IN THE COMMONWEALTH CONCILIATION AND ARBITRATION COMMISSION

In the matter of the *Conciliation and Arbitration Act* 1904-1969

and of

THE FEDERAL MEAT INDUSTRY INTERIM AWARD, 1965

(C Nos 138 and 328 of 1963)

(C No. 412 of 1968)

and of

THE AUSTRALASIAN MEAT INDUSTRY EMPLOYEES UNION

Claimant

v.

MEAT AND ALLIED TRADES FEDERATION OF AUSTRALIA

Respondent

(C No. 894 of 1969)

and

in the matter of the *Public Service Arbitration Act* 1920-1968

and of

THE PROFESSIONAL OFFICERS' ASSOCIATION COMMONWEALTH PUBLIC SERVICE

Claimant

v.

THE PUBLIC SERVICE BOARD and others

Respondents

(C No. 2157 of 1968)

and of

AMALGAMATED POSTAL WORKERS UNION OF AUSTRALIA

Claimant

v.

THE POSTMASTER-GENERAL and another

Respondents

(C No. 2158 of 1968)

and of

ASSOCIATION OF OFFICERS OF THE COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANIZATION

Claimant

v.

THE MINISTER FOR EDUCATION AND SCIENCE and another

Respondents

(C No. 2159 of 1968)

and of

[*The Commission*

THE COMMONWEALTH PUBLIC SERVICE ASSOCIATION (FOURTH DIVISION OFFICERS)

Claimant

v.

THE PUBLIC SERVICE BOARD and others

Respondents

(C No. 2160 of 1968)

and of

ADMINISTRATIVE AND CLERICAL OFFICERS' ASSOCIATION, COMMONWEALTH PUBLIC SERVICE

Claimant

v.

THE PUBLIC SERVICE BOARD and others

Respondents

(C No. 2161 of 1968)

and of

FEDERATED CLERKS UNION OF AUSTRALIA

Claimant

v.

THE PUBLIC SERVICE BOARD and others

Respondents

(C No. 2162 of 1968)

and of

THE ASSOCIATION OF PROFESSIONAL SCIENTISTS OF AUSTRALIA

Claimant

v.

THE PUBLIC SERVICE BOARD and others

Respondents

(C No. 2163 of 1968)

and of

COMMONWEALTH POLICE OFFICERS' ASSOCIATION

Claimant

v.

THE ATTORNEY-GENERAL and another

(C No. 2164 of 1968)

Variation of award and determinations—Equal Industry and the Commonwealth Public Service Act 1904-1969 *ss.* 34, 44A—*Public Service Arbitra Decision issued.*

On 21 June 1968 an application was filed on beha Industry Employees Union for an order varying the ab 1966.(1)

(1) 112 C.A.R. 586

The Commission]

1969,
Melbourne,
Feb. 25–27;
March 4,
—
Kirby C.J.,
Moore J.,
Public Service
Arbitrator
Chambers,
Comm
Gough,
April 29–30;
May 1, 2, 7–9,
13, 20–22;
June 19,
—
Moore J.,
Williams J.,
Public Service
Arbitrator
Chambers,
Comm
Gough.

On the same day and subsequent dates applications were filed on behalf of The Professional Officers' Association Commonwealth Public Service and others to vary various determinations.

Application C No. 412 of 1968 came on for hearing before the Commonwealth Conciliation and Arbitration Commission (Commissioner Gough) in Sydney on 11 July 1968.

F. T. Hall for The Australasian Meat Industry Employees Union.

E. W. Horton for the Meat and Allied Trades Federation of Australia.

J. H. Wootten, Q.C., and *B. E. Hill*, of counsel, for The Angliss Group and others (intervening).

On the same day the union made oral application pursuant to section 34 (2) of the *Conciliation and Arbitration Act* 1904-1968, that the application should, in the public interest be dealt with by the Commission constituted as provided by section 34 (1) namely, by not less than three members of the Commission nominated by the President, at least one of whom is a Presidential member. On 21 November 1968 the President directed that the application should be so dealt with.

The applications to vary various determinations were listed before E. A. C. Chambers, Esquire, Public Service Arbitrator in Melbourne on 29 July 1968 and on the same day the Administrative and Clerical Officers' Association, Commonwealth Public Service, supported by the other claimant organizations, made application under section 15A (3) of the *Public Service Arbitration Act* 1920-1966 that the applications should, in the public interest be dealt with by the Commission constituted as provided under section 15A (1) namely, by Presidential members of the Commission nominated by the President to the number of at least two and the Public Service Arbitrator. On 25 November 1968 the President directed that the applications should be so dealt with.

Application C No. 412 of 1968 and matters C Nos 2157 to 2164 of 1968 inclusive were listed in Melbourne on 25 February 1969 before two benches of the Commission (the President, Mr Justice Moore and Commissioner Gough) dealing with the Meat Industry Case and (the President, Mr. Justice Moore and the Public Service Arbitrator) dealing with the Commonwealth Public Service Cases.

R. J. Hawke, R. Willis and *G. Seciof* for The Australasian Meat Industry Employees Union.

J. Robinson, of counsel, and *B. J. Madden*, of counsel, for the Meat and Allied Trades Federation of Australia.

J. H. Wootten Q.C., and *B. E. Hill*, of counsel, for the Angliss Group and others.

L. S. Cunningham for The Professional Officers' Association Commonwealth Public Service.

W. J. Smith and later with *D. L. Linehan* for the Administrative and Clerical Officers' Association, Commonwealth Public Service and with *L. S. Cunningham* on behalf of the affiliates of the High Council of the Commonwealth Public Service Organizations and another.

A. M. Richardson for The Association of Officers of the Commonwealth Scientific and Industrial Research Organization.

G. Slater and *R. J. Hawke* for the Amalgamated Postal Workers Union of Australia.

[*The Commission*

R. J. Hawke for the Federated Clerks Union of Australia.

J. W. O'Hanlon for The Association of Professional Scientists of Australia.

V. B. McMullan for The Commonwealth Public Service Association (Fourth Division Officers).

J. Quelch for the Commonwealth Police Officers' Association.

J. A. Keely, of counsel, for the Commonwealth Public Service Board and others.

S. Crosland for The Australian Journalists Association (intervening).

A. E. Woodward Q.C., and *D. Dawson*, of counsel, for the Attorney-General of the Commonwealth of Australia (intervening).

R. E. McGarvie Q.C., and *J. A. Gobbo*, of counsel, for The Australian Bank Officials' Association (intervening).

M. A. Pollard for the Council of Professional Associations and certain affiliates (intervening).

W. Richardson and later *R. D. Williams* for the Australian Council of Salaried and Professional Associations and certain affiliates (intervening).

R. L. Gilbert, of counsel, for The Victorian Chamber of Manufactures and others and for the Federal Council of Dry Cleaners of Australia (intervening).

J. T. Ludeke, of counsel, for the Metal Industries Association, South Australia and others (intervening).

J. Robinson, of counsel, and *B. J. Madders*, of counsel, for the National Employers Policy Committee (intervening).

J. H. Wootten Q.C., and *J.E. Douglas*, of counsel, for the Australian Council of Retailers (intervening).

A. P. Aird Q.C., and *V. Watson*, of counsel, for the Australian and New Zealand Bank Ltd and others (intervening).

L. Behm for the Australian Nursing Federation Employees Section (intervening).

A. M. Magoffin for the Australian Federation of Business and Professional Womens' Clubs (intervening).

J. Child for the Union of Australian Women (intervening).

J. G. Norris for the Australian National Council of Women (intervening).

E. P. Powell for the Australian Federation of Women Voters (intervening).

On the same day pursuant to section 44A of the Act, the President having orally given a direction, the Commission decided that it would, in joint session, take evidence and hear argument in all the said matters.

The hearing of all matters continued until 27 February 1969 when it was adjourned until 4 March 1969 so that a claim could be served on the Meat and Allied Trades Federation of Australia in order to provide sufficient ambit to cover the claims in relation to that Federation.

On 4 March 1969 in view of an application by The Angliss Group before the High Court of Australia for a rule *nisi* for a writ to prohibit the President and Mr Justice Moore from further hearing the said matters the Commission adjourned further hearing to a date to be fixed.

On the same day notification of a dispute, C No. 894 of 1969, between The Australasian Meat Industry Employees Union and the Meat and Allied Trades Federation of Australia was given pursuant to section 28 of the *Conciliation and Arbitration Act* 1904-1968 by The Australasian Meat Industry Employees Union.

The Commission]

1969.
MELBOURNE, Feb. 25–27; March 4.

Kirby C.J., Moore, J., Public Service Arbitrator Chambers, Commr Gough.
April 28, 30; May 1, 2, 7–9, 13, 20–22; June 19.

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On the same day pursuant to section 44A of the Act, the President having orally given a direction, the Commission decided that it would, in joint session, take evidence and hear argument in all the said matters.

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The Commission]

The notification was heard in Melbourne on the same day by Commissioner Gough who found that a dispute existed. An oral application was thereupon made on behalf of The Australasian Meat Industry Employees Union that the dispute should in the public interest be dealt with by the Commission constituted as provided by section 34 (1), namely, by not less than three members of the Commission nominated by the President, at least one of whom is a Presidential member. On 11 March 1969 the President directed that the dispute should be so dealt with.

On 27 March 1969 the High Court of Australia (Barwick *C.J.*, McTiernan, Kitto, Taylor, Menzies, Windeyer and Owen *JJ.*) refused the application made on behalf of The Anglis Group for a writ of prohibition.

Acting on medical advice, the President announced his retirement from the proceedings and the appointment of Mr Justice Williams to both benches.

On 24 April 1969 pursuant to section 44A of the Act, the President directed that the Commission, in joint session, constituted of Moore and Williams *JJ.*, the Public Service Arbitrator and Commissioner Gough might take evidence and hear argument as to the questions in matters C No. 412 of 1968, C Nos 2157 to 2164 of 1968 and C No. 894 of 1969.

The matters came on for hearing before the Commission (Moore and Williams *JJ.*, the Public Service Arbitrator, and Commissioner Gough) in Melbourne on 28 April 1969 when Mr Justice Moore made the following announcement:

> 1. We propose to treat this hearing as a continuation of the earlier hearings, which means that we will treat appearances already announced as having been announced before us. The transcript will be a continuation of the earlier transcript, and submissions made and exhibits tendered will be treated as having been made and tendered to us. It also means that rulings given by the earlier benches will apply with any necessary adaptations.
>
> As to the new matter, C No. 894 of 1969, the President has given a direction under section 44A, and we propose to join it to the existing cases already being dealt with in joint sessions.
>
> Mr Justice Williams has asked me to inform you that he has read the transcript and the other relevant documents.
>
> 2. Our *prima facie* view is that the order of appearances should be:
>
> The applicants
> Interveners supporting the applicants
> The Commonwealth
> The respondents
> Interveners supporting the respondents
> The applicants in reply.
>
> We request those concerned to arrange the order of appearances within the groups I have mentioned. We have taken this course to enable those concerned to discuss the matter amongst themselves in the hope that agreement may be reached, but if it is not, anyone wishing to make any submission about the order of appearances, including submissions contrary to our *prima facie* view, will be heard at the end of Mr Hawke's submissions.
>
> 3. We have considered the practice which has arisen in major cases of allowing a two-day break to principal parties, including the Commonwealth, before they commence their cases. In view of the number of

interveners in this case we would suggest to those concerned that they consider whether such practice will be necessary and, if they desire a break, to apply for it at the appropriate time.

On 19 June 1969 the Commission issued the following decision:

REASONS FOR DECISION

Two benches of the Commission have sat jointly in accordance with the provisions of section 44A of the *Conciliation and Arbitration Act* to take evidence and hear argument in the several matters before them. Before one bench were two applications by The Australasian Meat Industry Employees' Union to vary The Federal Meat Industry Interim Award 1965 which had been referred to it under section 34 of the *Conciliation and Arbitration Act* and before the other were eight applications by various organizations to vary a number of determinations made under the *Public Service Arbitration Act* which had been referred to it under section 15A of that Act. Having jointly taken the evidence and heard the arguments in all matters, both benches have been able to reach a common conclusion and to publish joint reasons.

Union claims

The claim of all the unions in all the cases was to insert into the award and determinations an amount of money which would eliminate the difference in current rates represented by the difference between the former male and female basic wages. On a Six Capital Cities basis this represented an increase of $8.20 per week for females under the award and for females under the determinations an amount of $428 per annum. It was sought that the increases be applied to all females irrespective of the work which they performed. Mr Hawke, who was the principal union advocate in all cases, explained that it was part of the policy of the trade union movement that there should be equal pay for equal work, that to accede to the present claims would be an overwhelmingly important step towards the achievement of equal pay and that any anomalies which remained after the claims had been granted could be dealt with by individual Commissioners dealing with individual awards and by the Public Service Arbitrator with individual determinations. This case, which all unions asked us to treat as a test case, would provide the foundation for ultimate complete equality of wages.

He asked us to consider his arguments in the framework of modern society, a society in which there had been significant technological and sociological changes. These changes had altered both the economic structure of the community and the relationships of different groups within the community. The changes were inter-related and could not be better illustrated than in the case of females. Our expanding post-war economy had both required in and attracted into the workforce more women and the tasks which they performed are now more diversified than before. More women are entering the workforce all the time and their status and importance are much greater than they were previously. In this modern atmosphere it was proper, he said, that the Commission should seriously reconsider its wage structure for female employees. Without them the economy would not have developed to the extent which it has and the Commission should recognize this by establishing principles of wage fixation which would apply throughout its awards. He said that between 1961 and 1966 the percentage increases in the workforce were as follows—males 8.1 per cent, not married females 14.5 per cent, married females 69.2 per cent, total females 35.4 per cent.

He related the history of wage fixation in this country to the greater significance which women now have in the workforce. He pointed to the fact that in origin the basic wages for males and subsequently for females were on the one

hand for a married man with a family and on the other for an unmarried female. This concept of differing basic wages originated some 60 years ago when both the social attitudes towards women and their contribution to the economy were much different from now. He submitted that the concept of needs which had been important in these early years had become blurred, had first been disregarded in 1931 when wages were reduced for economic reasons and subsequently in post-war years had disappeared from the fixation of basic wages altogether. Once the needs basis of the basic wage had gone, he argued, the social desirability for maintaining the difference between male and female basic wages disappeared, and when the basic wage itself was abolished in 1967 the argument in favour of the differential between males and females became even more tenuous. He said that the difference in their wages is a relic of assumptions and conceptions which existed at the beginning of this century. Although the basic wage was abolished in 1967 the differential between the male and female basic wages which pre-existed could still be ascertained and until it was removed there would be no firm foundation for establishing the principle of equal pay for equal work. The number of women employed in the workforce, particularly married women, has increased significantly in recent years and so also has the scope of the work which they undertook. This factor, he said, augmented the unions' claim for a wage indistinguishable from the male wage.

To the extent that equal pay exists in Australia it has either been as a result of an attempt to protect men from women doing what has been described as men's work, or to implement a policy of equal pay for equal work. Whatever may have been their attitude in the past, the unions do not base their applications on the concept of protecting men by giving women equal pay. As to the concept of equal pay for equal work, he said, these benches should get rid of the differential in that part of the wage which can be identified from the past as being unrelated to work done, namely, the basic wage, and upon that happening moves could be made to implement the concept of total equal pay.

He also referred to a number of international conventions emanating from the International Labour Organisation and the United Nations. In various ways and with somewhat different emphasis they exhorted that women who do the same work as men should be paid the same wage.

Because this was a test case and because of the nature of his basic submissions Mr Hawke presented no material to us about the actual work done by the employees we are considering.

Mr Hawke's submissions were supported by representatives of various Public Service organizations (and by the High Council of Commonwealth Public Service Organisations) who in addition to putting further argument in support of their claims gave us detailed information about the salary structure in the Commonwealth Public Service. He was also supported by The Australian Council of Salaried and Professional Associations, the Council of Professional Associations, the Australian Journalists Association, the Australian Bank Officials Association and the Australian Nursing Federation Employees Section.

In reply Mr Hawke rejected the proposal put forward by the Commonwealth which was supported by the Commonwealth Public Service Board and Commonwealth instrumentalities that we should apply the principles of State legislation.

Women's Organisations

Leave to intervene was sought by and granted to the Australian Federation of Business and Professional Women's Clubs, the Australian National Council of

Women, the Australian Federation of Women Voters and the Union of Australian Women. They all supported the submissions made by Mr Hawke for the abolition of discrimination against women in the wage structure and all asked us to grant the claim pressed by him. They did, however, refer to the possibility of implementation gradually. They presented additional information, economic, social and historical, in support of their overall attitudes. Emphasis was placed upon the status of women and the desirability to end discrimination against women in all forms. We were referred to existing social security legislation, particularly to the alleged inadequacy of it, and to the fact that many more married women were coming into the workforce for a variety of reasons—economic, social and technological. It was said that due to better mechanical devices many women were now being relieved of drudgery round the home and were able to enter or re-enter the workforce. Reference was also made in some detail to the struggle which certain groups of women were having to achieve a proper standard of living and in particular to a survey undertaken in 1966 by the Institute of Applied Economic Research in the University of Melbourne, commonly known as the 'Poverty Survey'. We interpolate here to say that however desirable it may be to raise the status of women, to remove discrimination against women in other areas and to alleviate the situation of particular groups of women, we are confined by the Acts under which we are working to matters relating to conditions of employment, including rates of pay.

Commonwealth Government

The Commonwealth Government supplied the Commission and the parties with a document called 'Equal Pay—some Aspects of Australian and Overseas Practice' which everyone concerned found most useful and which helped to shorten the proceedings.

The Commonwealth announced that it was not opposed to the principle of equal pay, provided four essential conditions were met:

(i) The work performed by females must be the same or substantially the same as that performed by males under the same award.

(ii) The females must perform the same range and volume of work as males.

(iii) Females must perform the work under the same conditions as males.

(iv) The work must not be work essentially or usually performed by females. However, a classification may qualify for equal pay if it is one in which only female workers are employed but for which there is a corresponding classification in which males are employed.

It opposed the unions' claims, both on economic grounds and on the basis that equal pay for equal work could not properly be introduced in the simple form proposed by the unions. The Commonwealth examined the various international documents and discussed the position in certain overseas countries, namely, the United States, Canada, the United Kingdom, the member countries of the European Economic Community and New Zealand. We were asked to draw the conclusion from overseas material that few countries similar to Australia have found it practicable to put fully into effect I.L.O. Convention No. 100. This includes countries which, unlike Australia, have ratified that Convention.

The Commonwealth suggested that we should introduce into our awards and determinations provisions which would have the effect of applying to them principles to be found in the Acts of various States. By doing this the Commonwealth submitted we would in fact be implementing the principles in the I.L.O. Conventions and at the same time would not be causing problems in the States.

The Commonwealth suggested as a procedure that we should find in principle along the lines suggested by it, and then refer the matters now before us back to the Commissioner on the one hand and to the Public Service Arbitrator on the other for investigation and report back to the appropriate full bench which would then make the final award and determinations.

We have given consideration to this suggestion, but as to the determinations we think it a little unwieldy and it introduces an unnecessary complication into the situation. We see no reason why if we accede to the Commonwealth's proposals as to principles these matters could not simply be referred back to the Arbitrator to be dealt with in accordance with those principles. As to the Meat Industry matter, as somewhat different issues arise and because the Acts are somewhat different if we accede to the Commonwealth's proposals as to principles we will adopt the procedure suggested by the Commonwealth.

Commonwealth Public Service Board and Commonwealth Instrumentalities

Mr Keely discussed what had happened in the State Public Services which, in summary form, is that in all States the public services, including teachers, have been granted equal pay for equal work except in Victoria, where the principle has been confined to teachers.

He supported the submissions made by the Commonwealth Government that we should apply to our awards and determinations the principles to be extracted from the relevant State Acts. He also supported the procedure suggested by the Commonwealth.

Private Employers

Two groups of the employers respondent to the Meat Industry award were separately represented by counsel and the submissions made by each did not always correspond. Mr Robinson for the Meat and Allied Trades Federation of Australia (and for a number of interveners) emphasised the magnitude of the increases which would follow from the awarding of the claim and pressed us not to deal with the matter outside a National Wage case. He disputed the interpretation of the history of basic wage fixation put by Mr Hawke. He too traced the history of basic wages and ultimately total wages and submitted that the difference now existing between male and female rates is not based merely on sex discrimination but is to a large extent based on family responsibilities. He suggested that if the unions were right that through the abandonment of a needs concept in assessing wages female rates should go up then male rates should go down; in other words, that the differential should in some form be shared between them.

Mr Robinson disputed the interpretation put upon the I.L.O. Conventions both by the applicants and by the representatives of the women's organisations and said that those conventions were not offended by the present Federal wage structure in as much as family differentials were recognised as proper exceptions to the rule about equal pay for equal work.

He asked us not to implement the suggestion made by the Commonwealth; in other words, not to adopt the principles of State legislation. However, he submitted that if despite his opposition we were disposed to do so we should accept the scheme as a whole and should not attempt to differ in any way from the principles of that legislation.

Mr Wootten, who appeared for a number of other employers in the meat industry and intervened on behalf of retail traders, asked us to dismiss the claim

on the ground that no case had been made out for abolishing the social differential between male and female wages, or for changing it in any way. He pointed out that the employers he represented had a large and direct interest in female employees. For instance, retail traders employed some 130,000 full time and 60,000 part time female employees. He unequivocally supported the longstanding practice of differentiating on social grounds between males and females. In his submission the existing structure is sensible and fair and relevant to the current situation, and although not perfect it is the best available. The major part of wages under most awards and determinations consists of the old basic wage which was a social wage, the old margin not being in issue in these proceedings. He submitted that the male carried most social responsibilities and that the weighting of the wage in his favour is a desirable feature of wage fixation which, correctly understood, is not a denial of equal pay for equal work. He said that if the claim were granted it might lead to price rises or to a redistribution of income in favour of females. We were being asked, he said, to implement a major piece of social engineering on theoretical or doctrinal grounds which would interfere with a wage system which had operated for many years. If we moved at all in the area of female rates it would be proper for us to consider male rates at the same time so that the relationship between the two would be dealt with simultaneously. He gave us figures which indicated that there had not been a dramatic increase in the proportion of women at work during this century although the female workforce has undergone a radical change in the increase of married women workers. He also supplied figures which demonstrated that in any event the overwhelming number of women are still at home being maintained with their families on the husband's salary or wages. Figures also showed that a large number of women do not have dependants.

He opposed the proposal put forward by the Commonwealth and trenchantly criticised it. He said the States had acted at a political level and not as a result of decisions of responsible arbitral authorities. He described the proposal put forward by the Commonwealth as 'a sort of face-saver, a sop, to be thrown to women'. He said that the State legislation had produced anomalies and arbitrary results and that we as an institution should not be ashamed of the practices which we have adopted over the years. He also suggested that the implementation of the Commonwealth's proposals might well produce industrial resistance from male employees.

The other employer interests which were separately represented, namely, the metal trades employers, chambers of manufactures and the trading banks, all opposed the applications and gave support to the arguments which had been advanced either by Mr Robinson or by Mr Woolten. In the case of the banks, Mr Aird submitted that because of the very special situation of the Bank Officials' (Federal) (1963) Award and the fact that applications to vary that award were also the subject of a reference under section 34 whatever we might do in this case we should reserve the position of the trading banks.

Issues

The parties have put in issue before us the principle of equal pay for equal work. Although even if granted in full the claim in the Meat Industry case would not completely achieve equal pay for equal work, the submissions about that award and the determinations were based on the principle. The employers, other than the Public Service Board and Commonwealth instrumentalities, opposed completely the implementation of the principle. Four broad considerations

The Commission]

emerge from all the submissions and material put to us, and we propose to discuss them *seriatim*. They are:

1. The history of wage fixation in the Federal system.
2. The attitude of Australian Governments, express and implied.
3. The international material.
4. The economic effect of any decision made by us.

History of wage fixation.

There is no real dispute as to the origins of basic wage fixations, namely, that the male basic wage was fixed as a family wage and that the female basic wage was fixed as a wage for a single woman without dependants. This concept was based in one sense on sex discrimination inasmuch as it was only to a male head of a household that a family wage was awarded, but in another sense it was not because by and large heads of households were males. The real argument arises as to what has happened to that wage since, particularly in concept. We do not think it necessary to examine in detail what was said and done until World War II because generally speaking a relativity was established and retained that the female basic wage was approximately 54 per cent of the male basic wage. This relationship was interfered with, first by the decisions of the Women's Employment Board which awarded rates for females varying from 75 per cent to 100 per cent of the male rates, and later by the *National Security (Female Minimum Rates) Regulations* which set a 75 per cent rate. The Court was called upon to consider the relationship between the two basic wages in the 1949-50 *Basic Wage case*[1] which in our view is a critical one in this history and was so considered by the parties.

All members of the bench in that case declined to award the full male basic wage to females, but the majority moved the female basic wage from the 54 per cent which generally applied, to 75 per cent of the male basic wage. The judgment of Foster J., which gives the most detailed reasoning for this change, refers to the desirability of retaining a greater male basic wage because of social or family considerations. Nevertheless, His Honour was prepared to change the relativity of 54 per cent which had existed for many years to 75 per cent, mainly upon the ground that 75 per cent was being paid in industry generally. The real significance of the 1950 decision lies not in what was said but in what was done. Despite discussion about social and family responsibilities of the male, the Court was prepared to change substantially the relationship between male and female rates and to improve substantially the relative position of females on the basis of what was in fact happening principally as a result of decisions of the Women's Employment Board and of the effect of the *National Security (Female Minimum Rates) Regulations*. Whatever may have been the position earlier, this decision caused an erosion in the concept of the family wage because if before the decision it had been desirable for family considerations that there should be a 54 per cent relationship, the mere fact that industry was paying more should not have caused the Court to change the percentage, any more than the Court was prepared to change the percentage in the *Munition Workers case*[2], unless the Court was departing from the concept of a social wage.

In the 1952-53 *Basic Wage and Standard Hours Inquiry Case*[3] the employers sought a reduction of the 75 per cent to 60 per cent, but the Court rejected this contention on the basis that there was no material before it which enabled it to say that 75 per cent was too high. There has been no real overall examination of

(1) 68 C.A.R. 698 (2) 50 C.A.R. 191 (3) 77 C.A.R. 477

the relationship between male and female rates either as basic wage awards or total wage awards since. In adjustments of the basic wage since 1953 amounts were added on purely economic grounds to the male basic wage and 75 per cent of each amount was added to the female basic wage. This persisted until the basic wages disappeared in 1967 when the Commission introduced the total wage and at the same time awarded the same increase to both males and females. It did the same in the 1968 *National Wage case*.(3)

An examination of the history of the secondary wage for females produces an even more confused result. In some instances females doing the same work as males received the same secondary wage as males and in the Commonwealth Public Service this is normal. In some instances in private industry they did not. In other cases, such as the Metal Trades award, they received what might be described as a composite margin to cover a range of classifications. So that when in 1967 the Commission introduced total wages by combining the basic wage and margins the resultant money differences between the wages of males and females were due to a variety of reasons but were referable, at least in part, to the old basic wage differences. The pattern is even more confused when to this already complex situation is added the fact that in a number of awards females have for many years received the full male wage as the result of attempts to prevent what was regarded as unfair competition with men.

The most we are able to say is that there is still a relic of the concept of the family wage in most of the present total wages. It is an amount which has been arrived at for varying reasons and in varying ways, but we consider it no longer has the significance, conceptual or economic, which it once had and is no real bar to a consideration of equal pay for equal work.

The attitude of Australian Governments, express and implied.

Four States, namely, New South Wales, South Australia, Western Australia and Tasmania, have passed virtually identical legislation on equal pay, although the Tasmanian legislation is confined to the State Public Service. This fact in our view is a matter of significance for us for two reasons. The first is that the existence of this legislation demonstrates by implication that there is a belief in this community that the concept of equal pay for equal work is a socially proper one. The second is that if we did not move to bring our awards into line with State legislation we would in those States at least be adopting a different approach to this question from that applied by the laws of those States. We do not think we should merely rubber-stamp the principles of State legislation, but if after having examined them we consider them to be fair and reasonable in the circumstances, we receive considerable support from their existence.

The fact that the Commonwealth Government itself supported the introduction of the principles of the State legislation is also a matter of some significance. The Commission on a number of occasions has indicated that it will not necessarily implement submissions put to it by the Commonwealth and will examine submissions made by the Commonwealth in the light of all the material presented. This we have done in this case.

The Commission and the Court before it have in appropriate cases in the past when dealing with broad social issues paid regard to views of States either expressed by submissions or implied by State legislation. Thus in the 40 *Hours Case*[2] the Court expressly relied on the attitude of States and in the *Long Service Leave Case* of 1959[4] the Commission declined to move into the

(3) 124 C.A.R. 461 (2) 59 C.A.R. 561 (4) 92 C.A.R. 552

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field of long service leave, partly because of the uniformity of State legislation. Neither of these cases is a precise analogy with the present case, but we consider that our present situation is fairly comparable with them. We are of the opinion that the conjunction of views of the Federal Government and the four State Governments is a matter to which we must pay serious regard when considering a social problem of this magnitude. To this must be added the fact that the relative coverage of females by awards shows a significantly greater number covered by State awards than by Federal awards. Therefore in at least three of the States concerned the principles of the State Acts already apply to more females than do our awards, as the following figures (which are the latest available) show:

Incidence of Industrial Awards, etc.: States, May 1963

State	Employees represented in Estimates	Percentage affected by Commonwealth Awards, etc.	Percentage affected by State Awards, etc.	Percentage not affected by Awards, etc.	Total
	Males				
	'000	Per cent	Per cent	Per cent	Per cent
New South Wales ..	807	40.4	46.3	13.3	100.0
Victoria	588	57.3	27.9	14.8	100.0
Queensland	254	17.8	72.4	9.8	100.0
South Australia ..	194	55.7	29.0	15.3	100.0
Western Australia ..	136	13.3	76.5	10.2	100.0
Tasmania	65	47.4	37.5	15.1	100.0
Total(a)	2,044	42.3	44.4	13.3	100.0
	Females				
	'000	Per cent	Per cent	Per cent	Per cent
New South Wales ..	310	27.2	63.9	8.9	100.0
Victoria	244	44.3	47.0	8.7	100.0
Queensland	80	18.8	74.0	7.2	100.0
South Australia ..	64	23.7	62.3	14.0	100.0
Western Australia ..	42	14.8	74.4	10.8	100.0
Tasmania	19	35.4	53.1	11.5	100.0
Total(a)	759	31.0	59.7	9.3	100.0

(a) Excludes Northern Territory and the Australian Capital Territory.

As far as the Commonwealth employees are concerned, because the Commonwealth Public Service Board and the Commonwealth instrumentalities adopted the same attitude as the Commonwealth Government, the only real issue in all the determinations before us is whether we should follow the principles laid down by the State Acts or whether we should award the claim of the unions. It must also be pointed out that the principle of equal pay for equal work is being implemented in the Public Services (including teachers) of all States, other than Victoria, where it is confined to teachers. It would not be open to us to reject completely any alteration in the determinations under the *Public Service Arbitration Act*.

The International Material.

We were referred by various people to an amount of international material, but most reliance was placed upon two conventions and two recommendations of the International Labour Organisation, namely, Convention No. 100 and Recommendation No. 90 of 1951 and Convention No. 111 and Recommendation No. 111 of 1958. Convention No. 100 and Recommendation No. 90, which were concerned with equal remuneration for men and women workers for work of equal value adopted a principle of equal remuneration without discrimination based on sex. The 1958 Convention and Recommendation, which were concerned with discrimination, condemned discrimination based amongst other things on sex. This Recommendation which was put before us in full by Mr Robinson contained a provision that the application of the policy against discrimination in respect of employment and occupation should not adversely 'affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance'. We were also referred to a resolution of the Commission on the Status of Women which urged all members of the United Nations to take steps to apply the principle of equal pay for equal work for men and women. The I.L.O. Conventions have not been ratified by the Australian Government nor have they been ratified by a number of advanced Western industrial countries such as the United Kingdom, United States and Canada.

A good deal of debate took place before us as to the precise meaning of the words used in these documents and also to what extent we should feel obliged to follow their principles. Whatever may be the legal position of the I.L.O. Conventions and Recommendations and the United Nations resolution, they must be taken to represent international thinking on the question of equal pay for equal work. Their meaning, however, in the Australian scene is by no means clear. It is not certain whether the exception referred to in Recommendation No. 111 covers the former basic wage differential or not, the employers arguing that it did and the unions that it did not.

The economic effect of any decision made by us.

We were given varying estimates of the cost to the community of the implementation in full of the unions' claims varying from $300m a year to $500m a year. To cause this additional amount of money to be paid to female employees would, we think, have considerable economic repercussions which we would seriously have to consider if we were prepared to implement the claim. We do not, however, propose to deal in detail with the economics of the situation because of the result which we ultimately have arrived at. While we are not able to quantify with any accuracy the effect of our decision, it should cause no significant economic problems, particularly as we propose to adopt gradual implementation.

Conclusions

From all the submissions put there emerge only four alternative propositions which we could seriously consider. The first is the granting of the claim or a lesser flat increase to all adult females, the second its dismissal, the third its deferment until the next *National Wage case* (or at least the deferment of its implementation) and the fourth the granting of it to the extent of the principles of existing State legislation.

The Commission]

We are not prepared to grant the claim as pressed. It seems to us that it is a question of principle which we should decide, namely, whether there should be equal pay for equal work. The granting of the claim or a lesser flat increase would not really decide that issue because, as has been explained, it is intended to be no more than a first step towards the application of the principle. The awarding of an increase to all females whether or not their work is equal to the work of males seems to us to be putting the cart before the horse. The equality of the work must in our view be first determined. In view of everything that has been put by employees, employers and interveners we should decide the principle now in a case in which all interested parties have been heard. The arguments for dismissing the claim are sufficient in our view only to establish that the claim should not be granted in full and that no increases should be awarded without an examination of the work done. We will therefore not dismiss the claim outright.

We are also not prepared to defer this case to be heard contemporaneously with the National Wage case of 1969. Despite the employers' request, which has been repeated in several cases, that the Commission should never in one year deal with more than one case of national significance, the Commission has never agreed to the request. In any event the conclusion we come to in this case removes much cogency from the employers' argument, because although this is an important case, the decision we arrive at should cause no significant economic problems.

While we accept the concept of 'equal pay for equal work' implying as it does the elimination of discrimination based on sex alone, we realise that the concept is difficult of precise definition and even more difficult to apply with precision. We do not propose to deal in detail with all the possible different meanings of the phrase, nor do we propose to consider how it could be applied in communities other than ours. Though we realise that the various United Nations and I.L.O. declarations and conventions must carry significant weight in a general way, we must consider how, if they are to be applied, they can be fitted into our community. We have certain values which have in part been created by our own institutions including a complex wage system. This Commission cannot escape its own history, including the history of the Court, even if it wanted to. If the arbitration system had in the past not concerned itself with a needs or family wage but had fixed a rate for a job, irrespective of the sex, marital or parental status of the worker, the probabilities are that the rate for the job would lie somewhere between the current male rate and the current female rate. This is speculation on our part but it does highlight the difficulties of finding a satisfactory solution to the issues now before us. We consider it preferable to start from a decision on principle in this case and let that principle be worked through the system.

If there were no history of wage fixation in this country and if we were starting afresh we might well not approach male and female rates as they were approached in the beginnings of the Federal arbitration system. This is in no sense intended as a criticism of the eminent Judges of the past but is merely a reflection of the fact that in our view changes have occurred in social thinking. This is confirmed by the existence of virtually identical legislation about equal pay in four States of the Commonwealth, the effect of which the Commonwealth Government has asked us to reflect in the award and determinations now before us and into awards and determinations generally.

(The Commission

The extent to which we are prepared to implement the principle of equal pay for equal work is to introduce into the award and determinations before us the principles of the State Acts. To us this is consistent with the action taken by the Court in 1950 when the female basic wage was increased from 54 per cent to 75 per cent of the male basic wage. By the actions of Parliament in creating a special tribunal and special regulations the level of the female wage had been raised, and despite references to the social nature of the male wage, it was as a direct result of those actions that the relationship between the male and female basic wages was changed.

We have given serious consideration to the principles of the State Acts and although we are aware that they have created some anomalies and inconsistencies we consider that overall they are to be preferred to the present position under Federal awards and determinations and they are fair and reasonable in all the circumstances. Moreover, any attempt by us to lay down different principles and standards could only result in the creation of additional anomalies, inconsistencies and confusion. The wage relationship between males and females currently existing under Federal awards and determinations cannot be completely sustained on the grounds of logic or justice. We have taken the pragmatic step of introducing current standards from a different sphere which in our view are more logical and will give greater justice than the present situation. We do not claim to have achieved perfection.

During the proceedings considerable reference was made to the statement of the Commission in the 1967 *National Wage case*[1] where it said:

'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 (Serial No. B2112) 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.'

Although all the applications originally relied on that passage as the ground in support, Mr Hawke ultimately submitted that he did not rely on it to establish the unions' case. He said, however, that he was considerably assisted by it and the granting of the unions' claims would be in conformity with it. The passage clearly indicated that in 1967 the Commission was aware of apparent anomalies between male and female wages and although it stated that the situation called for a thorough investigation and debate in which the policy of gradual implementation should be considered we do not consider that the Commission in any way indicated that it considered claims such as those now put forward by the unions should be granted. In our opinion the scheme which we have adopted is consistent with the above stated views of the Commission.

(1) 118 C.A.R. 655

The Commission)

Principles to be applied

For the reasons which we have already set out we have decided that to the extent of the claims equal pay for the sexes should be allowed in the cases now before us, on a basis similar to those which are:

(a) contained in the various State statutes and

(b) suggested by the Commonwealth and offered by the Public Service Board and Commonwealth Instrumentalities in the present cases as regards their officers and already adopted in most States as regards State public service employees and teachers.

As we have already indicated the increases in wages of female employees which were sought in the present cases were specifically limited by the applicants to the amounts which were equivalent to differentials between the male and female basic wages when they were incorporated in the total wages in July 1967. The applications did not extend to any differences arising from the 'marginal' content of the total wages. Accordingly any orders which might be made in these proceedings must be limited to the 'basic wage' differentials.

The unions asked that these proceedings be treated as a test case and it is a fair inference from the way in which arguments were presented that there was general agreement (except in the case of the private trading banks) that they should be so treated. We therefore think that the principles expounded for the guidance of the Public Service Arbitrator and the Commissioner in the present cases would be appropriate in other cases, even when total wages are being considered. It will be necessary in due course for a separate examination to be made of each determination and award in respect of which applications for equal pay between the sexes are received, and we suggest that the following principles which will be applied in the matters before us should be applied in deciding those other applications:

(1) the male and female employees concerned who must be adults, should be working under the terms of the same determination or award;

(2) it should be established that certain work covered by the determination or award is performed by both males and females;

(3) the work performed by both the males and the females under such determination or award should be of the same or a like nature and of equal value, but mere similarity in name of male and female classifications may not be enough to establish that males and females do work of a like nature;

(4) for the purpose of determining whether the female employees are performing work of the same or a like nature and of equal value as the male employees the Arbitrator or the Commissioner, as the case may be, should in addition to any other relevant matters, take into consideration whether the female employees are performing the same work or work of a like nature as male employees and doing the same range and volume of work as male employees and under the same conditions;

(5) consideration should be restricted to work performed under the determination or award concerned;

(6) in cases where males and females are doing work of the same or a like nature and of equal value, there may be no appropriate classifications for that work. In such a case appropriate classifications should be established for the work which is performed by both males and females and rates of pay established for that work. The

classifications should not be of a generic nature covering a wide variety of work:

(7) in considering whether males and females are performing work of the same or like nature and of equal value, consideration should not be restricted to the situation in one establishment but should extend to the general situation under the determination or award concerned, unless the award or determination applies to only one establishment;

(8) the expression of 'equal value' should not be construed as meaning 'of equal value to the employer' but as of equal value or at least of equal value from the point of view of wage or salary assessment;

(9) notwithstanding the above, equal pay should not be provided by application of the above principles where the work in question is essentially or usually performed by females but is work upon which male employees may also be employed.

Where the Arbitrator or the Commissioner is satisfied that equal pay should be awarded, we consider that the implementation of such a decision should be spread over a period so that as from 1 January 1970 implementation will be the same as that under the South Australian, West Australian and Tasmanian Acts. We also consider that it would be appropriate for the first step to operate as from the beginning of the first pay period to commence on or after 1 October 1969, where a decision is made before that date. Where a decision is made on or after that date our view is that it should not operate retrospectively. The scale of rates and the dates of operation where a decision is made prior to 1 October 1969 should be according to the following scale:

Date of Operation	Amount of Female Rate
Beginning of first pay period to commence on or after—	
1 October 1969	85 per cent of male rate at that date
1 January 1970	90 per cent of male rate at that date
1 January 1971	95 per cent of male rate at that date
1 January 1972	100 per cent of male rate at that date

Provided that no female rates should be reduced by operation of the above formula.

Where application for equal pay is made, and a decision is given on or after 1 October 1969, the following rates should be prescribed as the commencing rates. Thereafter they should be increased in accordance with the above scale:

Date of Operation	Amount of Female Rate
From 1 October 1969 and up to 1 January 1970	85 per cent of the male rate at the date of operation
From 1 January 1970 and up to 1 January 1971	90 per cent of the male rate at the date of operation
From 1 January 1971 and up to 1 January 1972	95 per cent of the male rate at the date of operation
From 1 January 1972 ..	100 per cent of the male rate

Provided that no female rates should be reduced by operation of the above formula.

Where an award prescribes, as does clause 3 of the Metal Trades award, that irrespective of the rates elsewhere fixed by it an adult male shall not be paid less than a certain rate prescribed by the award for work in ordinary hours, it would not be appropriate, in our opinion, for females to be awarded that rate but only the rate for the specific classification.

The Commission]

We point out that in these cases we have been dealing with applications for equal pay and not with the principles of fixation of female rates generally.

We have not attempted to consider the implementation of this decision to the Bank Officials' (Federal) (1963) award having regard to the terms of that award and to the fact that applications concerning it are already the subject of a reference pursuant to section 34 of the *Conciliation and Arbitration Act*.

In the Meat Industry case we decide that the union's applications should be implemented in accordance with the principles we have enunciated, and from the dates we have set, and we refer the matter back to the Commissioner for a report with respect to the classifications in the award which will fall within these principles. Because the issues in all the matters under the *Public Service Arbitration Act* differ somewhat from those in the private industry case and because the Acts are somewhat different all these matters will be referred back to the Public Service Arbitrator for hearing and determination.

The form of the orders necessary to give effect to this decision will be settled by the Industrial Registrar who will have recourse to a member of each bench.