# Protecting The Low Income Earner: Minimum Wage Determination In Australia

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## Abstract

The Minimum Wage, in various variants, has been an important part of Australian wage determination for over a century. This paper documents the development of the minimum wage and in so doing highlights the pivotal role of the Sunshine Harvester case. That case left a number of legacies which are examined in other parts of the paper. These include the bifurcated nature of wage determination, consideration of family size, the sexual division of labour and wages, the conflict between needs and capacity to pay, wage adjustment indexes and the role of minimum wages in a decentralised wages system.

## 1. Introduction

In June 1995 the agreement entitled 'Sustaining Growth, Low Inflation and Fairness' was signed by the Federal Labor Government and the ACTU. This agreement is the eighth variant of the Accord developed before the federal elections of March 1983.

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Under successive Accords the political and industrial wings of the labour movement have sought a more flexible labour market, the modernisation of the award system, the creation of mult-skilling and career paths, and the decentralisation of wage determination.

In seeking greater flexibility and decentralism the Accord partners have also sought to maintain an element of the egalitarian wage structure which has historically accompanied the centralised wages system. In the Accord Mark VIII this is by way of Safety Net Adjustments. The Agreement provides for four adjustments to minimum wages until March 1999. For low paid workers the proposed adjustments are in the order of $11 to $14 per week and are seen to represent 'an element of redistributive support for the growth the economy is enjoying'.

The notion of Safety Net Adjustments is the latest concept in Australian wage determination designed to protect low income earners. This paper documents such developments over the last century and analyses the attendant practical and procedural problems associated with the various concepts employed.

## 2. Beginnings

Australian legislatures have been concerned with the concept of the minimum wage for a long time. For example, in 1890 Sir Samuel Griffiths, then Premier of Queensland and subsequently a principal author of the Constitution and first Chief Justice of the High Court of Australia, introduced a Bill providing for a minimum wage. This Bill stated:

> All persons are, by natural law, equally entitled to the right of life, and to the right of freedom for the exercise of their faculties ... The natural and proper measure of wages is such a sum as is fair immediate recompense for the labour which they are paid, having regard to the labour's character and duration; but it can never be taken at a less sum than such as is sufficient to maintain the labourer and his family in a state of health and reasonable comfort.
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> It is the duty of the State to make provision by positive laws for securing the proper distribution of the net products of labour in accordance with their principles hereby declared. (Hutson 1971: 33; Commonwealth Year Book 1939: 438).

In 1893, following anti-sweating agitation, a Bill was introduced into the Victorian legislature embodying 'the principle of a fixed minimum wage, which should be a living wage' (Pember Reeves 1969, p. 49). Subsequent legislation in 1896 established Wages Boards which had the capacity to fix

wages and piecework rates. Tasmania, South Australia, and Queensland also established Wages Boards, though the last two named States replaced these with arbitration tribunals in 1916. Western Australia adopted compulsory arbitration in 1900 as did New South Wales in 1901. These tribunals had the capacity to set minimum wage rates.

By 1905 Mr Justice Heydon had operationalised the concept of the minimum (or 'living') wage in New South Wales. Heydon's rationale, and the mechanism which he subsequently employed, anticipated those of Higgins J. of the Commonwealth Court of Conciliation and Arbitration which have gained more prominence.

The major political divide at federation was that of free trade and protection. The notion of 'New Protection', the coupling of tariffs and wages, was an attempt to bridge this divide. In his memorandum to Parliament, Alfred Deakin, second Prime Minister of Australia, explained this form of protection and how it differed from 'old' protection:

> Protective duties were originally imposed in order, among other things, to promote regular employment, to furnish security for the investment of capital in new as well as existing industries, to render stable the conditions of labour, and to prevent the standard of living of the employees, in these industries from being depressed to the level of foreign standards. Australian rates of pay have hitherto been fixed by the bargaining of the employer and the employees, except where the State has intervened, by means of Wages Boards and Arbitration Courts. The standards of these tribunals appear to have been determined on the basis of a minimum wage.
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> The aim of the proposals about to be outlined is more ambitious. The 'old' Protection contented itself with making good wages possible. The 'new' Protection seeks to make them actual. It aims at according to the manufacturer that degree of exemption from unfair outside competition which will enable him to pay fair and reasonable wages without impairing the maintenance and extension of his industry, or its capacity to supply the local market. It does not stop here. Having put the manufacturer in a position to pay good wages, it goes on to assure the public that he does pay them. This of course involves a careful adjustment of the duties to the double purpose they are intended to serve. For that reason the proposals for the 'new' Protection include the establishment of permanent machinery for investigating and ascertaining whether the duties are really effective for the purposes. If they are, fair and reasonable wages must be paid. If they are not, the alternative is to alter the duties. (*Commonwealth Parliamentary Papers 1907-08*, pp. 1887-89)

Within a decade parliament had brought into being a panoply of legislation which formed part of a New Protection policy. In this New Protection schema, those employers considered by the Commonwealth Court of Conciliation and Arbitration to be paying 'fair and reasonable' wages would be issued with certificates of exemption from the *Excise Tariff Act*. Those employers would enjoy the benefits of protection, as would their employees. In other cases, manufacturers would have to pay the excise tax, thus denying them the full benefits of tariff protection.

By 1906 the operations of New Protection had passed to the executive organs of State. In that year Mr Justice O'Connor, the first President of the Commonwealth Court of Conciliation and Arbitration, issued six certificates of exemption under the Act. He noted the New Protection import of his actions: 'It is intended that while the manufacturer shall obtain certain benefits under the law he is only entitled to those benefits if he shares them with his employees' (1 CAR 126). The judge's general approach is illustrated by the South Australian Agricultural Implement Makers' Case. At O'Connor's suggestion a number of claims were aggregated and unions and employers allowed to negotiate the minimum wage. O'Connor conciliated when required but the outcome was essentially the product of bargaining. O'Connor determined rates for the major manufacturing districts of South Australia on the basis of these negotiations which included differential rates in different districts to take account of transport costs (1 CAR 126-131).

In 1907 Mr Justice Higgins assumed the presidency of the Court. He is associated with the formulation and conduct of the basic wage which served as the Commonwealth minimum wage for six decades. Because of the major influence of his basic wage decision, it is useful to explore in some detail his method of determining the minimum wage.

## 3. The Sunshine Harvester Case and the Basic Wage

At the time of Higgins' appointment there were over 100 outstanding applications for certificates of exemption in Victoria. Unlike O'Connor, who was prepared to allow the parties to formulate a 'fair and reasonable' wage, Higgins applied a more instrumental role to the Court in the formulation of such a wage. In addition he sought a test case which would enable him to declare the minimum wage and save having to undertake this task repeatedly. Implicit in this approach was that the one wage could be the measure of what was 'fair and reasonable' in all circumstances and conditions.

Higgins chose the Sunshine Harvester Company as his test case. He noted that this company employed the most persons and the largest range

of occupational groups of any applicant and could therefore offer a useful test model. Unlike O'Connor who sought 'fair and reasonable' on the basis of what the parties, guided by custom and practice and prevailing rates, considered to be appropriate, Higgins formulated his own criteria and allowed the parties a limited role in the exercise. Indeed, the role of bargaining in the determination of the 'fair and reasonable' wage was dismissed. He noted that if bargaining, what he called the 'higgling of the market', provided fair and reasonable wages, there would be no need for the Act!

> The provision for fair and reasonable remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure to them something which they cannot get by the ordinary system of individual bargaining with employers. If Parliament meant that the conditions shall be such as they can get by individual bargaining – if it meant that those conditions are to be fair and reasonable, which employees will accept and employers will give, in contracts of service – there would have been no need for this provision. The remuneration could safely have been left to the usual, but unequal, contest, the 'higgling of the market' for labour, with the pressure for bread on one side, and the pressure for profits on the other. The standard of 'fair and reasonable' must, therefore, be something else; and I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community.

Higgins determined that wage should be such as to provide for the wage earner and his family to live in 'frugal comfort' (the last element echoing the language of the Leo XII's 1891 encyclical 'Rerum Novarum'):

> ... it seems to me that the framers of the agreement would have to take, as the first and dominant factor, the cost of living as a civilized being. If A lets B have the use of his horses, on the terms that he give them fair and reasonable treatment, I have no doubt that it is B's duty to give them proper food and water, and such shelter and rest as they need; and, as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards. This, then, is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as 'fair and reasonable' in the case of unskilled labourers.

Higgins took the average man to be married and with three children. On the basis of evidence presented by nine housewives, one land agent and one butcher he estimated that the amount needed for food and lodging was 36/-.

He added a further 6/- per week to provide for a miscellany of items – 'light, clothes, boots, furniture, utensils, rates, life insurance, savings, accident or benefit societies, loss of employment, union pay, books and newspapers, tram and train fares, sewing machine, mangle, school requisites, amusements and holidays, intoxicating liquors, tobacco, sickness and death, domestic help, or any expenditure for unusual contingencies, religion, or charity'.

Doubt can be cast on the methodology employed to determine the food and lodging component of 36 shillings; the additional 6/- for additional items was pure guess-work as is admitted in the decision. This then was the basis of the 42/- 'fair and reasonable standard'. Four years later the standard was given the name the 'basic wage' by which it became well known (5 CAR 14).

An important outcome for employers was that the Harvester Standard provided the potential for large wage increases. In the case of the McKay company the increases were in the order of 16 per cent. Historians have suggested that the general increase was in the order of 26 per cent (Palmer 1931: 210). Not surprisingly, employers sought to frustrate this decision. In a High Court challenge they were successful in having the *Excise Tariff Act* declared ultra vires. This severely circumscribed the legislature's capacity to implement a New Protection regime but had a negligible effect on the Arbitration Court's capacity to infuse the standard into awards of that Court.

Some other outcomes or elements of this important case are also worth elucidating. Higgins' penchant for consistency and uniformity 'else comparisons breed unnecessary restlessness, discontent and industrial trouble' (Higgins 1968: 41) was the rationale for a test case and the rationale for the application of a consistent standard as the outcome of that case. In time, as the standard was applied throughout the country where federal awards applied, and as the wage became adjusted to particular price indexes which indicated different costs of living in different regions, the basic wage structure stabilised at separate basic wages for the six capital cities, 26 country towns and two localities, in all 34 separate basic wages (Hutson 1971: 6). It was not until the 1960s that a common nation-wide basic wage was determined.

A second historical outcome was the stress on needs – the 'normal needs of the average employee regarded as a human being in a civilised society'. Higgins subsequently insisted that this 'needs' wage was an irreducible sacrosanct minimum wage:

> For this purpose it is advisable to make the demarcation as clear and definite as possible between that part of the wages which is for mere living, and that part of wages which is due to skill, or to monopoly or to

other considerations. Unless great multitudes of people are to be irretrievably injured in themselves and their families, unless society is to be perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct beyond the reach of bargaining' (3 CAR 32).

A third historical outcome of the test case approach undertaken by Higgins. This, together with Higgins' long term as a President of the Court, was to steer that Court in the direction of claims determined on the basis of aggregated hearings. The result was a centralised approach to basic wage determination and a resultant national wage predisposition.

Another important consideration was the family nature of the basic wage. The Court, as the 'interpreter of social conscious' (48 CAR 198), determined that the minimum wage should be one capable of sustaining a family unit. A number of consequences followed. Men were considered to be the primary family bread winners, women were not. Thus there was a differential in male and female rates, a situation which continued until 1975 in the federal jurisdiction. Unmarried males without family responsibilities did not have their rates reduced, and this for two reasons. Firstly Higgins considered marriage to be the 'natural fate of men', and that those not married were saving for that event. Secondly, if unmarried men were paid less then these could have been preferred to married men. That would have had undesirable social consequences. Similar arguments applied in the case of women who did have to support families. To pay them the male rate would have disadvantaged them vis-a-vis other women and may have resulted in them not being employed. As the Court later declared, 'The object of this uniformity is obvious; the employer, in choosing an employee, should not be driven to concern himself with the man's domestic affairs or tempted to choose men who have no children or fewer children in preference to men who have many' (68 CAR 772).

Higgins determined that the normal family was one of five – husband, wife and three children. What constituted the family unit, and how the system could cope with the reduced needs of families with fewer children or cope with the needs of families with more children, has been an important part of minimum wage determination since that time. This is developed in a latter part of this paper.

Yet a further important outcome arising from the manner in which the 'fair and reasonable' wage was determined was that it constituted not only a minimum wage, in the sense that no lower wage could be prescribed under federal awards, but also that it provided the foundation wage. As the Court came to insert the Harvester decision into all wage rates, it also adopted the precedent established in the Harvester Case of adding 'margins' for skill. This margin maintained the relativity which operated between unskilled and

skilled workers before the former rates were adjusted. The Harvester ratio of 7:10 (where the former was the daily rate for unskilled, the latter for skilled) was a benchmark which was approximated by the Court in subsequent margins or secondary wage test cases. In addition to margins for skill the Court came to add other elements to the basic wage, including loadings for prosperity. The net effect was to dilute the 'needs' basis of the wage. Other allowances and supplements resulted in few workers not being paid above the basic wage. By 1949 one member of the Court referred to the basic wage as 'a *rar avis*, an almost extinct species' (68 CAR 799). The Court's successor, the Australian Conciliation and Arbitration Commission, removed the foundation nexus when it introduced the minimum wage in 1966 and abolished the basic wage the following year.

Another element of the Harvester decision was its concern for capacity to pay. Though Higgins, in his book *A New Province for Law and Order*, bestowed upon the basic wage a needs mystique, the judgement of 1907 suggests that whatever role Higgins ascribed to needs, it was only one criterion used, and perhaps not the primary one. Higgins was also interested in maintaining established relativities, as was instanced by the Harvester ratio. Not surprisingly, in view of the massive wage increases prescribed, he was also interested in the capacity of employers to pay. His method of determining this was no more reasonable, by modern day standards, than his method of determining the cost of living. He took a selective range of public and local government employers and on the basis of their rates determined that his were affordable:

> Then, on looking at the rates ruling elsewhere, I find that the public bodies which do not aim at profit, but which are responsible to electors or others for economy, very generally pay 7s. The Metropolitan Board has 7s. for a minimum; the Melbourne City Council also. Of seventeen municipal councils in Victoria, thirteen pay 7s. as a minimum; and only two pay a man so low as 6s. 6d. The Woodworkers' Wages Board, 24th July, 1907, fixed 7s. In the agreement made in Adelaide between employers and employees, in this very industry, the minimum is 7s. 6d. On the other hand, the rate in the Victorian Railway workshops is 6s. 6d. But the Victorian Railways Commissioners do, I presume, aim at a profit; and as we were told in the evidence, the officials keep their fingers on the pulse of external labour conditions, and endeavour to pay not more than the external trade minimum.

Though not acknowledged by Higgins, it may be noted that earlier in the same year Heydon J. of the New South Wales Industrial Arbitration Court, provided for a 'living wage' of seven shillings per day. Higgins' misgivings as to the capacity of industry to afford his rates may well have been the

reason why he never indexed his basic wage, notwithstanding his passionate assertion of its needs base and its irreducible sacrosanctity. Clearly he did not mean by the latter the irreducible sacrosanctity of the **real** basic wage. To 1913 Higgins may have claimed an inability to adjust the basic wage to reflect cost of living because of the lack of any price index. Even when the Commonwealth Bureau of Census and Statistics produced a number of price series, however, Higgins chose to maintain control over adjustments rather than allow for any system of automatic adjustments. This approach may have been influenced by the advent of an inflationary war shortly after the introduction of the A Series Retail Price Index. It was not until 1921, the year in which Higgins' second term of office as President came to an end, that his successor (Powers J.) introduced a system of automatic quarterly cost-of-living adjustments. This necessarily sharpened the possible conflicts between needs and capacity to pay, as became evident a decade later when Australia was in the grips of the Great Depression.

The development of the basic wage after 1921 provides a useful index of changing social norms, the growing national basis of the economy and changed economic and political imperatives. These developments also provide useful insights into the operation of a modern-day system of minimum wage determination. These developments are canvassed in a thematic rather than chronological way.

## 4. Bifurcation

As indicated, the system developed whereby the minimum or basic wage was treated as a foundation wage to which margins for skill, allowances of various sorts and other additional amounts were added. For each award classification, the aggregation of each of the wage components (the award wage) constituted the minimum wage for that classification. Thus, while there was a common minimum foundation wage, this constituted **the** minimum wage only for those not receiving any additional award payments. In time few, if any, award employees did not receive some payment above the basic wage. Thus the basic wage, and the state equivalents which were usually termed the 'living wage', provided a poor index of what minimum wages had to be paid or what was the lowest wage rate.

A difficulty with the bifurcated wages system and with variation of each component by national test cases (in the case of the basic wage from 1920 on, in the case of the margins increasingly from 1949) was that each component was determined on similar national economic considerations. Following the removal of automatic quarterly cost-of-living adjustments in 1953, the basic wage was adjusted with an eye to national economic capacity

to pay. The margins for skill (based on Metal Trades Margins Cases) were adjusted on similar criteria. There was the capacity for both the basic wage and margins to adjust to price changes, changes in the capacity to pay and changes in economic policies and settings. There was the capacity of the basic wage to be adjusted to restore changes in relativities with the secondary wage. Conversely there was the potential for claims for adjustment of the secondary wage so as to restore relativities with the basic wage. These factors led to employers arguing for the abolition of the bifurcated system from 1959 on. By 1966 they had convinced the Commission of their case and in that year the Minimum Wage was introduced. The following year the basic wage was abolished.

Unlike the basic wage the Minimum Wage is not a foundation wage. It represents the minimum wage which may be paid to federal award employees, irrespective of award rates. Any award employee whose rates do not sum to the minimum wage must be paid the latter. An adjustment to the minimum wage does not result in increased pay for those paid above the minimum wage.

To reduce the potential of Minimum Wage adjustments pushing up wages generally, the Commission has come to insist on the insertion into awards of provisions along the following lines:

> The purpose of fixing a minimum wage is to ensure to each adult the stated minimum wage for a week's work performed in ordinary hours. Its fixation at the prescribed amount does not give reason for any change in rates of pay in this award (149 CAR 83).

Though the minimum wage is no longer a foundation wage, an element of ambiguity concerning the term persists. Any award rate continues to provide the minimum wage for the occupation concerned. This theme is developed below which canvasses recent developments in the federal Minimum Wage.

## 5. The Family Unit

As noted, the Harvester wage was determined on the basis of family needs. This naturally invited examination of what constituted the average family size. Employers early claimed that they were paying for some 'two million mythical children'. For good measure they further claimed that they were paying for '450,000 mythical wives'. (Campbell 1929: 12). Unmarried men, or married men without children were paid as if they had three children. On the other hand those with more than three children received no additional income. As the Royal Commission on Child Endowment (1929) noted: 'the

distribution is so unequal that while provision is made for many non-existent children, many children are inadequately provided for' (p. 62).

While the federal court provided for a family of five, as did the Arbitration Courts of Queensland and South Australia, in Western Australia the Arbitration Court provided for a family of four. The last measure was also used by the New South Wales Court until 1927 when the size of the family unit for wage determination purposes was reduced following the introduction of child endowment.

Following the Royal Commission, established in 1919 to review the Basic Wage, Piddington, its Chair (and whose recommendations were dismissed by the Arbitration Court) published the case for child endowment in his tract *The Next Step*. This he saw as the way of providing for those families with more than the three children. Higgins agreed with this view. In discussing the work of the Basic Wage Royal Commission he contended:

> As matters now stand, I must follow the old lines until some course better has been devised. If some scheme for child endowment should be adopted ... the basic wage payable by the employer could be reduced to meet the mere needs of the man, or the man and his wife; but in the meantime I must adhere to the practice of including some rough provision for children in fixing the basic wage. (15 CAR 301)

The problems as to the actual number of children per average family, and the problem of providing for families with over the average, was elucidated by Detheridge C.J. and Drake-Brockman J. at the 1934 Basic Wage Inquiry. They noted that while Higgins' basic wage was based on a 'labourer's home of about five persons', subsequent statistics suggested that the average household of the labourer was 'much smaller than had been supposed ... It may be now taken as established that for married male earners, the average number of dependent children is about 1.8, and that if all adult male wage-earners both married and single are brought into account, the proportion of dependent children is only about one to each such wage-earner'. After noting that the system advantaged some and disadvantaged others, they indicated only one way around the problem:

> All competent authorities are agreed upon this point. If it is desired to provide the same standard of living for households of all sizes – the same standard for a family of man, wife and three to six children as for the unencumbered bachelor wage-earner – the object cannot be achieved by this Court. Some system of family or child endowment would have to be established by competent legislative authority. (33 CAR 147)

The Holman Government introduced a child endowment Bill into the New South Wales Parliament in 1919. This was motivated in part by the

Government's commitment to the principle of endowment, and in part to reduce what was expected to be a heavy increase in the living wage for government enterprises such as railways and tramways. The Bill met opposition from unions and employers and was defeated on the third reading (Royal Commission 1929: 29). A Bill for family allowances introduced by the Dooley (Labor) Government was defeated by the Legislative Council in 1921.

In 1926 New Zealand introduced a system of child endowment. The following year the Lang Government was successful in having the *Family Endowment Act* pass through both Houses of Parliament. This provided for the payment to the mother of five shillings per week for each dependent children under the age of fourteen. The *Industrial Arbitration Act* was amended to provide for the Living Wage to be determined on the basis of a man and his wife. When the 1929 amendments to the Act removed endowment for the first child, the Industrial Commission determined the Living Wage on the basis of a family unit consisting of a man, his wife and one child (*Commonwealth Year Book* 1935: 383).

The Commonwealth Government established a Royal Commission to report on Child Endowment in 1928. It recommended against any such system, in part because of the suspect constitutional power of the Commonwealth, in part because of the majority view that 'both the federal system of arbitration and the State systems the employer does now finance Motherhood Endowment, but the fact is camouflaged' (Royal Commission 1929: 63). They arrived at this view after noting that the basic and living wages were all determined on the basis of family needs. In the event of the Commonwealth establishing a system of child endowment they recommended removing any child needs in the basic wage: 'we have reached the conclusion that if Child Endowment be established the most suitable family unit to be adopted in determining the basic wage is man and wife' (ibid).

The first Commonwealth sortie into child endowment was in respect to its own employees following the report of the Basic Wage Royal Commission. In December 1920, regulations issued under the *Public Service Act* provided for each married officer in the service whose salary did not exceed 300 pounds per year, a sum of 13 pounds per year in respect of each dependent child under the age of 14. The payment was reduced by one pound for every 16 pounds by which the salary exceeded 300 pounds. This limit was increased to 500 pounds in 1921.

The effects of this system of child endowment on basic wage fixation was described by the Public Service Arbitrator (Mr M.A. Hunt) to the Royal Commission on Child Endowment:

I had then to consider the fixation of the basic wage. I took the Harvester Wage as defined in 1907, and brought to up-to-date by the application of the Statistician's index numbers. That gave the result of 205 pounds 8 shillings. I discussed the position as follows:

> What is the basic wage intended to cover? It was originally stated that it was intended to provide for a household of about five persons. Neither inside nor outside the Service is the average family three children, and it would be more correct to say that nowadays the basic wage is intended to cover the requirements of the average household ... Under the system which I am asking Parliament to endorse, it is proposed that a separate payment shall be made for children, and it would, therefore, be unjust to include any payment for children in the basic wage on which to calculate service rates of pay.
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> Now the question is what amount should be deducted from the basic wage to get such a fair sum as will provide a definite foundation on which to build up a scheme of salaries for the Services? ... On the whole it may be taken that 0.84 fairly represents the proportion of children per adult male in the Service. ... 0.84 of 13 pounds is 10 pounds and 18 shillings, and deducting that from the 205 pounds 8 shillings gives 194 pounds 10 shillings, say for the purposes of convenience, 195 pounds, as a first foundation on which to build.
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> Salaries were then fixed with 195 pounds per annum as the basic wage in the Public Service' (Royal Commission, 1929: 32-33).

The Arbitration Court continued to call for a system of child endowment. At the 1940 Basic Wage Inquiry the Chief Judge noted:

> I was impressed by the new evidence and argument as to the inadequacy of the earnings of the lower-paid earners with families. On our accepted standards of living, looking at it from the needs point of view only, I regard the present basic wage as adequate for a family unit of three persons, but think it offers only a meagre existence for a family unit of four. When that unit gets beyond four hardship is often experienced. (44 CAR 38)

The judge suggested the need for child endowment to reduce this problem.

Following its acquisition of constitutional powers in the area of social security, the Commonwealth introduced a system of generalised child endowment in 1941. The system has undertaken a number of changes over time and is now referred to as the Family Allowance. Following the establishment of this system both the New South Wales and the Commonwealth Public Service schemes were terminated.

The Arbitration Court quickly accepted this new situation. In 1949, after canvassing the inherent difficulties attached to trying to provide a family basic wage when family sizes differed, Kelly C.J. noted that that was no longer a problem for the Court. 'Today,' he claimed, 'the situation in which the Court finds itself is different. So far as provision of an accepted or socially acceptable minimum standard of needs of a man, his wife and one or more dependent child or children is concerned the basic wage, like all other wages, is supplemented by the payment to him of child endowment' (68 CAR 773).

Though, as noted below, the Commission persisted with a family-based Minimum Wage following the abandonment of the basic wage, by 1974 it was asserting that the Commission was 'an industrial arbitration tribunal, not a social welfare agency. We believe that the care of family needs is principally a task for governments' (157 CAR 299).

## 6. The Female Minimum Wage

A natural corollary of the family basic wage was consideration as to who constituted the principal means of support for the family. As noted, the Court differentiated between male and female basic wage rates on this basis. The female rate was determined at 54 per cent of the male rate on the grounds that females had only to provide for themselves and not for their families.

The first time the Court was called upon to determine female wages was in the Rural Workers' Case of 1912. In that case Higgins J. enunciated three principles which conditioned female wage determination for decades to follow. The first was that females undertaking male work (for example blacksmiths) should be paid the same rates as males. The second was that females undertaking (unskilled) 'female work' (for example fruit packing) should be paid a female rate which, unlike the male unskilled rate, would not be determined on the basis of family considerations. The third principle was that where men and women were in competition (fruit picking) the male rate would apply (6 CAR 60-83).

In the Rural Workers' Case Higgins J. determined the female Basic Wage at 9 pence per hour. This was 75 per cent of the male rate of one shilling per hour. Higgins indicated that this was a 'tentative' determination, since there was not sufficient evidence for a conclusive determination. In the Theatrical and Amusement Case (1917) Higgins was again called upon to determine the living wage for females. In this, without giving adequate reasoning as to how it arrived at his figure, he awarded a female Basic Wage which was only 54 per cent of the male rate. Higgins noted:

> Before proceeding, I think it only right to mention that this Court has, since 1912, laid it down that women and men should be paid equal wages if women are employed to do a man's work – or where the work done by a woman is of as great a value as the man's work. It is only where the work in question is woman's work – suitable work for women – that the Court awards what it considers the value of the work as woman's work; or if the value is less than a living wage for a woman then it allows a living wage for a woman for a week's work.
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> This Court allows to men a living wage based on the assumption that the average man has to keep a wife and family of three children whatever the value of the work he does may be.
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> The Court allows a living wage to a woman as a single woman. The single man often gets more than his work is worth, but if single men are paid less than married men the cheaper labour would be employed and they could not make the necessary provision for marriage. Young women in some cases living at home may be able to live on less than £1 15s., but I find they always contribute to the home expenses if the wage they receive allows it. They certainly should do so, and ought to receive as adults sufficient to enable them to contribute. (11 CAR 145)

The ratio established in this case persisted until the 1940s. A more systematic approach to determining the needs of females was undertaken in the (1919) Federated Clothing Trades Case. This case, in many ways, replicated the Harvester Case which determined the male Basic Wage. It confirmed the ratio of 54 per cent established in the earlier case (13 CAR 699).

Writing in 1943, the Court indicated that to that time little had changed in the general procedure adopted towards female basic wage determination:

> It is beyond question that the general rule adopted and followed by the Australian industrial authorities in the assessment of wages for adult women workers, engaged upon work suitable for women in which they cannot fairly be said to be in competition with men for employment, has been and still is to fix a foundational amount, calculated with reference to the needs of a single woman who has to pay for her board and lodging, has to maintain herself out of her earnings, but has no dependants to support; and to add to this foundational or basic amount such marginal amounts as may be appropriate in recognition of the particular skill or experience of the particular workers in question or as compensation for the particular conditions which they encounter in their occupations. (50 CAR 211)

World War II resulted in greater numbers of females entering the workforce and in an increased range of work undertaken by females. During

this time the defence industry became a major factor in women's wage determination. As part of the government's aim to attract more women into work, as well as to assuage union fears that females would not replace male workers, the Women's Employment Board was required to establish female wages at between 75 per cent and 100 per cent of the male rate. When this Board was removed, the National Security (Female Minimum Rates) determined that female rates in the specified defence industries could not be any lower than 75 per cent of the equivalent male rates.

The Commonwealth Court of Conciliation and Arbitration resumed control over female wage determination with the demise of the Women's Employment Board and the removal of war-time Regulations. The influence of the war-time experience, however, was to prove long-lasting. In the 1949-50 Basic Wage Inquiry the Court considered its approach to female Basic Wage determination. Kelly C.J. considered that the Court should revert to the 54 per cent ratio, arguing that though the male basic wage was now determined on a capacity to pay rather than needs basis, it continued to be based on the assumption of the male as a bread winner. He maintained that the awarding of higher female wages necessarily reduced the Court's capacity to increase the family basic wage:

> In my judgement, no sufficient ground has been presented for departing from what has hitherto been regarded as the proper basis of assessment of the basic wage element in the wages of adult female employees; namely, that in the absence of specific evidence relating both to the appropriate 'just and reasonable' standard of, and to the cost thereof to, the adult female employee whose work or industry includes or involves no circumstance warranting any specific item or allowance in the computation of her minimum payment, her basic wage should be not be outside of the region of 54 per cent of the basic wage determined for the adult male. (50 CAR 784)

Kelly, however, found himself in the minority. The other two members of the Bench argued for the extension and retention of the 75 per cent ratio. Foster J. argued that this would merely institutionalise what employers were already doing in a tight labour market. The majority view not only prevailed but established a new approach to female wage determination – no longer was the female basic wage based primarily upon foundational (or needs) considerations but more so upon capacity to pay considerations. Such an approach to both male and female wage determination reduced the rationale for wage discrimination on the basis of sex.

As indicated in the Rural Workers' Case, the approach taken by the Court to female secondary wage determination was different. The tribunal could claim that there was no dispute between employers and unions that 'persons

performing the same work should be paid the same margins for skill irrespective of sex'. The value of the work, rather than preserving male jobs, was the primary consideration (118 CAR 286).

The payment of equal margins meant that any discrimination in (award) wage determination was primarily the result of the discrimination in the foundation or Basic Wage. In 1967 the Commission abolished the Basic Wage and adopted the Total Wage. The Total Wage was not determined on the basis of needs, but rather with a view to economic capacity to pay. This factor reduced the social desirability of maintaining the sexual differences in wages which had been incorporated into the Total Wage. In 1969 the ACTU mounted a successful campaign for 'equal pay for equal work'. Despite the success of this case, it is estimated that only about 18 per cent of females were advantaged by the Commission's judgement and received equal pay (147 CAR 177). In 1972 unions mounted a second successful test case on the basis of 'equal pay for work of equal value' (147 CAR 172-181).

As part of the adoption of the Total Wage in 1967 the Commission instituted the Minimum Wage. No worker employed under conditions determined by a federal award could be paid less than the Minimum Wage, notwithstanding any award prescriptions to the contrary. The Minimum Wage (largely at union behest) continued to be influenced by family considerations and for this reason the male Minimum Wage was higher than that of females. Efforts, in the 1972 National Wage and Equal Pay Case, to change the Commission's approach were not successful. The Commission claimed:

> With regard to the claim that adult females be paid the same minimum wage as adult males, all we can say is that ever since the minimum wage has been the subject of debate it has been presented by the unions and considered by the Commission as including a family component. The material used by the unions in the various claims over the years for special increases to the minimum wage has principally been directed to family problems ... However, the unions now argue as a simple matter of equity that females should receive the same minimum wage as males. We reject that argument because the male minimum wage in our award takes account of the family considerations we have mentioned. The fact that the unions consider the amount of the minimum wage to be too low does not affect the concept behind the wage. Because of the essential characteristic of the male minimum wage we decline to apply it to females and we dismiss that part of the unions' claims. (147 CAR 176)

The Commission did not persist with this approach for much longer. 'We believe,' the National Wage Full Bench wrote in 1974, 'that a strong case

has been made for acceding to the claim for equal treatment of adult male and female workers in respect to the minimum wage' (157 CAR 299).

The principles of equal pay have resulted in equal award rates in those instances where men and women are doing the same work, or in those cases where women are doing work which can be proven to be of equal value to comparable work undertaken by men. In some predominantly female occupations which have not historically had male counterparts (for example nursing) it has been claimed that the work in question has not been properly valued for wage purposes, and that the existing wage rates perpetuate a historical gender bias. This consideration gave rise to the unsuccessful Comparable Worth Case of 1986 in which unions sought a revaluation of nurses' pay, and by implication the re-evaluation of classifications in predominantly female occupations.

## 7. Needs and Capacity to Pay

As noted, though the 'needs' criterion featured in the Harvester Case, Higgins did not ignore the possible economic effects of his decision. His reference to what he termed 'reputable employers' reassured him that the wage he had established was within economic capacity to pay. Having established the Harvester Standard, Higgins did not ensure that its real value was maintained. Had 'needs' been the paramount consideration, the maintenance of the *real* basic wage would have received greater attention. It was not until 1921 that Powers J. indexed the basic wage. He added three shillings (the 'Powers 3/-') to compensate workers for the loss in purchasing power due to adjustment lags. Nevertheless, the basic wage continued to be regarded and to be promulgated as a 'living wage without any specific regard to the capacity of the economy in general to bear any particular [wage] level':

> Speaking generally, until 1921 the change in the cost of living was taken into account by the Court on occasions when it was called upon in connection with particular disputes to fix minimum wages. The practice of the Court was not, however, uniform. In some cases it purported to preserve the Harvester Standard by basing the rate upon the last published quarterly retail price index number; in these cases the average of the quarterly index number for the preceding twelve months was taken for the purpose of calculating the nominal equivalent of the 'Harvester' wage; and in other the last completed calendar year was used. (77 CAR 489)

Following the Great Depression, in which the Court felt compelled to reduce real wages by 10 per cent, the capacity to pay principle was given even more emphasis. In 1934 the Court noted:

> Whatever family unit is adopted by a wage-fixing body, the power of that body to endow that unit with any desired standard of living depends on the productive capacity of the economy as a whole ... This suggests, that the adoption of a family unit is not necessary, and what should be sought is the independent ascertainment and prescription of the highest basic wage that can be sustained by the total of industry in all its primary, secondary and ancillary forms. (33 CAR 149)

Subsequent basic wage decisions re-affirmed the paramount place of the capacity concept. Thus, in 1937, the Court noted that the basic wage 'is no longer related to the Harvester wage of 1907 with or without the 'Powers 3s' but is assessed at the highest amount which the Court thought could be safely prescribed' (37 CAR 583). Because of the prevailing economic prosperity the Court awarded a 'prosperity loading' ranging from four to six shillings per week.

However, while the capacity to pay criterion dominated the Court's judgements in the aftermath of the Depression, the concept of a 'living wage' was not lost sight of:

> Nevertheless, and notwithstanding what has been said about the dominant factor or principle recognised, adopted or followed by the Court since 1931, it must not be thought that in this matter of basis or minimum wage assessment the Court had decided to exclude altogether from its mind the purchasing power of the wage in relation to reasonable expenditure which even a typical unskilled and lowest paid worker must incur to fulfil his own needs and that of his family. For instance, if the situation were shown to be such that a drastic reduction of wages costs was unavoidable, ... justice and reasonableness might require part of the whole of the reduction to be effected to the end of preserving at all costs a frugal standard of living to the basic wage-earner in the field of secondary wages, overtime, 'penalty' and other special rates. The purchasing power of the basic wage is, in our opinion, a consideration to be borne in mind, no matter that its examination from time to time is conducted in the light of the capacity of the community to pay. (77 CAR 496)

Notwithstanding the Court's continual insistence upon the capacity to pay principle, the automatic adjustment of the basic wage to variations in the retail price index provided a mechanism which buttressed a 'needs' view, namely that basic wage determination related to maintaining the purchasing power of that wage. The logical corollary of the capacity to pay

principle was that basic wage adjustments on account of one economic index had little merit and would, sooner or later, be challenged. There was no guarantee that the basic wage produced by means of automatic quarterly adjustments was one which the economy could sustain. This problem became acute in the wool boom resulting from the Korean War. Large price rises associated with the export trade in wool did little to increase the capacity of domestic producers to pay increased wages without themselves raising prices. An inflation rate of 20 per cent per year in the year ending June 1952 panicked the Court into dropping quarterly cost of living adjustments in 1953. Having done so, the Court was forced to seek some alternative mechanism for basic wage adjustments.

At the Basic Wage and Standard Hours Inquiry of 1952-53 the Court acceded to the employers' request that automatic quarterly cost of living adjustments be discontinued. The Court reviewed the history of the basic wage, claiming that since 1931, at least, capacity to pay had been the dominant principle invoked in determining the 'foundation wage'. This being the case, the Court saw little reason for continuing the existing system:

> The Court finds it impossible to justify the continuance of an 'automatic' adjustment system ... There is no ground for assuming that capacity to pay will be maintained at the same level or that it will rise or fall coincidentally with the purchasing power of money. In other words, the principle or basis of assessment having been economic capacity at the time of assessment, it seems to the Court together inappropriate to assume that the economy will continue at all times thereafter to be able to bear the equivalent of that wage, whatever may be its money terms. (77 CAR 496)

The Court offered other reasons for abandoning quarterly cost of living adjustments. It contended that the combined result of changes to the basic wage rate in 1937, 1946 and 1950 had resulted in a basic wage 'considerably higher than that afforded by the former "needs" wage or the equivalent of the "Harvester Standard"' (ibid). Further, the Court argued that the automatic adjustments had 'undoubtedly been an accelerating factor in the rapid increase in prices which had afflicted Australia'.

Despite this move away from indexation adjustments, the Court (after 1956 the Commission) returned to using price indexes as the rationale, in part or in whole, for wage adjustments. After 1967 such adjustments affected the total wage rather than merely the basic wage. In 1960 the Commission adopted the 'prices plus productivity' formula. This involved annual reviews in which wages would be adjusted to prices unless those seeking to oppose such adjustments could persuade the Commission otherwise, and periodic adjustments to reflect productivity. In a growing econ-

omy, this formula was a blend of needs and capacity. Indexation accounted for the first, productivity had become a surrogate for the second.

The prices plus productivity formula was enshrined in the indexation principles which operated between 1975 and 1981, and again from 1983 to 1987. Just as major external shocks had previously caused a reduction in the basic wage in 1931 and the abandonment of quarterly adjustments in 1953, so too in 1987 international pressures on an increasingly open Australian economy led to indexation being removed.

## 8. Price and Productivity Measures

There have been two primary considerations in basic wage fixation: determining the basic wage level, and determining any adjustment mechanism to that wage level.

The manner in which the Harvester Standard was determined was described in an earlier part of this paper. This standard was adopted by the Court when making new awards. As awards came up for renewal the basic wage was frequently, though by no means uniformly, adjusted to take account of cost of living changes. To 1913 there was no appropriate measure and Higgins placed on unions the onerous responsibility for proving the rate of change. After 1913 the A Series Retail Price Index became the measure of adjustment.

In 1921 Powers J. introduced the system of quarterly automatic cost-of-living adjustments. The index then used was continued to be the A Series Retail Price Index. During the 1930s, however, the Court used a number of differing indexes. The 'D' Series Price Index adopted in 1933 and the 'C' Series Price Index in the following year. In 1937 the Court switched to special 'Court' Series based upon the relationship between wages and index number which had operated in 1934. In 1947 the Court adopted the Court Index (Second Series). A third Court Series was introduced in 1950. These Court Series represented adjustments in the index base in relation to the underlying C Series Price Index. This index was abolished for wage purposes in 1961 when the Consumer Price Index was adopted. Initially based on the cost of living in different locations, during the 1960s a common wage was prescribed. This was initially adjusted in relation to the Six Capital Cities CPI. It has since been replaced by the Eight Capital Cities CPI to reflect the changed political status of the Northern Territory and the ACT.

Though wage indexation, in one form or another, has been an important part of wage determination other adjustment mechanisms have also been employed. In particular, the Court and Commission have sought an index

which would approximate capacity to pay rather than reflect costs of living. This has not been an easy search.

The first departure from the notion of an irreducible needs basic wage was in 1931. At that time wages were reduced by 10 per cent. That figure appears to have been based on evidence submitted that the purchasing power of the Australian pound had fallen by 10 per cent compared with that of Britain, our major trading partner at the time. The wage reduction thus sought to replicate the loss in national purchasing power. Other ad hoc capacity to pay measures were also employed until 1953. 'Prosperity loadings' were added to the basic wage in 1937 and 1950. These loadings seem to have been determined by crude guess-work, in the former case the Court claiming that the basic wage should be 'assessed at the highest amount which the Court thought could be safely prescribed at the time (37 CAR 585).

The abandonment of quarterly cost of living adjustments called for a less ad hoc approach to measuring capacity to pay. This was not an easy task. As the Court noted in the 1934 Basic Wage Case, 'there is no clear means of measuring the general wage-paying capacity of the total industry of a country. All that can be done is to approximate' (33 CAR 156). During the long period of growth following the Depression, the Court appeared to assume that in an economy whose production was increasing price changes were a reasonable indication of capacity to pay and therefore that indexation, supplemented by prosperity loadings, was not inappropriate. Following the 1953 rejection of price index changes as a useful measure of capacity to pay, the Court was forced to look for some other measure. The 1953 decision introduced a system of wage adjustments based upon seven indicators which supposedly enabled the Court to evaluate the economy's capacity to pay. The measures were employment, investment, production and productivity, overseas trade, overseas balance, competitive position of secondary industry and retail price indicators.

This seven economic indicators system, while seeming to have economic merit, did little to make the tribunal's assessment anything but a hazy, subjective process. Accurate measures for some indicators were difficult to find and there was an obvious inter-relationship between others. Short and long term indicator trends gave conflicting prescriptions. Further, the Commission had little guidance as to how to weigh the various indicators, particularly when different indicators showed contrary movements. Even when all indicators showed positive signs, the Commission was inhibited by the inflationary potential of its decisions (84 CAR 161). Basic wage fixation had, to a large extent, become an ill-defined, value-laden system of wage adjustments based on variables remote from the experience of work-

ers. Little of the guess-work was taken out of the process by the introduction, in 1956, of a system of annual reviews:

> Just as any enterprise can only have its capacity assessed over a period of time and not by fits and starts according to the success or failure of a day's or a weeks' trading, so Australia as a trading nation can only have its capacity so assessed. A year has been found almost universally to be a sensible and practical period of time. (97 CAR 387)

The search for a more tangible formula which would maintain the real value of the basic wage, keep that wage within bounds of economic capacity and reduce the amount of guess-work, resulted in the adoption of a price index and productivity adjustment approach in 1961. In the search for some measure which would encapsulate the seven economic indicators, productivity became, in effect, a surrogate for capacity to pay. This approach seemed to offer some promise of establishing the highest basic wage compatible with economic capacity while also offering some protection against inflation. In simple terms the premise underlying the productivity geared wage mechanisms was that wage increases in themselves did not lead to inflation. Wage increases became inflationary only to the extent that their rate of increase exceeded that of national output. If wage increases could be maintained within the bounds of national productivity economic stability was not endangered.

The 1961 approach resulted in annual reviews to take account of changes in the Consumer Price Index. Though automatic wage adjustments were provided for, the basic wage was to be adjusted to the index 'unless the Commission was persuaded to the contrary by those seeking to oppose the change' (97 CAR 387). These same sentiments were subsequently written into the wage indexation guidelines which operated from 1975 to 1981. In a fully employed economy the Commission was reverting to an assumption which its predecessor had denounced in 1953, namely that changes in the price index adequately reflected changes in capacity to pay. In addition, the Commission had neatly passed on to employers the onus for showing that such a capacity did not exist. The about turn, form post 1953 practice, was justified by the confidence which the new Consumer Price Index inspired the Commission (97 CAR 391).

Less frequent test cases on account of productivity were to ensure that the basic wage, annually adjusted to price increases, was set at the highest level which the economy could afford. Much earlier, the former Court had indicated both the logic and the difficulties inherent in using productivity measures for minimum wage adjustments:

> If the principle of a general basic wage be accepted, then arises the question whether its amount is to be fixed according to the cost of living of a labourer's family or according to national productivity. Inasmuch as the source of all wages is the national productivity, and inasmuch as it is just that the share of the wage-earners as a whole should be proportionate to the national productivity for the time being, the latter proposition is theoretically the sounder. But its practical application is full of difficulty, and the working out of a feasible scheme, even if possible at all, would probably take years in normal times. In the present precarious condition of industry no such scheme could be successfully devised and applied. (33 CAR 147)

The 1961 resort to productivity measures vindicated this statement. All parties before the Commission agreed that the workers were entitled to a share in the fruits of productivity. The parties, however, devised separate productivity formulae suiting their own interests. Expert witnesses were of little use, they only demonstrated that any measure was approximate. 'Unfortunately', the Commission exclaimed, 'we cannot award approximate wage increases but have to make a decision as to actual amounts' (ibid, p. 389). The reason for periodic, rather than annual productivity reviews was that annual productivity measures, as well as being difficult to obtain, could give very misleading results (106 CAR 637). A productivity trend which would 'iron out' annual fluctuations and show average productivity growth over a period of a decade or so was wanted. One method of calculating such a trend was to take the Gross National Product for each year over the given period and deflate it by the price index. This figure was then divided by the total population, or the total number of civilian wage and salary earners. However, different results could be obtained from this formula, depending upon the base year chosen and the price index used as a deflator. If the base year chosen had been one of abnormally low production, productivity growth was overstated. Conversely, if the base year chosen was a boom year, productivity growth was understated. Of the practical price deflators then available, the 'C' Series Index or the CPI, the former gave a better result from the unions' viewpoint. That was the deflator they adopted. In addition, unions claimed that the most appropriate divisor in measuring productivity changes for wage and salary adjustment purposes was that civilian workforce whose wages and salaries were adjusted. That divisor improved the unions' case.

The significance of these 'manipulations' of the productivity trend formulae may be seen in the claims made on account of productivity at the 1961 Basic Wage Case. Using 1952-53 as their starting point, and the 'C' Series index as their deflator, the unions claimed that, between 1952-53 and

1959-60, national productivity had increased by a total of 19.5 per cent or 2.59 per cent per year, if the total population was taken into account. The use of the workforce divisor improved these figures: total productivity increased to 19.96 per cent or 2.64 per cent per year. Using 1949-50 as their starting point, the CPI as the deflator, and total population as the divisor, the employers demonstrated a total productivity increase of only 8.7 per cent or just over 1 per cent per year (97 CAR 392).

Despite the difficulties imposed by productivity measurements, provision for the adjustment of wages formed a part of recent indexation regimes (1975-1981, 1983-1986). The 1961 case remained a somewhat isolated case because productivity cases remained rare. The next case of any note was in 1986. Details of that case again serve to highlight the difficulties inherent in attempting to adjust wages on the basis of productivity indexes.

The wage principles introduced in September 1983, principles which restored a system of wage indexation, provided that 'Upon application ... the Commission will consider whether an increase in wages and salaries or changes in conditions of employment should be awarded on account of productivity' (Print F2900, p. 27). In June 1986 the Commission adjudicated upon an ACTU claim for wage increases in the order of four per cent on account of increased productivity. A major task for the Commission was 'to establish the size of productivity increase against which any labour cost increase may be offset'. The Commission added that 'the measurement of productivity growth relevant to the question before us is not straightforward and the submissions differ on certain elements involved in such measurement' (Print G3600, p.18).

Following the 1975 indexation principles which stated that 'Each year the Commission will consider what increase in total wage should be awarded on account of productivity' (Print C2200, p. 20) a Working Party on the Measurement of Labour Productivity published its report. This party consisted of senior officers of various Government Departments and of the Australian Bureau of Statistics. In the 1986 case the Commission referred extensively to this report. This noted, inter alia:

> The issues are complicated and the Working Party wishes to make it clear that nobody has yet been able to develop a fully satisfactory measure of productivity at the national level for wage fixation purposes ... There are various different concepts and measures of productivity and the selection of an appropriate one needs to be related to the purpose for which it is to be used. The approach adopted, therefore, has been to consider the appropriateness of the various measures of productivity in relation to their possible use in wage fixation.

The Working Party further noted that:

> The role of a productivity series as a guide to wage fixation is the limited one of indicating the scope of increase in real wages consistent with long term stability in overall income distribution between factors and without providing an additional source of price increases.

The Working Party concluded that the 'traditional measure (gross domestic product at constant prices per person employed) is deficient for purposes of wage fixation in several respects'. It canvassed a range of problems which were also addressed by the Commission in its judgement. These included whether the measure should cover the whole economy or just the market sector, the need for adjustments for changes in terms of trade, the need for adjustment for changes in hours worked, and the need for adjustments for change in the skill composition of the workforce. These, and other elements of dissension between the parties to the National Wage Case, were canvassed by the Commission in its judgement. The ACTU argued for productivity trend increases of 2.2 per cent, the Commonwealth measured these at 2.0 per cent, the Confederation of Australia Industry at 1.6 per cent and the Business Council of Australia at 1.4 per cent. The Commission noted that 'it is clear from the technical material presented to us that whatever trend figure is chosen as a measure of productivity which has occurred in the recent past, it cannot be applied mechanically to determine whether the imposition of additional labour costs can be sustained by the economy' (Print G3600, p. 21).

In dismissing the ACTU's claim that a 4.4 per cent increase in productivity was available for distribution (the trend for two years) the Commission noted that 'such an approach is conceptually and practically untenable as a basis for productivity distribution. It generates unwarranted expectations of an economically unviable catch-up'. The Commission claimed that the 'increase in productivity which has occurred since 1983, has gone to restoring the health of the economy mainly by allowing a recovery in profits to take place and by slowing down the rate of inflation'. The Commission went on to state that:

> Past productivity is relevant in so far as it provides the economic and distributional setting for the claim. However, the relevant productivity gains which to set off any further increased labour costs arising from benefits to wage and salary earners, is future productivity. The trend figures presented to us are no more than a guide as to what may be reasonably expected from productivity improvement in the near future. The determination on these trend figures, as the Working Party points out, is only a first step, and a judgement must be made as to how far

> allowance should be made for the fact that the future may not follow the same pattern as the past. (ibid.)

The above would suggest that in seeking wage increases on account of productivity, unions must contend not only with the hazards of attempting to measure past productivity, but also with anticipating future productivity and economic conditions. Perhaps not surprisingly, the inclusion of provisions for productivity increases in wage guidelines has not spurred unions into seeking wage increases under these provisions. The Commission, for its part, has been more prepared to accept employer submissions on the potential price suppression effects of productivity increases.

## 9. The Minimum Wage, Minimum Rates Awards, The Arbitrated Safety Net

As noted in a previous section, in 1967 the Commission abandoned the bifurcated wages system and replaced it with the total wage. Prior to the abandonment of the basic wage the Commission introduced the Minimum Wage. Unlike its successor, this wage was not a foundation wage but was designed to meet the circumstances of employees in the lowest classifications who are in receipt of award rates and no more' (115 CAR 102). Thus, the minimum wage merely provided the floor below which no wages could be paid for full time work. Where any award classification provided for a lower rate, the Minimum Wage was to be paid. Further, unlike the basic wage which it replaced, and which at some point had been determined on the basis of specific criteria, the Minimum Wage lacked such criteria, whether derived from statute or Commission principles. The closest the Commission came to determining criteria was in the 1971-72 National Wage Case when it noted:

> We agree to some extent with [the] argument that the minimum wage for adult males is a social wage concept and is merely the rate below which no adult male employee should be paid. (143 CAR 307)

For the most part, Minimum Wage determination became an ad hoc and inconsistent process. This arose, in part because of the lack of criteria to be employed, in part because of the lack of criteria resulting in a lack of evidence:

> We find it hard to see how future benches can continue to give special treatment in the absence of more information on the actual living standards of people on or near the minimum wage. (134 CAR 256)

In 1973 the Commission was asked to determine criteria for the minimum wage. The ACTU submitted that the Commission should 'implement a uniform level of minimum wage on alternative bases'. The first of these was 'current standards of needs for the average family unit of man, wife and two children'. The second alternative was 'updating some earlier fixation by the Commission with movements in average earnings so that the minimum wage reflects improvements enjoyed by the community in general (149 CAR 8). The Commission did not accede to the first approach and rejected the second. The problem of 'the appropriate criteria for the appropriate level for the minimum wage' (303 CAR 892) continued to bedevil the Commission.

The issue of whether or not the Minimum Wage was a family wage illustrates the Commission's inconsistent, ad hoc approach. It claimed that the 'first minimum wage was introduced in 1966, not as a family wage, but simply as a wage to adult males' (157 CAR 293). Despite this, until 1974 the Commission refused to award parity between male and female minimum wages because the former had a family component! By 1974 it had moved away from this view.

In 1975, when introducing indexation, the Commission claimed:

> In our view the Minimum Wage is a most important concept and we cannot accept the view of employers that it now has no place in the awards of the Commission. We see the minimum wage as a desirable floor below which the wage actually paid to any employee for ordinary time shall not fall ... The Minimum Wage does not appear to us to be less important for the reason that after June next it will equally apply to males and females whether or not they have a family to support. We believe that the community would expect us to make special efforts to ensure that those on low wages have special protection. (167 CAR 20)

These strong sentiments were not reflected in the numerous wage guidelines which operated in the subsequent decade and a half. The guidelines were silent on the matter of the Minimum Wage. In this case union peak organisations sought an adjustment of the minimum wage 'on the basis of 90 per cent of the most recent figure of the average federal award rate, a mathematical relationship which existed at the time the first Minimum Wage was fixed in 1966' (167 CAR 20).

As it had done in the previous national wage cases, the Commission rejected any concept of a mathematical formula for the purpose of fixing the Minimum Wage. It increased the minimum by $4 and provided that this wage would be indexed 'unless the Commission can be persuaded to the contrary'. The female minimum was set at 90 per cent of the male Minimum Wage until June 30, 1975 when it would move to parity. To ensure that the

Minimum Wage did not become a foundation wage the Commission added that 'the explanatory note signifying that the new Minimum Wages do not provide any reason for any change in award rates of pay which are below or above the appropriate Minimum Wage, will be retained in awards' (ibid.).

The minimum wage was adjusted in line with total wage movements during indexation. In the period of plateau and partial indexation (1976-1978) the more favourable treatment of lower income earners meant that with few exceptions, the Minimum Wage was fully adjusted for price increases.

At the Wage Principles Case 1978, which resulted in the Commission abandoning plateau indexation, consideration was given to the role, if any, of the Minimum Wage. Unions sought the retention of the concept and argued that 'it must be set at an amount to meet the reasonable needs determined from time to time in the light of standards generally accepted in a progressive community and the social aspirations of the Australian people'. They sought quarterly adjustments of the wage in line with the CPI together with annual reviews for productivity. Employers sought the deletion of the Minimum Wage 'because it had no basis or concept behind it'. They conceded that the Minimum Wage could continue 'provided it was adjusted only at the same rate as award wages generally and that this adjustment took place as a consequence of national wage decisions'. The Commission concluded that the minimum wage ought to be retained, that 'it would be subject to the same adjustment as award wages generally' (211 CAR 307).

This approach guided adjustments over the ensuing decade. In short, the Minimum Wage was adjusted, either by way of indexation or otherwise, in line with general wage adjustments, even when the CPI was discounted for wage adjustment purposes (Print E3410, p. 30). When, in 1981, the ACTU sought an increase in the Minimum Wage 'to reflect the work value round of between $8 and $9', the Commission reasserted that it had 'set itself against any precise mathematical relationship between the Minimum Wage and total wage [(subject] to the same adjustment as award wages generally' (254 CAR 384). At the national wage case restoring wage indexation (September 1983) the Commission noted that 'insufficient material was put in this case for use to give separate attention to the Minimum Wage' (29 CAR 49). In practice, the Minimum Wage continued to be adjusted in line with the total wage.

From 1986 on the centralised wages system became increasingly concerned with award restructuring and with the difficulties produced by the coexistence of minimum rates and paid rates awards. Developments to overcome these concerns paved the way for the mathematical relationship

unions had sought for the minimum wage, and in the process the replacement of this wage with concern for minimum award rates. The reduced emphasis on the Minimum Wage is indicated by the decision in the National Wage Case which reported in December 1986:

> The ACTU pressed strongly its proposal for the removal of the present prohibition on the granting of supplementary payments. We consider this method of addressing the situation of low wage earners might prove more efficacious than an updating of the minimum wage which has for all practical purposes proved ineffective, at least in recent years.
>
> This view is taken notwithstanding the submission of New South Wales, Western Australia, South Australia and Queensland seeking a more comprehensive review of the minimum wage in order to fulfil its original role. We do not consider that such a course is appropriate as a revised minimum wage may be treated as a base rate for the calculation of wage increases for workers who should not be so affected. There are also difficulties, expressed in decisions of the Commission, in determining appropriate criteria for an appropriate level for the minimum wage ... Consequently we are prepared to consider a principle providing for the inclusion of supplementary payments in federal awards. (303 CAR 982-93)

The mathematical relationship for determining minimum rates was accentuated with the introduction of the structural efficiency principles (August 1988) which necessitated unions co-operating 'positively in a fundamental review of awards' (Print H8200, p. 1). In that case the ACTU submitted that the Commission 'should approve in principle a national framework or 'blueprint' which would involve restructuring all awards of the Commission to provide 'consistent, coherent award structures' (ibid., p. 5). The ACTU submitted that such an approach could help obviate difficulties arising out of the co-existence of minimum and paid rates awards, reduce disputes over 'relativity leapfrogging' and would 'benefit those employees covered by minimum rates awards who have suffered from the inequities of the present system due to the level of their award rates and their lack of substantial overaward payments' (ibid). The Commission endorsed this approach. Minimum rates awards would be reviewed 'to ensure that classifications rates and supplementary payments in an award bear a proper relationship to classification rates and supplementary payments in other minimum rates awards'.

In the following National Wage Case unions pressed further for a national 'blueprint' which would involve restructuring all awards of the Commission to provide 'consistent, coherent award structures, based on training and skills acquired, and which bear clear and appropriate work

value relationships one to another' (Print H8200, p. 6). The ACTU had sought Commission endorsement for specific classification rates and supplementary payments as set out in Table 1:

**Table 1:** Minimum Notes and Supplementary Payments Requested by the ACTU, 1988

| *Classification* | *Minimum Rate* | *Supplementary Rate* | |
|---|---|---|---|
| Building Industry tradesperson | 356.30 | 50.70 | (100%)* |
| Metal industry tradesperson | 356.30 | 50.70 | (100%) |
| Metal industry worker (grade 4) | 341.90 | 48.80 | (95.9%) |
| Metal industry worker (grade 3) | 320.50 | 45.80 | (90.0%) |
| Metal industry worker (grade 2) | 302.90 | 43.10 | (85.0%) |
| Metal industry worker (grade 1) | 285.00 | 40.60 | (69.5%) |
| Storeperson | 325.50 | 46.50 | (94.4%) |
| Driver, 3-6 tonnes | 325.50 | 46.50 | (94.4%) |
| Filing Clerk | | | |
| - 1st Year | 337.00 | 28.00 | (89.7%) |
| - 2nd Year | 337.00 | 38.00 | (92.1%) |
| - 3rd Year | 337.00 | 48.00 | (94.6%) |
| General Clerk | | | |
| - 1st Year | 354.40 | 30.60 | (94.6%) |
| - 2nd Year | 354.40 | 40.60 | (97.0%) |
| - 3rd Year | 354.40 | 50.60 | (99.5%) |

* Proportion of tradespersons' rate

This schema sought to standardise the minimum award rates (and by implication the Minimum Wage for each classification). In this schema the Minimum Wage was effectively determined by the rate for the lowest award classification – in the above table the metal industry worker, grade 1. The schema was, in effect, a threefold comparative wage exercise. It sought to relate minimum rates awards to paid rates awards by way of the provision of supplementary payments. It sought to relate awards in one industry to those in others. It sought to relate wage rates within awards. Despite the fact that the Commission had repeatedly set its face against comparative wage justice claims over nearly two decades, it accepted the concept proposed by the ACTU.

The Commission accepted the proposed tradespersons' rate of $356.30 minimum rate and the $50.70 per week supplementary payment. Thus, the minimum rate for these workers was set at $407.00. In cases where overaward payments exceeded $50.70 no supplementary payments were to

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be made. In addition to accepting the tradespersons' rates, the Commission established a relativity band for minimum and supplementary payments for award classifications other than clerks. The relativity classifications shown in Table 2 were established:

**Table 2:** Relativities Established by the Commission in 1989

| | % of tradesperson rate |
|---|---|
| Metal industry worker, grade 4 | 90-93 |
| Metal industry worker, grade 3 | 84-88 |
| Metal industry worker, grade 2 | 78-82 |
| Metal industry worker, grade 1 | 72-76 |
| Storeman/packer | 88-92 |
| Driver, 3-6 tonnes | 88-92 |

In this approach the determination of any minimum wage was subsumed by the process of determining minimum rates. This gave rise to the Minimum Rates Adjustment Principle as indicated by the principles adopted in October 1991:

> 2. *Minimum rates adjustment*
> Minimum rates adjustments for minimum rates awards in accordance with the August 1989 and April 1991 National Wage Case decisions shall continue to be allowable and shall be in accordance with the following:
>
> (a) the appropriate adjustments in any award will be applied in no less than four instalments ...;
>
> (b) the second and subsequent instalments of these adjustments will not be automatic and an application to vary the relevant award will be necessary.
>
> (c) supplementary payments may be prescribed in the wage clauses of awards;
>
> (d) the award must contain a definition making it clear that a supplementary payment represents, in effect, a payment in lieu of equivalent overaward payments;
>
> (e) where the existing minimum classification rate in an award exceeds the minimum rate for that classification assessed in accordance with this decision, the excess amount is to be prescribed in a separate clause: the amount will not be subject to adjustment;

(f) acceptance of absorption of these adjustments to the extent of equivalent overaward payments is a prerequisite to their being applied in any award. (Print K0300)

The net effect of these developments has been to replicate, in part or in whole, the overaward components of paid rates awards in minimum rates awards. In the process, minimum rates may not have been adjusted while supplementary payments have been added to the wage package. The minimum rate, in effect, is constituted by the addition of the supplementary payment to the award wage rate. An outcome has been the provision of a mechanistic mathematical relationship between the tradespersons' rate and the lowest rate. Though in August 1989 the Commission prescribed the lowest ratio (that of metal industry worker grade 1) as falling within the band of 72 per cent to 76 per cent of the tradespersons rate, agreement in the metal industry has moved this ratio up to 78 per cent. This new ratio has become the benchmark for other industries.

National wage concern with structural efficiency has been augmented by a concern with enterprise bargaining. By 1993 the Commission could claim that there were 'three key parts' to its national wage strategy:

> There were and are, three key parts of that approach which we directed towards the achievement of a rational and equitable wage system based on accommodating both a national framework of minimum award rates and a primary focus on enterprise bargaining. The first was the determination of the structural efficiency principle .... The second was the minimum rates adjustment process under which classification rates and supplementary payments in a minimum rates award would bear a proper relationship ... to minimum rates and supplementary payments in other minimum rates awards. The reasons for introducing this process included the need to overcome wage instabilities in the system and the creation of a national framework of minimum award rates in order to protect employees, and particularly lower paid employees, as, and when, the community moved to a more flexible, decentralised wage system. ... The third was the introduction of the enterprise bargaining principle. (Print K9700, p.13-14).

Imbedded in this approach is concern that in providing for a more flexible award system based on enterprise bargaining, a system, which 'must, of its very nature, lead to differing outcomes' (ibid, p. 14) there was the need to provide a minimum set of award standards for bargaining purposes. The net outcome of this approach has been to subsume the minimum rates awards concept into that of the 'arbitrated safety net'. The Commission readily admitted this was not a risk-free approach: it was 'no easy task to evaluate the differing values of differing changes to arrange-

ments at enterprise level'. Further, there was the danger of wages being set by reference to 'comparative wage justice and maintenance of relativities'. These criteria, of course, were essential to its determination of that 'stable, coherent' national framework determining a common safety net approach in which 'classification rates and supplementary payments in an award bear a proper relationship to classification rates and supplementary payments in other minimum rates awards' (ibid., p. 21). The national benchmarks in this national framework of minimum award rates have been the metal and building tradespersons.

This approach, the Commission claimed, created a safety net: 'The implementation of the national framework of properly fixed minimum award rates (base rate and supplementary payment) ... effectively created a safety network of minimum award rates for employees across all industries'. The Commission claimed this to be 'an essential element in moving towards a decentralised system'. 'It follows,' the Commission added, 'that the safety network of minimum rates will require periodic review on the basis of a range of economic (including productivity, social and industrial factors) if they are to remain viable and equitable' (ibid., p. 21)

The first of the safety net reviews took place in October 1993. There the Commission awarded an increase of $8 in supplementary payments. The adjustment mechanism was not a simple one:

> This means for example that where, in accordance with the paid rates award principle, a paid rates award specifies the classification prescribed in the relevant minimum rates award on which the actual rate for the key classification in the paid rates award is based, the rate for that minimum rates award classification would be adjusted. However, whether that adjustment involved an increase in actual pay for employees covered by various classifications in that paid rates award would depend upon the effect of the absorption required by this decision. To the extent that existing paid rates awards do not contain a reference to the relevant minimum rates award classification/s then this should be addressed to ensure that the benefit, if any, of the safety net adjustment is not lost. (Print K9700, p. 24)

This cumbersome and complicated approach, containing as it did the distortion of new relativities, was simply explained: 'Our rationale in adjusting rates in this way is clear: the balancing of competing arguments has led us to find an approach which protects lower paid employees, maintains the integrity of the minimum award classification structure but which also does not detract from the trend towards enterprise agreements' (ibid). The Commission minimised the problems which might result from relativity distortions.

As argued by one state in the subsequent National Wage Case (September 1994) 'the payments constitute an awarding of across the board of increases which are the subject of later discounting by those who receive benefits under enterprise agreements or by some other salary movement means' (Print L5300, p. 6).

In this case the Commission decided 'to make two further $8 per week arbitrated safety net adjustments available' (ibid., 19). The determination provided that:

> A safety net adjustment at award level should specify a separate 'arbitrated safety net' amount for each classification in the award. Where the minimum rates adjustment process in an award has been completed, the Commission may consider an application for the base rate, supplementary payment and arbitrated safety net adjustment to be combined so that the award specifies only the total minimum rate for each classification. (ibid., p. 23).

The determination takes account of both previous and future developments: 'Our decision will ensure that employees covered by Federal awards will receive a minimum wage increase of $24 per week over a period of more than four and a half years from 1 November 1991 to July 1996' (ibid.). The Commission will meet to review wages at the latter date.

As already noted, the Accord Mark VIII has proposed the extension of the Safety Net Adjustments to 1999.

## 10. Conclusion

Australian industrial tribunals have sought the determination of a minimum wage regime which would be industrially acceptable, economically viable and administratively feasible. The conflicting pressures from these requirements have made both the concept and processes of minimum wage adjustment variable over time. Variability has also been the outcome of changed social norms as have ancillary government activities. Changes in social norms have been particularly influential in relation to female minimum wage rates; ancillary government activities have been influential in the consideration of family rates.

Finding the appropriate level of minimum wages has required an assessment of both needs and economic capacity. Neither of these concepts has been easy to define and has led to much fruitless searching for formulae. Apparently simply palliatives, such as productivity geared wages, have not provided a solution. Paradoxically, the tribunals desire to award the highest minimum wage which the economy could afford sowed the seeds of

destruction to the basic wage concept and the most readily identified minimum wage component of awards.

In its original form the minimum wage (the basic wage) was a foundation wage from which the total wage was derived. In more recent years the minimum wage has been derived, using mathematical ratios, from the tradespersons rates. In its most recent guise, that of the Arbitrated Safety Net and the Safety Net Adjustments, it has become a poorly defined concept lacking any clear criteria and being formulated as much as three years in advance. Such formulation is necessarily the result of guesswork which will invite further examination of the concept and rationale of minimum wage determination.

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*Note*: References in the text to Print such and such are to Australian Industrial Relations Comission, *Reasons for Decision*, various print numbers.

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