

IN THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

Conciliation and Arbitration Act 1904

and

Public Service Arbitration Act 1920

NATIONAL WAGE CASE NOVEMBER 1977

In the matter of an application by the Australian Telecommunications Employees Association to vary the

AUSTRALIAN TELECOMMUNICATIONS COMMISSION TECHNICAL AND TRADES STAFF (SALARIES AND SPECIFIC CONDITIONS OF EMPLOYMENT) AWARD 1975
[Print C6568]

(C No. 1733 of 1977)

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

METAL INDUSTRY AWARD 1971 — PART III — PROFESSIONAL ENGINEERS
[Print C1744]

(C No. 1735 of 1977)

And in the matter of an application by The Municipal Officers' Association of Australia to vary the

MUNICIPAL OFFICERS ASSOCIATION OF AUSTRALIA (STATE ELECTRICITY COMMISSION OF VICTORIA) AWARD 1975 [Print C4802]

(C No. 1741 of 1977)

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

METAL INDUSTRY AWARD 1971 [141 C.A.R. 389]

(C No. 1755 of 1977)

And in the matter of a direction by the President pursuant to section 15A of the *Public Service Arbitration Act* concerning

AUSTRALIAN TELECOMMUNICATIONS EMPLOYEES ASSOCIATION

and

in relation to wage rates

SIR JOHN MOORE, PRESIDENT

MR JUSTICE ROBINSON

MELBOURNE, 12 DECEMBER 1977

MR PUBLIC SERVICE ARBITRATOR TAYLOR

MR COMMISSIONER MATTHEWS

DECISION

The Six Capital Cities Consumer Price Index for the September quarter 1977 was 2 per cent higher than the figure for the June quarter 1977. As a result, applications were made by various unions to increase wages and salaries. The claims and attitudes of the parties and interveners are as follows:—

Australian Council of Trade Unions and Australian Council of Salaried and Professional Associations	2 per cent increase plus an amount to compensate for full percentage increases not awarded in the past.
Council of Australian Government Employee Organisations and Council of Professional Associations	2 per cent increase.
Australian Public Service Federation	2 per cent increase.
New South Wales, South Australia and Tasmania	2 per cent increase.
Queensland	a percentage increase less than 2 per cent.
Commonwealth, Victoria and Western Australia	no increase.
Private employers	no increase.
Master Builders Federation	no increase.

Two of the applicants asked that in addition to the current C.P.I. increase, rates of pay be adjusted by amounts necessary to compensate for past indexation decisions of less than the full C.P.I. increase. This was pressed only by A.C.S.P.A. The Commission has stated on several occasions that it will not grant this kind of claim and those parts of the current applications which seek so to do are dismissed.

Substantial compliance

As the indexation principles stand they contain the following introduction:

“In considering whether award wages and salaries should be adjusted a prime consideration will continue to be whether there has been substantial compliance with the principles.”

It has to be acknowledged that the concept of substantial compliance lacks definition and no doubt this will be one of the issues to be discussed at the on-going review of wage fixing principles being conducted under the chairmanship of the President.

However, the issue was given greater prominence and debated at greater length on this occasion due no doubt in the main to the much publicised consequences of the S.E.C. strike described by Victoria as *“the worst strike to occur since the introduction of wage indexation.”*

We were taken through the references to substantial compliance in successive decisions of National Wage Benches to show the way in which the concept has developed.

Recent quarterly reviews have considered substantial compliance by looking at the following aspects:

1. Movements in rates of pay outside the increases attributable to indexation.
2. Examination of the strike statistics issued by the Australian Statistician and a case by case survey of recent examples of industrial misconduct.
3. Reliance on the economic effects of major disputes.

No party or intervener sought to deny that the minimal movement in wage rates outside indexation satisfied that aspect of substantial compliance. However the Commission has in the past refused to treat wage movements as being conclusive and it does so again.

The material submitted on industrial misconduct and its economic effects led to a sharp polarisation of views as to whether substantial compliance had occurred.

The Commonwealth, Victoria, private employers and the Master Builders Federation each relied on statistical material and/or examination of individual disputes to found the argument that the union claim should be dismissed on the test of substantial compliance.

On the other hand, the unions contended that the overwhelming majority of employees had demonstrably complied and available figures showed a markedly lower level of industrial misconduct. The case for substantial compliance was supported by New South Wales, South Australia and Tasmania.

A middle view was taken by Queensland which suggested the degree of compliance was at a similar level to that applying in previous quarters. It pointed out, however, that all strikes have a negative economic result and suggested the Commission should therefore take that factor into consideration when determining the quantum of increase the economy could sustain.

The statistics on industrial disputation were used by both sides to support their respective arguments. Mr Jolly was able to show that strikes and working days lost for the eight months to August 1977 were significantly lower than equivalent figures for many years. Mr Madden relied on the rising trend of working days lost over the last four months for which figures were available. Working days lost in August 1977 exceeded those for the same month last year.

We find the statistics allow no firm conclusion on substantial compliance, particularly as they stop short of the recent period when major disputes over wage rates have had an economic impact unprecedented in the two and a half years of indexation.

The Commission has remarked on the shortcomings of official strike statistics for its purpose because they do not reflect —

- (i) Stand down of employees due to disputes;
- (ii) Stoppages of less than ten man days;
- (iii) Bans or limitations;
- (iv) The economic impact of any form of industrial misconduct.

In the decision given on 12 August 1976, while the Commission accepted substantial compliance *“with some doubt and with apprehension”*, it noted in its review of the economy that *“the incidence of stoppages, bans and limitations in support of campaigns to ‘beat’ the indexation guidelines has acted as a factor supporting the economic arguments for less than full indexation.”*

Once again we have had to anxiously consider whether using the test of substantial compliance we should dismiss the applications in whole or in part. On the one hand we have Mr Maddern’s submission that it is a misuse of the English language to submit there has been substantial compliance. On the other hand we have Mrs Barnes who suggested the plain ordinary meaning of the words is *“compliance by a substantial part of the workforce governed by awards of the Commission.”*

We have decided to adopt, in effect, the course of action suggested by Queensland and we will take the economic effects of recent industrial disputation into account in the conglomerate of factors which determine our decision in this case. It would seem to us that a more drastic course might prejudice the outcome of the current review of principles on this issue.

It remains to discuss the major areas of industrial misconduct which have led us to take this step.

On this occasion the Commission was given information covering various aspects of economic detriment brought about by the S.E.C. dispute, the campaign for a \$30 wage increase in the building industry and the disputation in the meat and livestock industries. The following figures were put to us about the effects of the S.E.C. strike. By their nature, some of these figures can only be estimates.

Number of employees actually on strike	2250
Period of strike	9.8.77 to 20.10.77 (except 14-17 Oct.)
Loss of sales by S.E.C.	275,600,000 kw. hrs.
Loss of income by S.E.C.	\$6,600,000
Number of man days lost by S.E.C.	122,000
Number of man days lost by Victorian workers	2,500,000
Loss in factory production	\$312,000,000
Peak daily loss of production	\$11,700,000
Loss of wages by employees	\$113,000,000
Loss of wages per day in manufacturing industry alone	\$5 ,800,000
Number of workers stood down in other industries	180,000
Registered unemployed as a result of the strike -	
Victoria	53,122
N.S.W., S.A., Qld.	2,825
At the end of October those still not re-employed	36,947

‘The Master Builders Federation gave us details of estimated losses and days not worked in the September quarter for major projects in the Melbourne area. As an example, 97 per cent of working days were said to have been lost on a single project, the State Savings Bank Centre, and the overall loss reported for the quarter was \$2,294,200 for that project.

Mr Madden said that *“the meat and livestock industries possibly have the worst history of industrial disruption of any industry since the present principles were introduced.”* The disputes have led to the closing of meatworks and the industrial campaign of the A.M.I.E.U. is continuing throughout Australia. In Queensland alone the disputes have prevented 250,000 cattle from being slaughtered. Significantly more than 100,000 man days have been lost in the last 12 months and the estimated loss of revenue to producers in the meat industry this year is \$45 million.

There is no doubt that these and other major disputes such as the Australia wide postal dispute, the public transport disputes in Victoria and New South Wales and the cement and concrete batching disputes in New South Wales, have added substantially to the burdens shouldered by the economy in a period of severe and prolonged recession. Nor is there any doubt that the additional costs will have to be borne by the community in the months to come. We emphasise that it is just not possible to look at disputation of this nature only in terms of the employees directly concerned or the State in which stoppages occur.

It was suggested that recent disputes arose out of the stringency of the guidelines and a lack of understanding of their implications. We remark that it is the very restrictiveness of the guidelines in their present form that has enabled the Commission to grant general increases in successive reviews.

If the guidelines are misunderstood, or understood and sought to be broken, actions taken on either count which further weaken an already debilitated economy, raise the question, *“Is the indexation experiment operating in a way which cuts across the very reasons for its existence?”*

The benefits of indexation lie in its rules being observed. Non-observance of the rules weakens both the industrial and economic justification for its existence.

In this connection we welcome the announcement by Mr Jolly that the A.C.T.U. proposes to take special steps to create a broader understanding of the indexation system among rank and file members.

State of the economy

The state of the economy was once again central to the debate before us and once again diverging points of view were put. The Commonwealth made its attitude clear from the beginning when it said:

“A general wage increase at this time would, in the Commonwealth’s submission, work against the emerging economic recovery and would reduce the effectiveness of the policies that the government is pursuing.

The Commonwealth believes that the real cost of labour has continued to run ahead of productivity of labour and that this relationship is at the root of the current unemployment situation, as well as continuing to keep up the rate of inflation. High labour costs have led either to labour-shedding or to price increases. Further increases now in the cost of labour will either delay the reduction in unemployment or add to increases in prices.”

The private employers said:

“The fact that there are tentative signs of an improvement in consumer confidence, as can be seen from the real increase in retail sales in the September quarter, and the inflation rate, which until this year continued on an upward path, now shows some signs of improving, should not be taken to mean that all our problems are solved. Far from it. Our inflation rate is still far too high and there have been false indications of recovery in the past. In addition the recent strikes and stoppages will undoubtedly have had an adverse effect on consumer confidence and although the rate of increase in unemployment, the power strike aside, has fallen, the absolute level of unemployment has continued to increase.”

As to the building industry the Master Builders Federation said:

“The building construction industry in Australia has been in decline over the last three years. ... Our analysis of the trends of the industry suggest there will be a further decline of about 2.3 per cent in this year. The earliest prospects of an upturn appear to be in 1978/79.”

The unions painted a pessimistic picture. For instance the A.C.T.U. said:

“An examination of the state of the economy will highlight the fact that Australia remains in the midst of severe recession. The economic policies of the Australian Government have pushed unemployment to new unacceptable heights and there are no signs of any future reductions in the unemployment rate. The labour market is deteriorating and job vacancies continue to decline - the depressing scene is summarised by the fact that there are 16 persons registered as unemployed for every job vacancy.

The stagnation of demand in Australia is the major factor behind the increase in unemployment.”

The States presented differing views. New South Wales said that there are no clear signs of recovery in the economy and that unemployment would become worse. South Australia said there was no sign at all of economic recovery. Tasmania expressed concern at the continued high incidence of unemployment. Victoria referred to the “*extreme seriousness of the current situation.*”

Queensland said:

“It is possible to posit both optimistic and pessimistic views of the state of the economy and in balance we would see that there has been little overall concrete improvement since the last hearing, and once again we would see the economy as being in a fragile and debilitated state, accordingly it is necessary that no steps be taken that will have further deleterious effects.”

Western Australia adopted the views of the Commonwealth.

From all these submissions a picture can be drawn of a sluggish economy with perhaps some signs of recovery. The unions once again pressed the view that by increasing wages we would stimulate the demand which is necessary for recovery. On the other hand the Commonwealth and the private employers again argued that by increasing labour costs we would cause further shedding of labour, thereby increasing unemployment.

The key to the Commonwealth prognosis is the existence of what it terms a real wage “overhang”. The overhang arises from an excess of real wage increases over productivity gains which took place primarily in the calendar year 1974. The imbalance then created has been perpetuated, so it said, or at least prolonged, by indexation. Unless and until normalcy is restored, with the shares of gross domestic product going to wages and profits resuming their traditional levels, wage increases will simply exacerbate unemployment. The Commonwealth tendered an article entitled, “*The Australian Labour Market*” which appeared in the September 1977 Bulletin of the Flinders University Institute of Labour Studies. The article was tendered to establish that the existence of real labour cost overhang was recognised by a reputable body in the field of labour economics.

The article however also served to highlight the differences which exist between schools of economic thought on the role played by indexation and the appropriate course for wages policy in the immediate future. Two short quotations from the article provide the contrast between the views expressed by the Commonwealth and those of the Institute:

“The Bulletin doubts that a significantly lower rate of indexation would be consistent with the survival of the indexation system, and believes that a breakdown of the system would result in a greater actual rate of wage increase.” (P.12)

“In other words, in the course of 1977/78, elimination of the real wage overhang, i.e. a reduction of real unit labour costs to their level in the late 1960’s, can be achieved, given probable indexation policy and trend (and likely actual) productivity growth.” (P.11)

The Commonwealth put forward an alternative set of calculations showing a larger overhang than that found by the Institute, but Mr Marks conceded that “in time the operation of economic forces will lead to a rectification of the imbalance”.

The Commission does not see its role as “adopting” a particular view of this or other matters which may from time to time divide economists who have expertise in labour economics. We are greatly assisted by all views expressed or documented and we make our best judgment on the material presented at each hearing.

The dichotomy of expert views endorses the observation made in the August decision:

“... it remains highly contentious whether employment recovered would have been greater or less merely if the Commission had awarded smaller wage increases during 1976/77. The causes of the present unemployment are complex.”

This observation does not mean nor has the Commission ever said that the explosion in labour costs culminating in 1974 (to which all parties to the industrial relations process contributed) has had no impact on employment levels. However the mere identification of possible symptoms of the continuing economic malaise does not of itself provide the remedy.

Once again we indicate that we do not consider that wage rates can be looked at solely with regard to the economy. Industrial relations aspects must also be considered. In fact the two go hand in hand. To refuse any wage increase might have the effect of increasing demands in the field, supported by strikes, bans and the like. If this happened there would be a further fall in production, employees would have even less money to spend, the economy would further deteriorate and the ranks of the unemployed would swell even more.

Mrs Barnes suggested we should view the present case in the following perspective:

“It is a fact wage indexation as a system set up to promote the orderly regulation of wages in a manner consistent with the abatement of inflation in a time of severe economic difficulty has worked. It is now a proven system and, given adequate time, can be expected to achieve continuing positive results, also providing there are no significant reversals in economic policy or sudden shocks.

The primary question before the Commission is whether it should run the risk of jeopardising the continuity of a system which has proven itself over a two and a half year period.”

It is not a matter of ignoring the economic imperatives, it is a matter of weighing them alongside the industrial relations imperatives.

All in all we have concluded that in view of the present state of the economy, the community would best be served by a moderate increase. In these proceedings no one has suggested that if an increase be awarded it should be other than by way of a uniform percentage applicable to all and we therefore follow that course. We note also that no one asked for indexation to be applied to overaward payments.

Extensive reference was made in this case to material which suggested that juniors have increased their earnings more rapidly than adults and unskilled workers have gained relatively to skilled workers. This it was said has had an adverse effect on the employment prospects of juniors and unskilled workers. Although it seems clear that many of the movements occurred prior to indexation we note that no argument was put to us by any party or intervener that if we awarded an increase we should differentiate in any way between groups of employees for reasons associated with their particular unemployment levels.

There remains the question of whether the C.P.I. increase should be discounted by the part attributable to devaluation. The Commonwealth, Victoria and the private employers contend the total effect of devaluation was 0.5 per cent. The Statistician estimates that of the 2 per cent, 0.23 was attributable "*to net increases in prices of goods wholly or substantially imported*". The Commission has decided on previous occasions to adopt the Statistician's figure as an estimate of the effect of devaluation appropriate for its purpose and has discounted accordingly.

Having taken into consideration the state of the economy together with the economic effects of the many recent strikes and stoppages and price increases attributable to devaluation we have decided that all award wages and salaries should be increased by 1.5 per cent.

Date of operation

As to date of operation the unions have asked that any increase awarded be payable from the beginning of the first pay period which commenced on or after 15 November 1977. The employers although opposing the granting of any increase at all contended that, if contrary to their submissions an increase was granted, it should be prospective in operation and they suggested that it should operate after the forthcoming annual closedown. They argued that many employers were suffering liquidity problems which would be heightened in the near future if they had to find cash to meet substantial annual leave payments increased by, in most cases, the 17½ per cent annual leave loading and this notwithstanding that production will be almost at a standstill during the period.

We are not prepared to defer the operation of the increase we have decided to award. We are of the view that it should be payable from the beginning of the first pay period to commence on or after today. However to give employers some relief we will provide that the necessary payments need not be made until 27 January 1978. Employees who do not receive payment until that date must receive payment back to the December date.

Form of orders

The variation of the awards and determination will operate from the beginning of the first pay period to commence on or after 12 December 1977 but payment of moneys pursuant to this decision need not be made until 27 January 1978. The variations of the awards will operate until 15 February 1978.

Minimum wages will be increased by 1.5 per cent.

Junior rates prescribed as money amounts will be increased by 1.5 per cent.

Additional rates prescribed for leading hands will be increased by 1.5 per cent as will shift allowances which are expressed in money terms, rounded off to the nearest 1 cent if on a daily or shift basis.

Weekly rates will be calculated to the nearest 10c and annual rates to the nearest dollar.

It is not our intention that allowances except those mentioned be increased nor that over-award payments, including those covered by a recommendation provision as appears in the Metal Industry Award, be increased.

The form of orders necessary to give effect to the decision under the *Conciliation and Arbitration Act* will be settled by the Registrar with recourse to a member of this Commission. The form of the determination will be settled by the Public Service Arbitrator.

Appearances:

R. A. Jolly, J. Marsh and A. McLagan for the Electrical Trades Union of Australia and others

R. L. Gradwell and I. Oldmeadow for the Australian Telecommunications Employees Association

P. Barnes for The Association of Professional Engineers, Australia

B. Hartnett, W. Richardson and B. D. Durham for The Municipal Officers' Association of Australia

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

P. Dalton, Q.C., and F. Turner, of counsel, for the State Electricity Commission of Victoria

T. W. Orange, E. R. Cole and M. L. Rush for the Public Service Board

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

B. Hartnett, W. Richardson and B. D. Durham for the Australian Council of Salaried and Professional Associations (intervening)

P. Barnes for the Council of Professional Associations (intervening)

B. G. Shaw and J. S. Lucknan for The Master Builders Federation of Australia (intervening)

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

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

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

J. W. Johnston, of counsel, for Her Majesty the Queen in right of the State of Queensland (intervening)

A. R. Cunningham for Her Majesty the Queen in right of the State of South Australia (intervening)

A. Robinson for Her Majesty the Queen in right of the State of Tasmania (intervening)

G. M. Overman, of counsel, and A. G. Errington for Her Majesty the Queen in right of the state of Western Australia (intervening)

N. J. Sweeney. of counsel, for Her Majesty the Queen in right of the State of New South Wales (intervening)

Dates and place of hearing

1977

Melbourne;

November 15-17, 22, 24, 25, 26, 30