

THE COMMONWEALTH CONCILIATION AND ARBITRATION
COMMISSION

NATIONAL WAGE CASES 1967

(THE METAL TRADES AWARD, 1952)

Matters C Nos 1855 of 1965; 3 of 1966; 958 of 1967

On 8 July 1966 the Commonwealth Conciliation and Arbitration Commission (Wright, Gallagher and Moore *JJ.*, Deputy Presidents, and Commissioner Winter) issued a decision⁽¹⁾ and made an order⁽²⁾ in part settlement of matters C No. 1855 of 1965 and C No. 3 of 1966 insofar as they concerned total wage and margins.

1967.
MELBOURNE,
April 4-7,
11, 14, 18-20;
May 2, 4, 9, 10;
June 5.

On 22 December 1966 the Commission as constituted by Gallagher and Moore *JJ.*, Deputy Presidents, and Commissioner Winter issued a further decision⁽³⁾ in part settlement of the matters.

Kirby *C.J.*,
Gallagher *J.*,
Moore *J.*,
Commr
Winter.

On 16 January 1967 the Metal Trades Employers' Association and others applied for the relisting of matters C No. 1855 of 1965 and C No. 3 of 1966 and, in the event of the unions filing an application for an increase in the basic wage rates, for the joint hearing of that union application with the two matters relisted.

On 10 February 1967 an application (C No. 958 of 1967) was filed on behalf of The Amalgamated Engineering Union (Australian Section) and others for an order varying the award dated 16 January 1952 as reprinted on 15 August 1963⁽⁴⁾ and known as the Metal Trades Award, 1952, *re* increase in the basic wage.

On 22 March 1967 the President announced that the Commissions to hear the matters would be constituted as follows:*

C No. 958 of 1967—Kirby *C.J.*, President, Gallagher and Moore *JJ.*, Deputy Presidents.

C Nos. 1855 of 1965; 3 of 1966—Gallagher and Moore *JJ.*, Deputy Presidents, and Commissioner Winter.

The President also gave a direction pursuant to section 44A of the Act to enable the Commissions to sit in joint session should they so decide.

On 23 March 1967 pursuant to section 36 (1) of the said Act the Attorney-General, on behalf of the Commonwealth of Australia, announced his intervention in the public interest.

The matters came on for hearing in Melbourne on 4 April 1967 before the Commissions in joint session and continued until 10 May 1967 when decision was reserved.

R. J. Hawke, R. Willis and J. Heffernan for The Sheet Metal Working, Agricultural Implement and Stove Making Industrial Union of Australia and others.

D. L. McBride for the Electrical Trades Union of Australia.

J. Devereaux and A. E. Horsburgh for The Amalgamated Engineering Union (Australian Section).

M. E. Heagney for The Federated Ironworkers' Association of Australia.

⁽¹⁾ 115 C.A.R. 93

⁽²⁾ *Ibid* p. 235

⁽³⁾ 116 C.A.R. 713

⁽⁴⁾ 103 C.A.R. 463

* The circumstances leading to the constitution of the benches are set out in statements made by the President on 1 March 1967 and 22 March 1967 and published at the end of this report.

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- A. McLagan* for the Federated Moulders' (Metals) Union of Australia.
- T. Addison* for the Australasian Society of Engineers.
- J. Robinson*, of counsel, and *B. J. Maddern*, of counsel, for the Metal Trades Employers' Association and others.
- A. P. Aird*, Q.C., and *I. E. Douglas*, of counsel, for Her Majesty the Queen in right of the State of Victoria and others.
- E. N. West* for Her Majesty the Queen in right of the State of Tasmania.
- E. G. Tattersall* for Her Majesty the Queen in right of the State of South Australia.
- J. A. Keely*, of counsel, for the Attorney-General for the Commonwealth of Australia (intervening).
- L. S. Cunningham* for organisations members of the Council of Professional Associations (intervening).
- R. D. Williams* and *G. Butcher* for organisations members of the Australian Council of Salaried and Professional Associations (intervening).
- E. G. Deverall* for employee organisations affiliated with the High Council of Commonwealth Public Service Organisations (intervening).
- K. G. Wybrow* for employers members of the Australian Coal Association (intervening).

On 5 June 1967 the President published the following pronouncement:

PRONOUNCEMENT BY PRESIDENT ON BEHALF OF ALL

Three matters are before the Commission, namely, an application by unions for an increased basic wage, an application by employers for a total wage and an application by unions for an increase in margins. The last two matters were part heard when the unions' basic wage application was made and were listed before us on the application of the employers so that all three might be considered together.

Because of the provisions of the Act the Commission could not be constituted by the same persons for each matter but, following a direction under section 44A, all the persons sitting on the three matters have taken evidence and heard argument as to questions common to all matters.

The bench dealing with the basic wage comprises Mr Justice Gallagher, Mr Justice Moore and myself. The bench for the remaining matters comprises Mr Justice Gallagher, Mr Justice Moore and Mr Commissioner Winter; Mr Justice Wright had presided earlier but was unable to continue to sit during the present proceedings. All four of us have given consideration to everything put and have discussed at length amongst ourselves what should be done about the various matters raised before both benches and how it should be done.

We have agreed that in the way the proceedings have developed each bench is called upon to consider and decide two questions only. Firstly, whether there should be an increase in award rates of pay and, secondly, whether any increase should be added to the basic wage on the one hand or expressed in a total wage on the other.

Because the issues argued before us are inextricably mixed and because we are unanimous on how they should be decided we have concluded that it would be best if I made on behalf of us all a pronouncement which is the result of our combined efforts and which takes the place of such traditional reasons for judgment as might otherwise have been given. It does not attempt to deal in detail with the role of the Commission.

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Although we have all reached agreement on the issues, it cannot be assumed that we all agree as to the exact weight and significance of every single economic factor involved. We agree that when settling interstate industrial disputes involving general economic reviews we must consider the economic state of Australia and have regard to the economic consequences of our decisions.

The various matters we have considered and discussed are those which inevitably arise in national wage cases and are predominantly economic in character. These include the question of adjustment for price movements (which we all think has a particular significance in wage fixation), the question of price stability, the question of productivity movements and above all the question of economic capacity to pay.

We are indebted for the submissions made on behalf of the principal parties and the Commonwealth. We will not discuss submissions in detail because of the nature of this pronouncement and because naturally enough each of us tends to give different weights individually to different aspects of them. There is, however, one aspect of the submissions to which we refer because it gives some indication of the present difficulty of our task. The Commonwealth and the employers have offered different views as to the state of the economy. The Commonwealth sees the economy as running at a higher level than do the employers, and on balance seems to have greater fears as to the impact of a wage increase. The Commonwealth sees a strong trend in consumer spending whilst the employers submit that some factors are still showing decline and that retail sales are rising only at a rate well below that of 1964 and barely up with 1965. The Commonwealth sees a close connection between the recently awarded wage increases and consumer spending whilst the employers deny that the two dollar increase awarded in July had any real effect on consumer spending. The employers suggest the increase in savings which was a feature of the latter half of 1966 may well be attributable to the July increase and point to the high level of bank liquidity despite lending by the banks at a substantially increased rate. The Commonwealth does not exclude the possibility of demand inflation which would appear to be contrary to the whole submission of the employers. The employers expressly and the Commonwealth by clear implication opposed an increase in award wages yet each as already mentioned presented views as to the state of the economy which were materially different.

The economy seems to us to be moving from a position of comparative sluggishness to a position of increased activity. Employment is continuing at a high level. The Consumer Price Index has moved upwards but the March figure shows a flattening out. Because of a better season primary production will be greater and farm income higher this year than last but this should be expected following the drought. The terms of trade show little change from the past two years. There are some signs of a weakening in the balance of payments situation in the current year. On the evidence available there is no sound ground for fearing that the July and December wage increases caused any damage to the economy. An increase in award wages now should add to economic activity and, if it were large, might create difficulties about prices and inflation. The increase we propose is within the capacity of the economy expanding as it is at present and should not cause any undue pressures particularly, if, as is indicated later, another general economic review should not take place before the second half of 1968. This consideration of likely economic consequences is consistent with the attitudes we have always adopted in the past namely to consider the economic consequences of our decisions but not to attempt to create a particular economic climate.

We have decided to award \$1 increase to all adult employees.

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To what wage should the increase be added?

The basic wage has become a tradition in Australian wage fixation, though it may mean different things to different people. For example, to some it means the wage of the unskilled employee; to many more it means the lowest wage paid in their industry. Some regard it as an assessment by the Commission of a family wage but such an assessment has not for many years been undertaken or sought. For the Commission not one of these meanings is apt, because the basic wage is in substance defined by the Act to mean that wage or part of a wage fixed without regard to the work upon or the industry in which a man is employed. It is with this statutory basic wage that the Commission has been dealing over the years.

The Commission's basic wage has become important in three specific ways. It has guaranteed a minimum wage to workers under its awards, its variation has been the means of giving general wage increases on economic grounds, and the secondary wage structure has been built on it. It has played a significant part in improving wage standards. Since the famous Harvester decision⁽¹⁾ of Higgins J. some 60 years ago the basic wage has served the workers of Australia well. It has been the keystone of our wages system and has had a special quality. But in our view the time has come to overhaul our time-honoured system because a course is now open which is more consonant with modern requirements and which at the same time will give better protection to employees. We should now express wages as total wages and retain the minimum concept introduced by the Commission in July 1966.

This new approach will ensure that under our awards wage and salary earners will annually have applied to them the increases for economic reasons which it is common ground they may normally expect and the increases will be applied to the whole wage instead of only to part of the wage as at present. We are sure that in work-value cases the fixation of total wages will bring to award-making both greater flexibility and greater reality. The minimum wage will give better protection to those whose needs are greatest, namely, those whose take-home pay would otherwise be below the standard assessed by the Commission and will give the Commission more flexibility in assisting them because we will have more scope to give them special consideration.

We have not taken this step lightly. In four consecutive years the Commission has been called upon to consider applications of one sort or another for the abolition of the basic wage and the adoption of a total wage. The applications of 1964 and 1965 were rejected but there was an acceptance in principle of the application of 1966. Notwithstanding that acceptance in principle if upon further reflection a reasonable doubt had remained as to the wisdom of changing a long-established system those involved last year would have been prepared to revert to earlier views. However, no member of either bench entertains such a doubt.

We have given serious consideration to the powerful arguments which Mr Hawke has advanced for the retention of the two elements of the wage and in particular to what he said about the Commission's indication of July last that it would delay its decision on total wage until the ultimate hearing of the margins claim under this award. A year has passed since then; a year during which margins were significantly increased. Appropriate notice has been given to everyone concerned that the employers would press for a total wage now. All this has been considered, as have all the other submissions put. Our decision has been reached after consideration and discussion of all matters. Mr Hawke tendered

(1) 2 C.A.R. 1

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certain exhibits to show some practical difficulties which might flow from the introduction of the total wage. We have given the most serious consideration to these exhibits but we feel that the genuine fears expressed by the trade union movement will be proved to be groundless. We are sure that with continued common sense and continued practical approaches to award-making this Commission will produce better results for those concerned than at present. We emphasise the fact that this Commission retains control over the fixation of its award rates and that it will continue to apply proper principles of wage fixation. The new procedures will ensure greater industrial justice to all concerned with our wage fixation. We are creating new up-to-date fixation procedures and not changing principles of wage assessment.

The Commission will be able to handle the annual review of the total wage flexibly. An increase could be awarded as a flat amount, as now; as a flat percentage, as in 1965; or in varying percentages, as in December 1966; or in other ways. We will not attempt to tie the hands of future benches in this regard.

We have given consideration to the position of State industrial laws. We can see no serious problems under State laws and in any case we must first aim at what we consider the best results under our own awards. If we attempted to retain any basic wages in the Federal system for any purpose whatsoever the decision which we make would inevitably be complicated and weakened. There will therefore be no reference to basic wages in our awards. Although opposition to the total wage was expressed by unions representing Commonwealth public servants, the Commonwealth expressed no difficulties about the introduction of the total wage. No serious problems should arise in applying total wages in the Commonwealth Public Service.

In summary the adoption of the new procedures will enable the Commission to act flexibly, to ensure that economic gains are reflected in the whole wage each year, to give more reality to its award-making both in economic and work-value cases, and to give proper attention to the low wage earner. It will simplify the procedural difficulties in economic cases, which would not be entirely overcome by the unions' agreement to simultaneous hearings of basic wage and margins cases. It will eliminate the present awkward necessity for different benches contemporaneously dealing with different parts of the wage; it should simplify the rapid and proper spread of economic decisions throughout awards and determinations under this Act and the *Public Service Arbitration Act*; and it should put those who give and receive over-award payments in a better position to deal with their problems.

The increase will be added to the new minimum standard created in July last. Industrial justice demands that this standard should be reviewed regularly so that the special position of low wage earners will be constantly attended to. Male and female juniors, including apprentices, will receive increases as a result of our order. Under the Metal Trades Award no special action is necessary, as junior rates are expressed as percentages of a total wage.

It is our intention that increases should flow generally throughout Federal awards both to adults and juniors. This can be done by application to the appropriate Commissioner by either the unions or the employers concerned or by the Commissioner acting on his own motion. The form each variation will take may differ from award to award and the final determination of the form will be a matter for each Commissioner. We suggest that the Australian Council of Trade Unions and the National Employers' Policy Committee confer immediately to ensure that applications to vary all the Commission's awards are made speedily

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and in time to have the same commencing date as in the Metal Trades Award. Having regard to past experience we suggest that the Commissioners would be helped in their tasks if applications were filed on or before Friday 23 June 1967.

Submissions were put about the conduct of future work-value cases and the principles to be applied in them. It would not be proper in these proceedings to make any pronouncement about these matters. For the information of the Commissioners and the parties we announce however that in the future Commissioners will be able to fix total wages on a work-value basis in the knowledge that at each annual review any adjustment which should flow from general economic factors including price movements will be made to all total wages.

Despite the submissions of Mr Robinson for the employers we will not make any pronouncement as to the future course or nature of the proceedings before the reference bench of which Mr Commissioner Winter's enquiry forms part. Nor do we propose at this stage to restate the terms of reference to Mr Commissioner Winter. However the reference bench will be prepared to consider any questions as to the terms of reference which may arise from this decision.

This decision gives the third general increase in our award wages in twelve months. We all think it undesirable that in the absence of special circumstances there should be any further economic review before the second half of 1968. The new wage fixation procedures require that an application should be made each year for an economic review of the total wage. The employers have stated that, in the absence of any union application, they will make the appropriate application to the Commission each year. I therefore anticipate applications from one party or the other which will enable me to list the hearing of the next annual economic review for Tuesday, 6 August 1968 and subsequent reviews each August.

Although we refer to the total wage, there will for the present be a different total wage for males and females and a number of total wages for many classifications. These result from existing basic wage differentials and from the quite complex history of basic wages particularly those for females, starting many years ago from a concept of differing needs and responsibilities of men and women. Both basic wages have over the years been adjusted in a variety of ways. We are conscious of these apparent anomalies, but consider it is not practicable to attempt to deal with either at this time.

The community is faced with economic industrial and social challenges arising from the history of female wage fixation. Our adoption of the concept of a total wage has allowed us to take an important step forward in regard to female wages. We have on this occasion deliberately awarded the same increase to adult females and adult males. The recent *Clothing Trades decision*⁽¹⁾ affirmed the concept of equal margins for adult males and females doing equal work. The extension of that concept to the total wage would involve economic and industrial sequels and calls for thorough investigation and debate in which a policy of gradual implementation could be considered. To a lesser extent the same may be said about the abolition of locality differentials. We invite the unions, the employers and the Commonwealth to give careful study to these questions with the knowledge that the Commission is available to assist by conciliation or arbitration in the resolution of the problems.

(1) *Supra* p. 286

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Orders.

Each bench will make formal orders in these proceedings. The Commission in Presidential Session will formally dismiss the unions' application for an increase in the basic wage. On behalf of the reference bench I announce the elimination of basic wages and margins and the introduction of total wages. The total wages will be arrived at by adding an amount of \$1 per week to the weekly award wages of all adult males and females, but no employee is to receive the increase twice. By virtue of existing award provisions male and female juniors including apprentices will receive proportionate increases. The increase will also be added to the minimum standard for adult males introduced in July 1966. The necessary variation will come into operation from the beginning of the first pay period to commence on or after Saturday, 1 July 1967 and will remain in force for 12 months thereafter. The form of order will be prepared by the employers, and there will be a speaking to the minutes of the proposed award before the reference bench at 9.30 a.m. on Tuesday, 13 June 1967 in Sydney.

Note: The order herein made is printed and published separately (see *infra* p. 663).

STATEMENT BY THE PRESIDENT
SIR RICHARD KIRBY:

MELBOURNE
1.3.1967

1967 Hearings of Wage Cases

I have had talks in Melbourne and Sydney with the national employers and the A.C.T.U. the main parties in the part heard employers' total wage case and the new A.C.T.U. claim for an increase in the basic wage. I have also had the benefit of talks in Adelaide with the presiding Judge in the part heard case, Mr Justice Wright, who is convalescing after illness.

We have discussed the fixation of a date of hearing for both cases in the light of part heard cases before full benches and of Mr Justice Wright's position as well as procedural matters including whether I should authorise a joint hearing. In addition I decided it was proper in the most exceptional circumstances presently existing to include in our talks the question of the composition of the two benches having regard to the fact that one case is part heard and that there may be some doubt as to Mr Justice Wright's availability.

A common view is held on the subjects mentioned and I am happy to give effect to it by this announcement:

1. The cases will be listed for hearing at 10.30 a.m. on Tuesday 4 April 1967 in Melbourne. It is hoped that Mr Justice Wright will be available by that date and the intervening period will allow other full bench cases part heard from last year to be finalised or brought very close to finality.
2. If Mr Justice Wright is available on 4 April the bench in the part heard total wage case will remain as before namely Mr Justice Wright, Mr Justice Gallagher, Mr Justice Moore and Mr Commissioner Winter and in the new basic wage case will be Mr Justice Wright, Mr Justice Gallagher and Mr Justice Moore.
3. If Mr Justice Wright is unavailable to commence or becomes unable to continue to sit the President will take his place on the basic wage bench and the other bench will continue with its remaining members.

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4. Regarding a joint hearing I will make a direction pursuant to section 44A of the Act. This will enable the benches to sit in joint session but it should be noted that the actual decision on this is one for those benches and not for the President.

STATEMENT BY THE PRESIDENT
SIR RICHARD KIRBY:

MELBOURNE
22.3.1967

1967 Hearings of Wage Cases

In my statement of 1 March I referred to my several talks with Mr Justice Wright in Adelaide and the national employers and the A.C.T.U. in Melbourne and Sydney regarding the national wage cases which I then set down for 4 April and in particular to the common view held by us all including Mr Justice Wright on the most appropriate constitution of the benches for these cases.

In the exceptional circumstances I mentioned it was agreed that if in the unfortunate event Mr Justice Wright were unable to sit I should take his place on the unions' basic wage case.

I very much regret that Mr Justice Wright's period of convalescence has had to be extended and he has told me that on medical advice it is not desirable for him to sit on those cases. I make this early announcement for the convenience of the parties and interveners.

Because of Mr Justice Wright's inability to sit the benches will now be as follows:

For the unions' basic wage case—The President, Mr Justice Gallagher and Mr Justice Moore.

For the part heard employers' 'total wage' case—Mr Justice Gallagher, Mr Justice Moore and Mr Commissioner Winter.

The first sitting day will be devoted to the resolution of procedural matters not resolved by agreement between the parties.

I will be available from tomorrow to help at discussions between representatives of the parties on any matters of procedure they might wish to raise.

I have today made the direction pursuant to section 44A of the Act which will enable the benches to sit in joint session should they so decide.