and in section 48 of the Act is confined to a purely physical disability and therefore any inability based on cultural or psychological grounds did not fall within the clause or the section. We incline to the view that neither the clause nor the section can be confined in this way and that it would be a matter of fact whether an inability existed, be it based on physical or any other ground.

The way in which these proceedings have been conducted has been normal for the Commission and its usual procedures have been applied. The question now remains whether after such a normal proceeding the Commission is prepared to apply to these people standards which are not its normal standards.

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We propose now to examine in some detail the case put by the employers to see whether we would be justified in applying to these aborigines standards which are lower than or different from those applying in the community generally.

Employers' case.

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

We propose first to consider the evidence given as to work performance and then to consider the other material which was put to us in support of the fundamental proposition that aborigines are not as good workers as whites. We will also consider the likely effects of a decision to give award coverage to aborigines. We will finally consider whether in all the circumstances we will apply to these aborigines the enlarged slow-workers' clause sought by the employers.

Work Performance.

What we have to say about work performance of aborigines is of necessity in summary and general form and must be read as such.

It was put to us that these aborigines are unable to work as well as whites because of cultural and tribal factors. In the first place they are, in the employers' submission, semi-tribalised and even in the union's submission they are not fully part of the white community. It was put to us by witness after witness that there are a number of factors which prevent most aborigines from working in the same way as white men. What was said by the witnesses was amplified by the anthropological material referred to later. In the first place, these aborigines do not understand the meaning of work in our sense. This is because before their contact with whites they were a hunting race who lived off the land and did not work in any way understood by us. They had no agricultural skills and no domesticated pastoral animals and the discipline and understanding of work which agriculture and pastoral activities involve were foreign to them. When whites began to set up the cattle stations in the Northern Territory the aborigines remained on their lands now taken over by the stations and instead of hunting as a means of obtaining food, they substituted the obtaining of rations from the station owner in return for doing a little work. The effort which the aborigine used to put into hunting for food was now put into working for food and just as the hunter did no more than was necessary to obtain sufficient food so also the aboriginal employee on the station did no more than was necessary to obtain sufficient rations. Linked with this is the fact that aboriginal society was not competitive in an economic sense. Moreover, it was not an individualistic society in which the individual had ambitions and worked for himself. Within certain tribal patterns the aborigine shared the fruits of his hunting. Accordingly the idea of working for oneself with ambition to achieve some economic goal was foreign to aboriginal society.

The reason why aborigines in their tribal state had no real concept of work is due to a number of factors. In tribal society the idea of cause and

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effect was not known. Time, in the Western sense, and the significance of time were also unknown. They had no idea of forward planning, of working out a long term enterprise based on predictions of future planned occurrences. The notions of number, precise distance, and mathematical accuracy were unknown. Their culture excluded the idea of disciplined, reliable and responsible endeavour under a contract of employment.

Many examples were given to us of the attitude of natives to work and of the difficulties which station owners accordingly face. Mr. Connellan of Narwietooma Station feels strongly that he has an obligation to help the aborigines who had previously hunted on his land, to give them employment and to give them opportunities to better themselves. He has spent a good deal of time himself in training natives. Of the examples he gave, one concerned an aborigine called Paddy who when first employed by Mr. Connellan spoke very little English and did not have any employment skills. Having been tried in stock camp work he was found not to be suitable to it but found suitable to axe and adze work which he could do quite well. He was ultimately paid £10 a week, well above the prescribed minimum. He subsequently became a contractor. The main problem with Paddy was that although he took pride in his work and liked to improve his position he spent a great deal of time not working. Indeed, he spent more than half his time not working. At Christmas 1964 he went away for two weeks' holidays and stayed away for over four months. In May 1965 he asked for two days' leave to go to the Show, from which he had not returned in July, when Mr. Connellan gave evidence before us. Mr. Connellan knew he was at Papunya native settlement and went to see him there. Paddy said he was "worrying for his job", and wanted to start, but the Superintendent at Papunya had been trying for seven weeks to get him to go back and every time he asked Paddy he said "Yes", and that "He would go tomorrow", but, as Mr. Connellan said, he was, at the end of July, still "just playing cards". Other examples, not as dramatic as this, were given which indicated that the aborigines fail to regard work in the same way as white workers.

Competent and experienced station managers called by the employers all expressed opinions that most of the aborigines were not worth, as employees, as much as whites. Even if the reasons given for the aboriginal attitude to work were quite wrong, the employers produced this considerable volume of evidence from men on the spot that aborigines do not work as well or as consistently as whites and that they do require much more supervision.

In addition to their witnesses, the employers relied on a number of other sources for their general proposition that aborigines do not understand work. For instance, in the Report for the Northern Territory, 1963-1964, one of the main purposes for the existence of settlements and missions is stated to be "to introduce the general concept of 'work' as a worthwhile aim in life". Moreover, the Government published a booklet entitled "*Fringe Dwellers*" in 1959. The latest edition (1964) contains the following passage:—

"The concepts of money and working for money were alien to tribal Aborigines. In the tribe, food could not be hoarded and personal belongings were a positive hindrance in tribal wanderings. Each fit person worked as a hunter, food-gatherer or specialist in magic, for the benefit of the whole tribe. Individual effort for individual gain was unknown. The ideas of employment and existence in a money economy have, to the present influenced Aboriginal thinking and behaviour very little indeed."

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A good deal of anthropological material was put to us. In particular we were referred to Professor Elkin's Book—" *The Australian Aborigines* ", which contains the following passage:—

" Aboriginal Adaptation—Intelligent Parasitism.

The Aborigines on their part, learnt that they could not rid their various tribal countries of the white man, nor take his possessions with impunity, for they came off worst when faced with either guns or courts. They therefore gradually adapted themselves to the white man, with his flocks and herds, as a permanent factor in the environment. Fortunately, they could do this in the outback and north because settlement there was both slow and sparse. They had time to learn from their own clashes or from those of tribes farther in, the futility of force, and to sum up the position. Moreover, there seemed to be room in most regions both for the settlers and his herds, and also for the tribes. The Aborigines realized too, that the settlers and managers of properties were dependent on them for labour and, in some cases, for sexual partners. Here then was an opportunity to obtain by peaceful means some of the white man's goods, such as tobacco, sugar, tea, flour and iron. They provided labour for him, and did just sufficient work to enable him to carry on his property and to give them the articles they desired in return for that labour, and also for associating with their women. From their point of view, this was a policy of Intelligent Parasitism.

No advance could be made through it either for them or for the country, but it was a *modus vivendi*. Many of the settlers concerned have recognized the position quite well, summing it up in the picturesque phrase that they were 'just working for the Blacks'. They were right. This situation, which still prevails here and there, was not peculiar to the small settler on the frontier. It also prevailed on many of the big stations. The manager or owner regarded, and still regards, the local tribe or clans as 'his Blacks' while they summed up each new owner, manager or stockman to see how they could best get what they wanted from him with as little interference as possible to their own domestic and tribal affairs. Their position, however, was servile. In the course of the couple of generations station Aborigines had woven station activity and certain European goods into their social and economic organization and into their psychology without upsetting the fundamentals of their social behaviour or beliefs. The country was still their geographical and spiritual home so that, except temporarily in individual cases, they were wholly dependent on employment on the station for their material and psychological well-being.

This rather unsatisfactory situation can only be changed by employment within a money economy and by education. Pastoralists have opposed both these measures, correctly realizing that their patriarchal hold in 'their' natives would be loosened if government made them effective." (pp. 364-6)

We should add that in his final address, counsel for the pastoralists said:—

"So-called pastoralist paternalism cannot stand in the way of assimilation and does not want to. It cannot stand in the way of developing employment in a money economy; it cannot do it, but wants to help."

Ethnopsychiatric material was put to us to indicate the psychiatric and personality problems which aborigines are having in adjusting themselves to our white economic society. (Dr. J. E. Cawte: Address to American Psychiatric Association, 31.8.65; Tjimi and Tjagolo "Oceania", Mar. 1964; "Australian Ethnopsychiatry in the Field", Medical Journal of Australia 28.3.64; Dr. Cawte and Dr. M. A. Kidson "Australian Ethnopsychiatry", Medical Journal of Australia 19.12.64.) This material gave general support to the arguments that the aborigines with whom we are concerned are still in a transitional stage from tribal culture and that too great a speed in effecting the change from a nomad way of life to a Western economic society would aggravate problems for the aborigines.

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The employers also relied on a Report from the Select Committee on Social Welfare Legislation presented to the Legislative Council for the Northern Territory on 12th May, 1964. That Committee had before it a proposal from the Commonwealth Government for the regulation of the conditions of employment of aborigines, which proposal was published as Appendix 3 to the Report. The pastoralists submitted that this proposal which emanated from the Commonwealth Government was in effect the same as the proposal which is now made to us by them and they therefore sought to find in this proposal justification for their present claim. It appears that since the Appendix was compiled the attitude of the Commonwealth Government has undergone some change, but this is not significant for us. The significant thing for us is the attitude of the Government in this case. We should decide the issues on the facts before us and not rely on the conclusions of the Select Committee or indeed on the proposals of the Commonwealth Government to that Committee.

The union and the Commonwealth Government both argued that the employers put their case too high and that aborigines were more satisfactory employees than the pastoralists would have us believe. It was suggested that the employers were to some extent still living in the past and judging aborigines by past standards. We point out that if in fact aborigines generally are as good as white labour neither the union nor the Commonwealth Government produced any evidence to this effect. They relied exclusively in this regard on a criticism of the evidence called by the pastoralists. In our view the criticism of the evidence produced by the pastoralists is no more than minimal. Generally speaking, we accept the uncontradicted evidence given by pastoralists as to the work ability of the aborigines, supported as it was by what we saw ourselves and by the anthropological and other material.

In our view, however, it is significant that from time to time in the evidence called by the pastoralists there were references to change. For instance, Mr. Baillieu (of Brunette Downs, Vice President of the Northern Territory Pastoral Lessees' Association) stated that the nature of the walk-about at Brunette Downs had changed and that their natives were showing a marked reluctance to leave the property at all. Mr. Connellan (of Narwietooma, Vice President of the Centralian Pastoralists Association) expressed the view that "there is a tendency developing gradually to be a bit inclined to regard things as private property". Mr. Chisholm (of Anningie, President of the Centralian Pastoralists Association) said that the natives are becoming a little more sophisticated today than they were five or six years ago. Today if they get a rise in pay they think it is very good. Mr. Morris (of Vestseys, President of the Northern Territory Pastoral Lessees' Association) agreed that a change is taking place which is slow, but which shows a definite improvement. He also said in connection with aborigines' lack of understanding of money that tribal influences are gradually dying out.

In addition we were able to compare the present position at Napperby with that of some eight or ten years ago when there was no fixed camp for the natives. They camped around the area both of Napperby and nearby Coniston. They used to walk about quite a lot and at times moved camp up and down the creeks on both stations. The camp in those days averaged about 30 to 40, though at times of aboriginal ceremonies it might build up to 100

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or 150. The station only rationed the natives employed by it. Members of the camp who were not workers either hunted for food or obtained a share of the rations from the employed natives.

Now there is a fixed camp on one of the traditional camp-sites near the homestead with a number of permanent buildings permanently accommodating about 100 aborigines. Six or seven are given regular, though intermittent, employment. Rations are supplied to women and children as well as to males. The significance of walkabout seems to have diminished. Even in a comparatively short time there have been quite dramatic changes in the way of life of these aborigines.

It seems to us that the attitude even of these isolated aborigines to money and other circumstances of white civilisation is gradually changing. As aborigines come more and more into contact with white men the old tribal influences are likely to change, especially the old tribal attitude to work and money. We do not think, however, that the change at this time is as significant with these aborigines as the union or the Commonwealth Government would have us think. From the overwhelming evidence given to us tribal influences are still quite active in aborigines on cattle stations.

Although the idea of incentive through money rewards seems to be having some effect on aborigines, we cannot agree that the introduction immediately of award wages could either at once or speedily break down all the other influences at work in the aborigines. In some cases additional money would act as an incentive to better work, but in most cases we have grave doubts whether the work effort would be appreciably different for some time to come.

That the situation is changing is confirmed by the epilogue which Professor Elkin put to his "The Australian Aborigines" in 1964—

"The second world war played no little part in maintaining this impetus. For a few years northern regions of Australia, particularly the Northern Territory, were the scene of much military and Air Force activity. The Aborigines got to know men of the Services. They worked for them both casually and in labour units. They were treated justly as persons performing necessary tasks. They appreciated the Services' attitude and responded quickly to the routine of work, hygiene and camp life generally. In so doing they showed that they were intelligent beings capable of working efficiently and of appreciating civilized services and amenities (hospitals, hygiene, canteens, films, huts and schools). Moreover, the very camp-setting of this experience related it to their own way of life, and suggested that a blend of the old and new was possible. They were still able to maintain the essential structure of their social and ceremonial life, and no attempt was made to change their philosophical and religious heritage." (pp. 371/2).

Again on page 374 he says—

"However, the influences of the past will gradually wane, especially if the rising generations be given active and rewarding roles in our economic pursuits, but this will depend on the development of such pursuits in the difficult regions of Australia where these concentrations of Aborigines exist. Their future, as far as we can see ahead, must lie in their 'own countries'."

Although this was not referring to aborigines on cattle stations, it seems to us that what Professor Elkin said applies also to employees on cattle stations. Of them he says—

"In many cases they are only tribal remnants, usually clinging to their old tribal country or its neighbourhood. But though these may be regarded as relatively detribalized, they still speak their own languages and observe as far as possible their social rules."

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AWARD.

[*The Commission.*]

From the wealth of material presented to us by pastoralists, both in oral and written evidence, we conclude that at least a significant proportion of the aborigines employed on cattle stations in the Northern Territory is retarded by tribal and cultural reasons from appreciating in full the concept of work. The great majority are unable to work in a way which employers would expect of white employees.

International Material.

As part of their case the pastoralists submitted international material from the I.L.O., including I.L.O. reports and conventions. The conventions have not been ratified by the Australian Government but they were tendered as an indication of international thought, for instance, in the definition of discrimination. Convention III states that "Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination". It was argued by the employers that because they are prepared to pay award wages to some aborigines but not others because of their incapacity for work there was no discrimination in the sense of that convention. With this we agree.

The other matter which emerges from the international material is the concept that indigenous peoples should not be introduced precipitately to new forms of social and economic organisation. We agree with this as a general proposition in our field but make two comments. The first is that for the past 50 years or so the assimilation or integration of the aborigines with whom we are concerned into the white community has been painfully slow. If the same pace were continued into the future an indefinite time might pass before assimilation or integration took place. In the second place we consider that the period to be allowed should be sufficient to give everyone concerned, including aborigines, adequate time to adjust themselves to any changes which our decision may make.

Other Industries.

The pastoralists called evidence about aboriginal employment on the Darwin waterfront, at the abattoirs at Darwin and Katherine, and with Qantas at Darwin. It is proper to conclude from the evidence that the aborigines employed in these various enterprises failed, for reasons which may well be cultural, to display the attitude to their work which in our community is normally expected of employees. However these aborigines may not belong to the class with whom we are dealing and it is common ground that aborigines show a liking and an aptitude for cattle station work. Accordingly we have not attached much weight to this evidence.

Education.

There was a good deal of evidence about education of aborigines and we saw a good deal of what was being done, particularly in the settlements, for aboriginal children. There is a consensus of opinion that one of the great problems of the Northern Territory is the fact that the aborigines who are now adults were not educated as children. The Commonwealth Government is steadily expanding the facilities for educating aboriginal children. The view of the employers is that the real hope of change lies in an active educational policy.

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It was suggested to us by a number of witnesses, including Mr. Baillieu and Mr. Morris, that it was virtually impossible to educate adult aborigines who have no ability to read or write and, in many cases, no ability to count. This does not mean, of course, that such aborigines may not be useful employees in tasks for which no formal education is required. The employers have established to our satisfaction that lack of education is a problem, particularly when it is linked with tribal attitudes towards work. It is our view that both the union and the Commonwealth Government took a somewhat unreal view of the problems which pastoralists face when dealing with stockmen who can neither read, write, nor count.

The pastoralists stated that they would be happy to co-operate with the Commonwealth Government to create educational facilities for aborigines and in particular to help to set up local boarding schools for young aborigines at which they could receive some formal education, to be followed by vocational training. The pastoralists believe that if such boarding schools were established the young people would be both educated and withdrawn from tribal influences, thus helping to remove those influences which are hindering the aboriginal children from learning and accepting the ways of white culture.

Educational policy for aborigines, whether adult or children, is not, of course, a matter for us. The activity of the Commonwealth in the field of education is shown by a detailed report following an investigation into the curriculum and teaching methods used in aboriginal schools in the northern Territory by Miss Watts, Lecturer in Education in the University of Queensland and Mr. Gallacher, Inspector of Schools, Welfare Branch, Northern Territory Administration. We do not propose to refer in detail to this Report which does, however, generally support the attitude of the pastoralists that native culture is still a problem in the treatment of aborigines including their education.

Education, or the lack of it, concerns us in two ways. In the first place the material confirms the pastoralists' view that the lack of education, combined with cultural differences, makes aborigines less receptive than whites. There is also the particular problem of the education of both adults and children, on cattle stations. The Commonwealth Government is now supplying mobile classrooms and mobile teachers' residences for use on cattle stations. Though this will help to bring education to children on some stations, it is hard to envisage that this method will encompass all children on all stations. If any decision we make enables more aboriginal children to go to school, whether on settlements or in towns, it must be of benefit to the children. It seems to us that children in settlements and towns are likely to be better educated and less susceptible to tribal and cultural influences than children on cattle stations, and therefore more able eventually to enter fully into the Australian way of life, including its industrial system.

We agree wholeheartedly with the need for better educational facilities for adults and children wherever they may be. We have considered this problem and think that our decision will give full opportunity for its solution by all concerned.

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AWARD.*[The Commission.]*Disemployment.

The pastoralists argued that the application of award rates to aborigines on cattle stations will cause massive disemployment. They submitted that for economic reasons they could not afford to employ aborigines on award rates. The employers concede that some aborigines are almost as good as whites and that aborigines enjoy working on cattle stations because it is closely related to their earlier nomadic life and it keeps them living in their own country. But if aborigines are to be paid the same as whites, then employers would prefer to employ whites because they could employ far fewer with the same results.

If they are burdened with the additional cost of paying all aborigines award rates the pastoralists will be inclined to accelerate their development programmes which will enable them to employ only white labour. The state of development of properties in the Northern Territory varies considerably but there are a number which would not require very extensive improvements in order to make feasible the employment of only white labour. Indeed, there are some stations, such as Bruchilly, where even now there has been a change from aboriginal to exclusively white labour. The improvements necessary to run the stations with white labour include accommodation for that labour and general property improvements such as additional fencing. If these improvements were carried out the employers told us it would be possible to run the stations with even fewer men, and they would probably be whites. There was a general assessment that aborigines by and large were from the employers' point of view only about half as good as white labour. In other words, two aborigines could be replaced by one white. This, of course, cannot be worked out with mathematical precision, but this was a general view.

In answer to these arguments the union and the Commonwealth Government relied on the fact that improvements are going on all the time and are likely to continue; that any movement there might be to white labour or to a reduction of aboriginal labour will go on independently of our decision in this case, and the same ultimate result is likely to occur whether or not we award full wages. They submitted that at most we would accelerate the changeover in labour, although they both submitted that employers would be likely to continue to employ aboriginal labour even on full award wages. It was suggested that it would be difficult for the employers to find white labour, but the station owners and others with considerable experience maintained that they expected no difficulty in obtaining the complete complement of this labour, given a period of perhaps three to five years to effect a change-over.

The problem of disemployment must be seen in proper perspective. What we are deciding is, of course, of great significance both to the aborigines and the pastoralists. But the total number of aboriginal males over 16 years employed on pastoral properties in the Northern Territory as at 30th June 1965 was 1,003. Of this 1,003 there are quite a number, perhaps 20 to 25 per cent., who are unable or unwilling to do more than nominal work for a few hours a day and are paid the minimum ordinance rates by the pastoralists. Although they might be unhappy to have their present way of life interfered with, an industrial tribunal cannot be over-concerned with such

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people who are not employees in any real sense, particularly when the Commonwealth Government is well aware of its responsibilities in regard to them. At the other end of the scale there are those 20 to 25 per cent. whom employers are prepared to retain on the Northern Territory award rates. Assuming for the moment that the employers remain prepared to employ at least that number of aborigines, and leaving out those whom we do not treat as employees, then there is something like half the 1,003 employees who might be disemployed. In other words, the figure is something in the nature of 500 if it is confined to employees in any accepted sense.

The figures produced by the Department of Welfare show that at the end of 1963 there were 6499 aborigines in pastoral and agricultural areas. By December 1964 this figure had dropped to 5432, by June 1965 the recorded population on agricultural properties was 4713. The figures may to be strictly comparable but they do show a continuing diminution of the number of aborigines on these stations and it almost certainly follows, of the number employed thereon. The rapid decrease from 1963 was to a large extent due to drought conditions in Central Australia. Now that the drought has broken the diminution may not be as rapid and in fact may not continue.

It would appear from the figures available that the bulk of the aborigines who have moved from pastoral and agricultural areas have moved either into settlements or missions. Assuming that no other or special provision is made for aborigines affected by our decision it can be assumed that they also would move from stations to settlements or missions. This makes the attitude of the Commonwealth Government to the claim of special significance. Although the Commonwealth Government argued before us that the pastoralists overestimated the degree of disemployment which would follow the granting of award rates to aborigines it stated it will accept responsibility for any displacement which may occur.

The pastoralists submitted that a decision which would have the effect of disemploying large numbers of aborigines would in reality bring to an end the employment of aborigines in the pastoral industry altogether. Although conscious that this is a possible result of our decision we do not think it probable. Even if implementation of the employers' proposals led to the retention of all aborigines on cattle stations, the proposals have in them the germ of a second class work force. It is at least possible that for many years individual aborigines would remain in the categories suggested by the employers and this, together with isolation and distance, would impede rather than help assimilation or integration. The employers made it plain that, although the words used in their claim would permit it, they would not apply the lower paid categories to white employees. In the result the award would have special provisions which applied only to aborigines and which would tend to keep them economically depressed. We consider that overwhelming industrial justice requires us to put aboriginal employees in the Northern Territory on to the same basis as white employees. The law which prevails for white employees in this industry should also prevail for aborigines.

It is difficult for us to assess what is likely to be the employment position of aborigines if award wages are applied to them. We accept the employers' evidence that as at present advised many of them expect to

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change over to white labour if aborigines are to be paid at award rates. We are conscious, however, that if in the event we were to include aborigines in the award we could by a reasonable postponement of the operation of the decision give the pastoralists time to gradually adjust themselves to the new concept, sort out their labour problems generally and in particular minimise the extent and impact of aboriginal disemployment. We were impressed by the expressed desire of many employers to help their aboriginal employees and by the warmth of the feeling which they had for them. In particular, we were impressed by the attitude of most employers that they did not wish to have the aborigines removed from their tribal lands. At least before the white men came, tribal lands were of both economic and religious significance to aborigines who felt a deep and abiding attachment to "their own country". This feeling must have started to weaken from the very time the cattle stations were set up in the Northern Territory and the land changed from its original open country with indigenous wild life to fenced country with cattle grazing on it. However it is a fact of some significance to many employers. Moreover, the employers frankly admitted that an indigenous labour force resident on the station with cultural and spiritual ties to the land, even if somewhat inefficient, has many advantages over a floating white labour force which has no particular knowledge or feeling for the land in which the station lies and which may leave at any time. Given all these things we consider that although it is likely that disemployment of some degree would occur it may not be as great as the employers now contemplate.

It is proper in this context to refer to Mr. Baillieu's prediction for the industry. In his view a combination of four factors has injected an atmosphere of confidence into the industry. In the first place the establishment of export abattoirs in Darwin and Katherine have brought closer and stable markets to the cattle industry of the Northern Territory. In the second place the efforts of the Government to provide better access and communications with beef roads has materially assisted the industry. The other two factors are the increases in the prices received by the pastoralists for beef and the increasing demand for beef throughout the world. An industry which has reasonable confidence in its future should be able to ameliorate the disemployment of its aborigines.

One thing however must be added. The aborigines are usually remnants of a tribal group living on a particular station. There is a feeling of unity amongst them and if any of the group were to be disemployed and thereby leave the station the whole group might go. If for instance in a camp where there were 50 ablebodied aborigines the station owner decided to retain only six it is possible that those six might prefer to leave with the tribal group. In addition some pastoralists expressed the view that it is easier to get whites to work and remain on a station which is manned exclusively by white labour as there are many whites who do not like working in mixed stock camps. So employers who start off with the idea of retaining some aboriginal labour and employing white labour in part, might for either of these two reasons find that they finish up with purely white labour.

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In our view the disemployment problem might be partly solved if the slow workers' clause were made more workable and less cumbersome than it is at the present time. This is a subject on which we will be more definite later but on which it is convenient to make some observations now. In its present form it is not very practical for remote and isolated cattle stations in the Northern Territory. It seems to us that if the slow workers' clause were made simpler pastoralists might be able to apply for slow workers' permits for individual employees. This would undoubtedly cause greater administrative problems on the stations than would the success of the employers' claim, but if by this means particular natives on individual stations were given slow workers' permits within the normal concept of slow workers then the degree of disemployment could be less.

Assimilation.

If the employers' application were to succeed and if the aborigines were to remain living on stations it seems to us likely that their assimilation or integration into our white economic society would be delayed. This is not intended as a criticism of the station owners and managers, but it seems to us inherent in the isolation of the stations and the smallness of the aboriginal camps that for a variety of reasons both the aborigines themselves and the camps are likely for some time at least to remain substantially as they are now. If, therefore, as a result of our decision, substantial numbers of aborigines move to settlements or missions it is our view that the policy of assimilation and integration will be assisted rather than hindered. Those aborigines who move will be those who are now having the greatest difficulty in understanding the concept of work and in fitting into our economic community, whilst those who remain will be the most advanced and therefore the easier to assimilate on the station properties.

The employers express fear that disemployment would cause aborigines to move to a life of handouts on the settlements. They emphasised their view that life on Government settlements is demoralising and does not adjust or educate aborigines for assimilation into the white economic community. They based this on their own experience of employing aborigines from settlements and also on the view that the life on settlements does not help to make aborigines viable members of the white economic community because it does not teach them the meaning of and necessity for work. We do not agree with this. In our view the less assimilated aborigines may well be able to be assimilated or integrated more readily if they move on to settlements which are run especially for their welfare. Their idea of work is such that whatever they are going to do on settlements is as likely to be work in their eyes as work which they now do on the stations. This will certainly be true of the 20 to 25 per cent. commonly referred to as "hose holders", whose activities on the stations is not "work" in any accepted economic sense. Having seen five native settlements and having had a good deal of material about them, we consider that aborigines are more likely to be assimilated or integrated readily on settlements than on cattle stations.

We also observed that the kind of accommodation available to aborigines, and the area surrounding that accommodation, were generally better

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on settlements than on stations. Living on settlements in better accommodation and surroundings might help the aborigines to move completely into our culture.

Conclusion.

We agree with the pastoralists that there are many aborigines on cattle stations who for cultural reasons and through lack of education are unable to perform work in a way normally required in our economic society. We agree that the problem of assimilating or integrating these aborigines into our society is a difficult one with many facets. Our task, however, is a limited one. The guiding principle must be to apply to aborigines the standards which the Commission applies to all others unless there are overwhelming reasons why this should not be done. The pastoralists have openly and sincerely explained their problems and future intentions. However they have not discharged the heavy burden of persuading us that we should depart from standards and principles which have been part of the Australian arbitration system since its inception. We do not flinch from the results of this decision which we consider is the only proper one to be made at this point in Australia's history. There must be one industrial law, similarly applied, to all Australians, aboriginal or not.

If any problems of native welfare, whether of employees or their dependents, arise as a result of this decision the Commonwealth Government has made clear its intention to deal with them. This is not why we have come to our conclusion but it means we know that any welfare problems which arise will be dealt with by those most competent to deal with them.

Order.

Having decided to give aborigines the protection of this award, we must next consider when this protection should commence.

As we have pointed out, it is difficult to forecast with any precision what is likely to be the result of our decision. There may be some disemployment, there may be some movement into missions and settlements and some camps on stations may go out of existence. When the award applies to them, aborigines will cease to be covered by the ordinances which now deal with rates of pay, accommodation and rations, and which make provision for members of employees' families. It would be undesirable for such a change to come about without notice to the aborigines and without giving them time to prepare themselves for it and without giving the Commonwealth authorities opportunity to help them in this important regard. The aborigines will need guidance to understand and appreciate the implications of moving from a semi-protected situation to an exposed industrial situation whereby they have to care for themselves and their families out of their wages. It is also necessary to give the pastoralists an opportunity to consider the future of their aboriginal employees and to make arrangements for their replacement by white labour if necessary. Practical problems about accommodation and other matters on the stations will also have to be considered by pastoralists. The Commonwealth Government will have problems to consider before the award comes into operation such as the future of the

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ordinances and the arrangement of such extra accommodation on settlements as may be necessary. This will probably require liaison with the pastoralists. Missions may be similarly involved.

It is proper to emphasise the distances involved in the Northern Territory, the isolation of some of the stations, the difficulty of getting materials for even simple constructions in these isolated areas and the cost of them. Pastoralists, missions, and the Commonwealth Government are all likely to be involved in construction, one way or another, as a result of this award.

The applicant union, recognising the difficulties involved in implementing its claim, suggested that a delay of three months before our award became operative would not be unreasonable. It also recognised that apart from wages, there were other complicated issues which would require conferences of the parties and perhaps further submissions to us.

Although we firmly believe that the time has come when aborigines are entitled to award protection we wish to be practical about the results of our decision. We must give everyone concerned time to adjust and rearrange their activities so that the introduction of the award will occur as smoothly as possible and with as little dislocation, social and economic, to everyone concerned and in particular to the aborigines themselves. The introduction of award coverage for aborigines will therefore come into operation on 1st December 1968, which will give everyone ample time to deal with the various practical matters involved. This date was chosen by us because it is the beginning of a month approximately three years from the end of the hearing, and it is between musterings on most properties. The intervening period will also enable the parties to give consideration to the terms of the current award, including questions such as accommodation and rations which may require change when aborigines are covered by the award.

It then remains to consider what the Commission should do, if anything, in the intervening period. We have given serious consideration to the suggestion of the Commonwealth Government that the introduction of full award provisions should be phased by us over a period of years. The Commonwealth Government has power to deal with wages, working conditions, welfare and all other matters which may call for consideration during this transition period. We consider that in the period between now and the date the award will operate it would be in the interests of all concerned if one authority dealt with all problems which may arise including wages, accommodation, rations and keep. Ignoring the possible jurisdictional difficulty that the Commission cannot deal with some of the matters concerned, such as keep for wives and children, officers of various Government departments are more readily available, are much closer to the details of these problems and have much more practical experience in the field than the Commission. Moreover, if the Commonwealth Government deals with everything in the intervening period, co-ordination of the various things which have to happen, for instance about accommodation, can be more readily achieved. Therefore we do not propose to make any order for the period between the date of our decision and the date of award coverage for aborigines. We urge, however, all concerned, the union, the pastoralists and the Commonwealth Government to consult with each other in an attempt to smooth the way for the aborigines to the day when they have complete award coverage.

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[*The Commission.*]

Domestics.

The claim of the union originally asked that the exclusion of "domestic servants" be removed from the award. However, the union finally said that although it sought the removal of the exclusion of domestics it did not seek the insertion of a classification or rate for domestic employees. No material was brought before us which directly went to the issue of domestic servants and we do not propose to make any order about them.

Form of Order.

We make the following order:—

Delete from clause 3, Definitions and Interpretations, the definition of "Aboriginal".

Delete from clause 6, Scope, the word "aboriginals".

This order will operate from 1st December 1968 and will remain in force for 12 months thereafter.

We give the order a nominal life of 12 months because the Act requires us to give it a fixed period, but of course it will also by virtue of the Act remain effective after that period until varied. It will be settled by the Registrar or a Deputy nominated by him with recourse to a member of the Commission.

We request the parties, including the Commonwealth Government, to consider an appropriate form of slow workers' clause which would enable a slow workers' permit to be obtained more easily than it is now. We draw the attention of the parties to the comparable clause in the Aluminium Industry Award 1963.

The Commission as now constituted, or a member of it, will be readily available for the purpose of implementing our decision.

Order and prescribe:—

That the said award be and the same is hereby varied in manner following that is to say:—

I By deleting from clause 3 the definition of "Aboriginal".

II By deleting from clause 6 the word "aboriginals".

III The foregoing variations shall operate on and from the 1st day of December, 1968, and shall remain in force for twelve months thereafter.