Federal Conciliation and Arbitration in Australia 1967-1981

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April 1984

A thesis submitted for the degree of Doctor of Philosophy of
The Australian National University

This thesis is a representation of my own original work, and contains no copy or paraphrase of material previously written by another person or authority except where due acknowledgement has been made.

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Acknowledgements

My greatest debt is to my supervisors, Jim Lally, John Merritt and Jerzy Zubrzycki. I owe particular thanks to Professor Zubrzycki, who undertook the supervision of my work under difficult circumstances.

A number of members of the Australian Conciliation and Arbitration Commission were very generous with their time. I was also assisted by discussions with Pat O'Malley, Garth Pilkinton, Marian Simms and Evan Willis, though they have no responsibility for any errors contained herein.

The Petherick Room of the Australian National Library provided excellent research facilities, and I would like to thank the library staff for their assistance. I am grateful to Barbara Hutchinson for typing much of the first draft, and to Chris Carstens and Gretchen Jones for facilitating the production of subsequent drafts.

Finally, I wish to thank my parents and Stephen Mugford, who in different ways have provided support and encouragement for my work over many years.

Abstract

This thesis examines major developments in the determination of wages and conditions by the Australian Conciliation and Arbitration Commission between 1967 and 1981. A theoretical framework based on contemporary Marxist theories of the state is used to analyse changes in the Commission's decision-making strategies. It is argued that the Commission's activities are limited by the conditions of existence of different policy forms. These limits are explained in terms of the contradictions encountered by state apparatuses in capitalist social formations. The major contradiction is derived from the conflict betweenthe reproduction of private accumulation and capitalist relations, and the maintenance of the legitimacy of existing political and economic relations.

The theoretical framework suggests that state apparatuses which are central to class struggle in capitalist social formations will be characterised by inconsistent, opportunistic policies. While seeking to pursue policies which maintain conditions favourable to capital accumulation, state apparatuses at times take actions in response to struggles between capital and labour or within classes which are injurious to one or more parties, who may seek remedies which contradict the original action.

It is argued that this theoretical framework provides considerable insight into the long term development of the Australian Conciliation and Arbitration Commission. Although the Commission pursued an overall policy of wage restraint, its high degree of internal autonomy allowed rapid escalation to occur in response to industrial action by key sectors of the subordinate classes. The Commission sought to maintain considerable

flexibility in order to deal with the incompatible demands made by trade unions, private employers and governments, and discouraged attempts to limit its options. It is shown that seeking to manage class conflict, the Commission is prepared to contravene its own decisions, and that when the Commission works within rigidly defined principles, its effectiveness is reduced.

A detailed analysis is made of both national and industry decisions in order to trace the development of policy through the different "tiers" of wage fixation. Special attention is given to the relationship between the Commission and the federal government, in order to demonstrate the operation of contradictions within the state. It is concluded that although the state seeks to manage class conflicts in order to maintain capitalist social relations, it does not invariably act in favour of capital in specific conflicts, and that inconsistent actions are a regular, normal aspect of state activities.

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Abbreviations

ACOA	Administrative and Clerical Officers' Association
ACSPA	Australian Council of Salaried and Professional Associations
ACTU	Australian Council of Trade Unions
AEU	Amalgamated Engineering Union
AFR	Australian Financial Review
AILR	Australian Industrial Law Review
ALLR	Australian Labour Law Reporter
ALP	Australian Labor Party
AMFSU	Amalgamated Metals, Foundry and Shipwrights' Union
AMWSU	Amalgamated Metal Workers' and Shipwrights' Union
AMWU	Amalgamated Metal Workers' Union
APEA	Association of Professional Engineers of Australia
APSA	Australian Public Service Association
APTU	Australian Postal and Telecommunications Union
ASE	Australasian Society of Engineers
ATEA	Australian Telecommunications Employees' Association
CAGEO	Council of Australian Government Employee Associations
CAI	Confederation of Australian Industry
CAR	Commonwealth Arbitration Reports
CLR	Commonwealth Law Reports
CPI	Consumer Price Index
CPSAR	Commonwealth Public Service Arbitration Reports
DLP	Democratic Labor Party
ETU	Electrical Trades Union
FEDFA	Federated Engine Drivers' and Firemen's Association
FIA	Federated Ironworkers' Association
IAS-CR	Industrial Arbitration Service- Current Review
IIB	Industrial Information Bulletin
IRB	Industrial Relations Bureau
L-NCP	Liberal-National Country Party
MTEA	Metal Trade Employers' Association
MTIA	Metal Trades Industry Association
NEIC	National Employers' Industrial Council
NEPC	National Employers' Policy Committee
NWC	National Wage Case
PJT	Prices Justification Tribunal
PSB	Public Service Board (Commonwealth)
SMH	Sydney Morning Herald
TWU	Transport Workers' Union
VCM	Victorian Chamber of Manufactures
VEF	Victorian Employers' Federation
WWF	Waterside Workers' Federation

Chapter 1: Introduction

The objective of this thesis is to provide an historical account of major developments in Australian conciliation and arbitration at the federal level between 1967 and 1981. The focus of the study is on the Australian Conciliation and Arbitration Commission, but it has been necessary to examine the activities of capitalists and their organizations, workers and trade unions, state officials and other branches of the state apparatuses, and politicians and governments. The theoretical framework which has been adopted is based on recent work within a broad Marxist framework.

The basic argument of this thesis is that the capitalist mode of production limits the actions that can be taken by the state apparatuses within it. The difficulty experienced by governments and state apparatuses in capitalist societies in establishing coherent and relatively long-lasting strategies and policies is an inherent problem generated by fundamental contradictions within capitalism itself. In seeking to manage the capitalist economy, key state

apparatuses are subjected to incompatible demands by powerful groups. This leads to a continual search for "acceptable" policies, the ultimate limits of which are the continued existence of capitalist relations.

The Arbitration Commission is a state apparatus at the centre of the conflict between capital and labour. During the time period to be covered, 1967-1981, there was significant conflict between the major classes in Australian society. If the framework developed here to account for the form of state activity is viable, it should be applicable to the Arbitration Commission in the years to be examined below.

This research has methodological and substantive objectives. Methodologically, it is an attempt to bridge the gap between two disciplines, history and sociology. This distinction is artificial, in my view, and the study of society would be significantly enriched if the boundaries between disciplines were broken down. I have sought to write a theoretically informed history, as the lack of a theoretical framework detracts from the explanatory power of much historical writing. On the other hand, the ahistorical approach of many sociological works tends to reduce the operation of social processes to a static "snapshot". As there are few guidelines for conducting such research, in many respects the study was exploratory in nature.

The thesis is also concerned with the disjuncture between theory and empirical research in Marxist writing. There have been significant advances over the past twenty years, particularly in the area of theory. Yet these theoretical developments seem to have slowed in recent years, and some of the debates have become increasingly rarified and introverted. It is possible that a period of consolidation is now necessary. My view is that there is a need to apply the new theoretical approaches in an attempt to gain a deeper understanding of empirical questions. While I reject a radical distinction between "facts" and "theory", I consider it essential to use theory in empirical research. Indeed, it is only by such activities that theory can once again advance.

Substantively, the thesis examines an institution which is in many respects unique to Australia, and which is central to the management of the Australian economy and the maintenance of its political and ideological order. An understanding of the Commission may illuminate the internal dynamics of capitalist state apparatuses, as well as the broader context within which they operate. The strong, relentless pressures to which the Arbitration Commission is subjected makes it an ideal "test case" for the applicability of some recent theories of the state. The research is therefore intended to make a contribution to our understanding of Australian society and assess the applicability of a major theoretical framework for the analysis of capitalist state apparatuses.

Theoretical Foundations

The theoretical principles underlying this research are based on premises which have recently been articulated by O'Malley (1980) and Wright (1978), among others. The theoretical framework is discussed in the next chapter, but it is necessary here to specify some preliminary assumptions.

O'Malley has termed his position "structural determination". He argues that attempting to explain the activities of the state in terms of a general causal model is a distortion of Marxist theory. Citing recent theories of change in the legal system, O'Malley contends that attempts to theorize the causal determinants of legal change tend to lapse into a problematic of competing interest groups. Through their control over superior economic resources, the bourgeoisie are said to be able to have their interests upheld by the state.[1]

While there is an undoubted tendency for the interests of the bourgeoisie to win out more often than not in capitalist societies, it is a mistake to elevate this empirical generalization to the level of a theoretical explanation. O'Malley argues that this conception of theory relies on an empiricist conception of power, and is inherently

circular. In place of this approach, it is suggested that the proper object of theory is not the causes of phenomena, but their conditions of existence.

> Unlike causal determination, structural determination involves the identification of conditions of existence rather than 'causes'. The structural approach renders emergence of phenomena possible rather than necessary, requires no conformity in patterns of emergence other than by implying the necessary presence of some given condition and specifies conditions which may be present wherever and whenever the phenomena persist (causes, on the other hand, may disappear long before the disintegration of the phenomena).
>
> (O'Malley, 1979, 53)

This approach sets up parameters for the existence of phenomena. It does not attempt to specify their content. The explanation of the causes of any particular event must be couched in terms of the concrete, historical circumstances in which it arose.

It is not suggested that structures "cause" particular phenomena, or that structures are immutable or operate in a mechanical fashion. Wright (1978) stresses the importance of class struggle in understanding the development of a social formation. Class struggle is <u>limited</u> by structural constraints, but in turn acts upon those limits, changes them, and allows for further, qualitatively different struggles to arise. Causality is analyzed at the level of concrete historical events, which are played out within the context of structural contraints and in turn act upon them.

The objective of theory is therefore to specify underlying structures and processes, indicate how these limit and shape concrete struggles, and specify the linkages between concepts at both levels. While much of the text to follow deals with concrete historical events, it is emphasized that these operate within a context given by an underlying framework, which is the object of theory.

The Australian Conciliation and Arbitration Commission

Industrial arbitration has been, and remains, an important element of class relations in Australia. This is not to suggest that arbitration is functionally necessary. In its absence, it is unlikely that Australian society would be fundamentally different. However, arbitration is deeply involved in the way certain social processes — in commonsense terms the management of industrial disputes and the distribution of income — are carried out. These processes could be carried out differently, as they are elsewhere. However, they take a specific form in this country, which has no parallel elsewhere (with the qualified exception of New Zealand), and an understanding of Australian class relations would be incomplete without analyzing industrial arbitration.

State intervention in capitalist economies takes a variety of forms, but is essentially related to the management

of contradictions inherent in capitalist societies. To a varying degree, the state intervenes in what is commonly termed "industrial relations" in all capitalist societies. In Australia, such intervention has been institutionalized in the form of industrial tribunals. These are branches of the state, or state apparatuses, with a quasi-independent character.

The federal government is constitutionally[2] prevented from intervening directly in industrial relations, but is permitted to set up machinery for the prevention and settlement of industrial disputes. A permanent tribunal was established in the early years of Federation, the Commonwealth Court of Conciliation and Arbitration (after 1956 the Commonwealth (later Australian) Conciliation and Arbitration Commission). It acquires its form and powers under legislation, but is free from direct control by government. In arbitration, therefore, we have a form of political intervention in what are usually considered to be economic matters.

Under the Conciliation and Arbitration Act, the Commission is empowered to intervene in industrial disputes and effect their resolution by means of conciliation and arbitration. The Commission may also intervene in the affairs of trade unions and employers' organizations registered under the Act. While registration provides certain legal

advantages, the provision for control over aspects of their internal operations led to distrust on the part of some trade unions, usually, but not always, on the political Left. The importance of the Commission's power to intervene in the affairs of industrial associations should not be underestimated. Dispute resolution is its primary task, however, and this will be the focus of the thesis.

Originally, the Commission was envisaged as an agency which would step in to resolve ongoing or impending overt conflict, such as strikes. Early in the Commission's history, the High Court determined that an "industrial dispute" could consist of the rejection of a formal log of claims. This meant that the Commission could become involved in the relationship between the parties before industrial action took place. The Commission's presence in industrial relations has become institutionalized to the extent that its formal participation in industrial relationships is regular and normal. Furthermore, it plays an important informal role as well, serving as a source of information, co-ordinating mechanism and "problem solver" for the parties in an industry.

The Commission's activities on a "micro" level are paralleled by its role in the economy as a whole. Wages and conditions are set by the Commission through awards — legally binding decisions which fix minimum standards for a series of classifications within an industry. Historical

relativities developed between different classifications within the same award and between certain classifications in different awards. Movement in one classification usually resulted in a "ripple" effect throughout the wage structure. The key classification became the fitter under the Metal Trades Award. As an increase in the fitter's rate was likely to "flow on" to much of the workforce (a process that could take considerable time), major cases under this award became "test cases", with implications for the entire economy. In undertaking a role as "dispute resolver", an unintended consequence was that the Commission moved into the area of economic policy as well.

The Commission's decisions affect the wages and conditions of large sections of the workforce, but not all employees are covered under federal awards. State tribunals cover large sectors of the workforce and have at times taken a leading role in industrial relations. However, the federal Commission is generally recognized as having the greatest influence.

As awards set minimum standards, employees may seek more favourable terms from their employers. Such bargaining takes place outside the auspices of the Commission and is a frequent source of industrial disputation. A "three tier" system has evolved in Australia, with national decisions affecting most workers directly or indirectly (as they flow to

state awards), industry level decisions, and agreements between unions and employers outside the Commission.

The Commission consists of a President, who must have legal qualifications, and a number of Deputy Presidents (about 12 in recent years), who until 1972 were also required to have legal qualifications. There are a larger number of Commissioners, who must have considerable industrial relations experience. The Commission may be constituted as individual members, the form in which most proceedings are held, or as a full bench composed of Presidential members and (usually) Commissioners. Full benches are usually reserved for significant matters, and in some instances, such as national wage or hours hearings, are required by law. Proceedings may take the form of conciliation or arbitration. In the former, the Commission seeks to resolve disputes through agreement between the parties. If no agreement is reached, the Commission will arbitrate. The parties and intervenors (such as governments) deliver submissions in an adversary manner. Hearings may be open to the public or closed.

Decisions are legally binding on the parties, though the penalties under the Act have proved unenforceable against trade unions in recent years. Decisions of individual members may be appealed to a full bench under certain circumstances. Full bench decisions are final, though appeals on points of law may be made. The Commission has been precluded from

interpreting or enforcing its own decisions since 1956. Such matters are handled by the Federal Court (until recently by an Industrial Court) or ultimately the High Court. Decisions of the High Court have had a significant influence on the role of the Commission.

The Commonwealth government cannot direct the Commission to make specific decisions, but it has a major influence through the legislation establishing the form and function of the Commission, its capacity to make submissions, and its impact on the wider political and economic environment. Unions and employers have no direct control over the Commission, but can have a profound effect by their willingness to co-operate and the actions they take outside the arbitration machinery. It is sometimes asserted, particularly by commentators on the Left, that major advances are seldom made by unions through the Commission unless they are first pursued through industrial action "in the field".

Approaches to the Study of Australian Industrial Arbitration

There is a sizable literature on the arbitration system, but most of this makes no attempt to use a coherent theoretical framework.[3] Much of the literature consists of descriptive accounts of institutions; industrial law, the arbitration agencies, or the parties who participate in the

system. Most of the remainder is concerned with "problems" that have arisen in industrial relations. These latter works generally include some account of the role arbitration agencies have played in the development of the "problems" and seek to provide "solutions". These approaches have been criticized by Hyman and Brough (1975, 157), who argue that their seemingly atheoretical stance hides covert theoretical assumptions. Most of the available literature assumes that the participants in industrial relations share a common interest in the perpetuation of the existing system. Where it is granted that interests differ, this is usually seen to lie at a relatively superficial level (e.g the "share of the cake"). Another common assumption is that power operates at the level of observable events. Union "victories" are therefore seen to be indicative of power equal to or greater than that of employers, a view which ignores any systemic bias which channels conflict into avenues which allow workers to achieve gains which do not threaten the existence of relations which disadvantage them as a class.

Among the descriptive material is an important paper by Hawke (1956), who was concerned with the consistency of the principles upon which arbitration decisions are based. He examined the legal reasoning of the decision-makers, and located the source of inconsistency in their attempts to apply conflicting principles. Hawke describes these principles, but does not attempt to analyze their social origins. Other

writers have taken a broader but equally descriptive approach. Yerbury's (1980a) discussion of the part played by governments in the establishment of wage indexation in 1975 is meticulous in recounting the detail of these developments, but is limited to the agencies which form the context within which arbitration takes place. No mention is made of a wider social context. The implication is that a narrative of the activities of state agencies reveals the "causes" of events, and that this serves as an explanation. "Events" are dealt with, but not processes.

The "problem-solving" literature attempts to analyze the defects of the arbitration system and provide solutions to issues such as the relative merits of arbitration and collective bargaining or the implementation of incomes policies. Based on certain assumptions about a desired state of industrial relations, this approach seeks to "read off" a "correct" formula for arbitration decisions which will solve whatever problem is being dealt with. The arbitrators are presumed to have "read" the situation incorrectly or to have been swayed by factors detrimental to the "solution" of various problems within the system. This literature assumes that the parties share a fundamental interest in the stability of the industrial relations system. Examples of this approach can be found in Isaac and Ford (1971) and Niland and Isaac (1975).

One of the earliest attempts to make use of a coherent theoretical framework was Walker (1970), who argued that the parties formed part of an industrial relations "system". The Parsonian framework that underlies his approach, with its assumptions of consensus and equilibrium, has been criticized frequently for its conservative bias and ahistorical, teleological mode of explanation. Nevertheless, variations on the "systems" approach continue to be used, and appear in works such as an introductory textbook on Australian industrial relations recently published by Plowman et al. (1981).

The recent contributions of Romeyn (1980) and Dabscheck (1980; 1981)) also show a familiarity with mainstream social and political literature. Based on earlier work by Perlman (1954), Romeyn formulates a typology of arbitration strategies.[4] She finds the source of these differing strategies in goal displacement. Dabscheck (1980) attempts to account for the actions of arbitration tribunals by using Dahrendorf's (1959) theory of conflict over the distribution of authority in society. This is translated into an alleged "survival" tendency, wherein the Commission avoids making decisions that would undermine its legitimacy and centrality in the wage-fixing process. Dabscheck's use of Dahrendorf's conflict theory is a positive step. However, he does not rigorously draw out the connections between this theory and

the phenomena he analyzes. Furthermore, the weaknesses of Dahrendorf's work have been noted by a number of writers.[5] In a later article, Dabscheck (1981) attributes more positive motivations to arbitrators, but his argument is based on pluralist assumptions largely derived from recent American writing.

More critical discussions can be found in Mitchell (1980), Hutson (1971) and Sorrell (1972). Mitchell notes the role of the Commission in stabilizing industrial relations and argues that its practices have tended to benefit employers over the long run. Hutson also alludes to the benefits gained by employers through the arbitration system. He outlines the vagaries of arbitration decisions, but his explanation goes no deeper than a desire on the part of the Commission to be flexible in order to keep up with changing circumstances. Sorrell seeks to locate the arbitration system within the context of a state that operates in the interests of the capitalist class. He suggests that arbitration provides an element of predictability for capital, and stresses the legitimating function served by its semi-judicial form. He argues that arbitrators must base their decisions upon ruling class norms, while presenting their actions as the result of objective, neutral reasoning. He locates the source of bias in a presumed indentity of interests between arbitrators and capitalists.

These three writers view conflict as more intractable than most other commentators However, they do not move beyond an interest group problematic. Their explanations rely on a combination of the "balance of power" between the parties and the motivations of the arbitrators. This is essential for an explanation of the content of arbitration, but does not address its form.

This thesis will offer an approach different to those currently available in the literature. Like most other works, much of the text below will be concerned with the activities of institutions; unions, employers, governments, and tribunals. Interest groups are viewed as important, as are the reasons given by the arbitrators for their rulings. However, these will be placed in the context of underlying structures and processes which set in motion the surface conflicts between the actors; which limit the initiatives and responses that are made and which mould the discourses through which the phenomena are apprehended. This context is the capitalist mode of production. It will be argued that capitalism sets the conditions of existence of arbitration, the reality of which must be analyzed within specific historical conjunctures. The actions taken by agents within these historical settings in turn affect the nature of capitalism itself as it exists in Australia. Explanation therefore does not lie at the level of

a formalistic, static set of structures, but in the dialectical relationship between fundamental tendencies inherent in capitalism and the concrete circumstances in which they appear.

The theoretical framework to be used in the thesis is developed in Chapter 2. A short history of labour relations in Australia to 1967, with particular reference to arbitration, is provided in Chapter 3. The next four chapters cover the period 1967-1981, concentrating on those aspects of the Commission's work with the greatest immediate impact on the economy. The less prominent activities at industry and plant level are secondary to the main objective of the thesis. The conclusion provides an overview of the main developments in arbitration since 1967 and assesses the utility of the theoretical framework.

Footnotes

1. See especially a quotation from Chambliss, in O'Malley (1980, 53).

2. Under s. 51 (xxxv), "The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to: Conciliation and Arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state".

3. An exception is a recent work by Fisher (1983), which appeared after the bulk of this thesis was written. In my view, this is the most insightful published work on arbitration to date. There are some basic similarities to the approach adopted here, but there are also important differences, which will be addressed in Chapter 8.

4. Romeyn's typology has some similarities to a typology developed by Offe discussed in Chapter 2 which forms the basis for much of the subsequent analysis in the thesis. However, the two typologies are based on different theoretical premises.

5. See for example Lockwood (1964), Rex (1961) and Zeitlin (1973).

Chapter 2: Theoretical Framework

This chapter deals with the role of the state in capitalist societies. There is no unified Marxist theory of the state. Most contemporary scholars agree that a single theory applicable to all capitalist societies cannot be formulated. The state is universal in capitalist social formations, but its form and internal processes are not. While statements of a general nature will be made here, they refer to tendencies applicable to most advanced capitalist societies, and would need qualification in each case. There is no one perspective which is clearly superior to all others, and the work of a variety of authors will be drawn upon.

Some fundamental concepts of political economy will be introduced first, followed by an extended discussion of the state. Consideration will then be given to the nature of ideology, followed by a discussion of industrial relations.

Fundamental Processes of Capitalism

Capitalist societies contain strong tendencies towards self-transformation, resulting from contradictions between the productive forces which constitute the material basis of society, and the relations of production. Capitalism produces impediments to continued private accumulation. These result from conflicts between capital and labour and within the capitalist class itself. Such conflicts cannot be avoided, nor can they be ignored (Wright, 1978, 122). The operation of capitalism is marked by periodic crises, as the impediments are not always overcome smoothly. These crises are not necessarily confined to the "purely" economic level, but may extend to other parts of the social formation. The nature of crises and the impediments to accumulation are topics of controversy.[1] However, it is often argued that in seeking to accumulate, capitalists tend to undermine the conditions necessary for continued accumulation to occur.

The development of crises can be traced to the tendency of the rate of profit to fall (TRPF) (Fine and Harris, 1979, 81). The TRPF results from the tendency of capitalism to revolutionize the production process. In order to lower production costs, capitalists introduce various labour-saving devices or re-organize the labour process in pursuit of greater efficiency. This tends to increase

productivity and reduce the proportion of labour, or variable capital, contained in commodities. To maintain a given mass of profit, expansion must continue, increasing competition and forcing out less efficient capitalists and superfluous workers. This tends to produce an increasing concentration and centralization of capital in giant firms and to increase the proportion of the population with nothing to sell but their labour power. The accumulation process is uneven, resulting in crises in which capitalists are unable to exchange their commodities for money. This may be due, among other things, to other capitalists being driven from the market, or insufficient means among the workforce to purchase consumer goods. It must be stressed that the TRPF is a tendency only, the real trajectory of profits being dependent upon historical circumstances.

A number of counter-tendencies exist to the TRPF. These include increased productivity[2], the reduction of wages, foreign trade or shifting capital overseas, and increases in the scale of production and speed of circulation of capital. So long as the mass of profit is sufficient, a declining rate of profit will not trigger a crisis (Eaton, 1966, 167-169; Fine and Harris, 1979, 80-82; Mandel, 1968, 166-170).

The TRPF and its counter-tendencies provide the basic dynamic by which capitalist societies develop. This proceeds unevenly, depending on historical factors such as technology,

the size of the industrial reserve army, and the availability of new markets. Ultimately, accumulation and crises are dependent on competition between capitalists and struggles between capital and labour.

The uneven development of capitalism is manifested in the business cycle. The features of each cycle differ, but some of the main characteristics can be outlined.[3]

In the trough of a depression, business activity and investment are low. The fall in investment particularly affects firms producing means of production. Sales of consumer goods decline less markedly, as many such purchases cannot be put off. Once inventories of consumer goods are reduced, activity in this sector revives. As costs then tend to be low, investment increases. This reactivates the capital goods sector. Unused capacity may be brought into production, increasing productivity. Combined with low costs, capital enjoys high rates of profit, leading to further investment and hiring of additional labour. This boosts demand, and a general recovery may ensue. New investment on top of existing capacity brings production to a higher level than before the previous slump.

Competition among producers of consumer goods for capital goods and raw materials tends to increase the prices of their inputs. More labour is employed, the industrial reserve

army becomes smaller and wages tend to increase. As boom conditions develop, profits in the consumer goods sector tend to be squeezed from both sides. Prices can be increased, but this can set off a wage-price spiral, and credit becomes more expensive. Investment in the consumer goods sector then tends to decline, affecting the capital goods sector, in which excess capacity develops. Labour is then retrenched, which begins a process of contraction of aggregate demand culminating in business failures, high unemployment and generalized recession.[4] Firms with high levels of productivity are most likely to survive, and the most highly organized sections of the working class are best able to resist cuts in their standard of living.

All other things being equal, this process results in a greater concentration of capital. The working class in turn tends to become better organized. Overall, production becomes increasingly integrated. This establishes the basis for expanded production, and for obstacles to arise in the next cycle. The factors underlying business cycles vary (see Mandel, 1978, 39), but what does not vary is that struggles between capitalists and between capital and labour eventually bring recovery to an end.

The accumulation process does not operate smoothly or automatically. The counter-tendencies to the TRPF can overcome some of the more serious problems of accumulation. As the record of the capitalist countries after World War II

shows, this can occur for a long period of time. The anarchy of capitalist production, based on the existence of private property, precludes capitalists themselves from organizing the counter-tendencies at a systemic level. Yet the counter-tendencies are increasingly organized in an effort to maintain the capitalist system. This is frequently done by agencies which appear to be, and in a significant sense are, external to the economy. These interventions are carried out by the apparatuses of the state.

The Nature of the Capitalist State[5]

The political level is not restricted to the institutions of the state, but the state is central to political struggles and will be the focus of attention. The state is a relational phenomenon, embodied in a set of institutions in which social power is concentrated and exercised (Therborn, 1978, 132). The power of the state is a class power, directed towards the reproduction of a set of class relations. This is not to reduce the state to class. Rather, the state is structured by class relations, which are internalized within it. The state has a separate material existence apart from classes, and an autonomy of its own.

Political phenomena operate on a terrain structured by the existence of capitalist production relations. This

determines the limits of the state's form and actions, but the state in turn has a significant effect on "the economic".[6] It must be stressed that there is no one-way determination of a passive "superstructure" by an all-powerful economic "base".

The approach developed here must be distinguished from "functionalist" analysis. In what follows, much will be made of the functions of the state. Indeed, it is suggested that the maintenance of class domination under capitalism requires the existence of a state. Following Godelier (1972), I would argue that one must understand the functions of an institution in order to understand its history. This does not imply that the existence of an institution can be explained by its effects. Rather, the effects of a particular institution are explained by the history of class and other struggles in a social formation.

The primary function of the state is the "protection and reproduction" of capitalist relations to the extent that this is not done automatically by the economy (Mandel, 1978, 474). The state increasingly intervenes in the accumulation process in order to maintain the conditions of existence of capitalist relations. The state also takes on collective functions beyond the capabilities of individual capitals, such as the provision of infrastructure and planning activities. As an institution "separate from" and "above" the interests of particular capitals, the state organizes the capitalist class and manages conflicts within it. Subordinate classes are

disorganized (in terms of potential independent power bases) and integrated into "conventional" political and ideological practices. The state plays a leading role in legitimating the existing social order, and where necessary, repressing dissent.

One view of the state, based on the work of Offe (1976), stresses its role in the management of systemic crises. The conditions necessary for economic exploitation are not reproduced automatically. The economic system must be supported by normative and coercive systems. Capitalism is not simply an economic relationship, but an ensemble of economic, political and ideological practices. The intervention of non-economic agencies in the management of economic crises results in crises taking on a more general character. Crises have increasingly become crises not only of accumulation, but of crisis management as well. With increasing state intervention in the management of economic crises, there is a tendency for these to become translated into crises of the state.

An increasing (but uneven) level of state intervention has occurred in all major capitalist social formations during this century.[7] The reasons for this include, firstly, state involvement in colonization and other imperialist ventures. Secondly, the increasing complexity, integration and scale of production require planning, research, management and infrastructure which is beyond the ability (or willingness) of

private capital to provide.[8] Finally, the role of the state has expanded in response to the strength and organization of the working class. The state performs an important ideological role by defining policies which maintain capitalist relations as being in the "national interest". The state also intervenes in industrial struggles, seeking to limit conflicts over control and distribution. Industrial intervention has been institutionalized to a particularly high degree in Australia through industrial tribunals such as the Conciliation and Arbitration Commission.

The expanding role of the state has contradictory effects. Its interventions are frequently successful, smoothing the way for capital accumulation and reducing class conflict. At the same time, state intervention tends to undermine the stability it seeks to impose. Offe and Ronge (1975) point out that state intervention in the economy tends to restrict the free production and exchange of value. This reduces economic effectiveness and provokes resistance from some sections of capital. Paradoxically, attempts to maintain capitalist relations place an increasing sector of society outside the framework of the private production and exchange of commodities. This exposes commodity relations to control through practices based on criteria other than private property and profit (Offe, 1973, 114).[9]

Poulantzas (1975, 171) argues that state intervention in the economy has transformed economic crises into crises of

the state and ideology. Economic struggles tend to become politicized, increasing the grounds for working class organization and heightening the level of conflict. Capitalism requires state intervention in order to manage the contradictions generated by existing social relations, but this can lead to further, potentially more serious contradictions (Offe, 1976, 37). State apparatuses which intervene in economic processes must smooth the way for capital accumulation and keep class struggles within acceptable limits. However, they must do this without creating new difficulties which may prove more serious than those which they sought to solve.

Class

The developments outlined above occur through the agency of classes; capitalists, workers and other groups to which the term "class" may be applied.[10] Class refers primarily to the relationship of groups to the means of production. This criterion is not exhaustive, as political and ideological factors must be considered as well.

The nature of class

There is widespread debate on the nature of class. One approach is closely associated with the work of E.P.

Thompson. Thompson (1963) views class as fluid and emergent. He stresses that class is an historical phenomenon, arising through the experience of individuals engaged in concrete struggles. He states,

> And class happens when some men, as a result of common experiences (inherited or shared), feel and articulate the identity of their interests as between themselves, and as against other men whose interests are different from (and usually opposed to) theirs. The class experience is largely determined by the productive relations into which men are born—or enter involuntarily. (1963, 9)

The effect of "productive relations" on class is through the experience of conflict. General statements about the relationship between productive relations and experience are shunned as distortions of historical reality.

A contrasting tradition is the "structural" approach, exemplified by the work of Poulantzas and Wright. Like Thompson, Poulantzas views class as existing at the level of social relations, and considers class struggle to be an inherent part of the concept. However, he stresses the structural role of productive relations and the places of dominance/subordination on class relations.

> More exactly, social class is a concept which shows the effects of the ensemble of structures, of the matrix of a mode of production or of a social formation on the agents which constitute its supports: this concept reveals the effects of the global structure in the field of social relations. (Poulantzas, 1973, 67)

Poulantzas does not contend that class <u>is</u> a structure. Agents

occupy objective places in the division of labour, and class cannot be reduced to their consciousness. However, a class may adopt a position in the class struggle which is contrary to the interests given by their objective place (Poulantzas, 1975, 14-15).

Both approaches pose problems. The "experiential" school tends to lose the fundamental insight of political economy that social structure generates limits on action. The structural approach seems ahistorical, and despite allusions to the "laws of motion" outlined in Capital, lacks a mechanism for analyzing change. While class struggle is emphasized in theory, it is unclear how to observe the effects of structure on events. If Thompson leaves out the role of structure, Poulantzas overlooks the role of experience and consciousness. The theoretical gap between structure and experience has yet to be bridged. In the absence of consensus, it is necessary to avoid the pitfalls of both positions.

Class boundaries

Another area of controversy concerns the location of class boundaries.[11] The key authors in this debate, Wright and Poulantzas, agree that there are two main, antagonistic classes; bourgeoisie and proletariat. A third group, the traditional petty bourgeoisie, has a place of small scale production and ownership. Another large group is not clearly

part of a major class and is subject to contradictory forces. The problem is whether this large mass of "white collar" and service workers should be considered as part of the working class (Wright) or a separate class (Poulantzas). Unquestionably there is a "core" to the working class which consists of the traditional "blue collar" workers. If lower clerical and service workers are part of this class, some account must be given of why their industrial behaviour has differed so markedly from the "core" in Australia until quite recently.

Poulantzas' explanation stresses the political and ideological differences which separate workers. These have several sources, but Poulantzas emphasizes the distinction between mental and manual labour. This division results from the political and ideological ordering of production in class society; an aspect of the control by capital over the labour process.[12] The worker is not only subordinated to the ordering of production in the interests of capital, but systematically excluded from the knowledge necessary to undertake production.[13] The case of clerks is important in this respect. They have lost their former control over manual workers, but continue to participate in the ideological separation of direct production and knowledge through their location in bureaucracies, an institutionalized form of the mental/manual division. Their location on the "mental" side of production tends to engender an identification with

management. This is important for the analysis of industrial relations, as the "white collar" workforce has become more militant. Stripped of their former dominant role in the firm, increasingly subject to factory-like conditions and economic pressure, the ideological links of clerical workers with management appear to be a tenuous basis for their continued industrial passivity. The behaviour of "white-collar" unions in Australia, particularly in recent years, testifies to the strong contradictory pressures which these workers experience.

The major classes

Capitalists

The bourgeois or capitalist class comprises a small proportion of any capitalist social formation. The bourgeoisie are defined not by their origins, orientations or possession of wealth, but by the place they occupy with respect to capital. In other words, they exercise the function of capital in the social formation. This encompasses political and ideological domination over the working class as well as the ownership and control of the means of production (Poulantzas, 1975). Although economic domination is the most important aspect of capitalist relations, it does not by itself distinguish the place of capital.

The capitalist class is not homogeneous. Three

criteria are commonly used to analyze divisions within the bourgeoisie; function, market control and foreign ownership.

Capital is differentiated into "fractions" according to its function in the division of labour. A tripartite distinction is often made between productive or industrial capital, banking or money capital, and commercial capital. Only productive capital yields surplus value. Money and commercial capital facilitate distribution and exchange, but reduce the surplus value available to the productive capitalist.[14] Conflict over the share of surplus value is common, particularly in times of economic decline.

The second major distinction within the capitalist class is the degree of market control. This produces a qualitative division between monopoly and non-monopoly or competitive capital. Monopoly capital refers to the ability of a small number of firms to dominate one or more sectors of industry. These firms produce a significant share of the output of particular industries, have a substantial effect on the level of prices, and can determine where, how and what commodities will be produced. Competition between monopoly firms is substantially reduced, though not eliminated. By establishing a level of super-profits through administered prices, exploitation of non-monopoly firms, cheap finance and concentration in high productivity industries, monopoly capital can operate in the short to medium term as if the law of

value no longer applied.[15] The stability of these industries, their high profitability and high levels of capital per worker allow monopoly firms to provide relatively steady employment and high wages to their workers (O'Connor, 1973, 15-16). Non-monopoly firms generally operate in low productivity, high risk or fringe areas of the economy. Their markets remain competitive, and they are subject to exploitation by the monopolies. They are more seriously affected by the business cycle, being less able to raise prices, obtain credit or receive aid from the state.

In Australia, there are distinct monopoly strata in mining, manufacturing, retailing and finance. Although each area has a large number of small enterprises, a substantial proportion of the economic activity is controlled by a small number of large firms (O'Shaughnessy, 1978, 44-47; Connell, 1977, ch 4). This situation is reflected, though not invariably, in differing industrial relations practices, with larger employers generally being able to pay higher wages and provide better terms of employment. Conversely, one can often find warnings in employers' journals that wage increases create serious hardship for small employers.

The third aspect of the bourgeoisie that will be examined is foreign ownership. Capital has no inherent national characteristics, but there is ample evidence of the exploitation of weaker nations by more powerful centres of

capitalism. Australia occupies an intermediate position in the world capitalist system, being dominated by foreign capital in certain key sectors while dominating other, less developed societies.

Investment in the Australian economy has become subject to the global accumulation strategies of multinational corporations (Crough and Wheelwright, 1980, 15). This has significant implications for class relations. The concentration of investment in capital intensive industries, particularly mineral extraction, reduces employment. Combined with a tendency for labour intensive industries to locate in countries with low wage rates, the potential is created for high levels of unemployment. The internationalization of capital makes it difficult to exercise political control over production and investment. Finally, it seems plausible to suggest that some multinational corporations might seek to alter indigenous industrial relations practices when they are at variance with their interests. While it might be incorrect to suggest that the increasing importance of collective bargaining in recent years has been "imported", it is likely that multinational enterprises would be more amenable to the practice than local (and often weaker) firms.

Traditional petty bourgeoisie

Distinct from both the bourgeoisie and proletariat are

the traditional petty bourgeoisie; independent artisans, small shopkeepers and businessmen, and most farmers. Their class determination is based on simple commodity production and exchange. Although they own their own means of production they do not exploit labour in any significant sense.

The traditional petty bourgeoisie is polarized between labour and capital. Their existence is threatened by capital, whose higher level of productivity and control over economic relations transfers value from the sphere of petty commodity production. The petty bourgeoisie tend to fear proletarianization, and often express "anti-rich" sentiments. At the same time, they tend to have strong ties to their property and resist encroachment on their economic freedom. Poulantzas (1975, 296) points to a cult of individualism within this class, involving a belief in open avenues of upward mobility for the "able". Overrun by larger capital, they remain strongly attached to capitalism. While at times attracted to populist movements, the traditional petty bourgeoisie tend more towards orthodox conservatism, viewing the support provided by the state to the bourgeoisie and welfare services to the proletariat as aberrations which should be reduced or eliminated.

The traditional petty bourgeoisie in Australia is only peripherally related to the state industrial relations machinery, but nevertheless play a key indirect role through

their support for conservative anti-union offensives. Much of the rhetoric of conservative governments espouses support for the ethos of the small businessman, and plays on fears of socialism. The anti-union line also stresses the inflationary impact of wage increases and the disruption to business caused by industrial action. The need to maintain the support of this class for capital gives rise to serious dilemmas for conservative governments, particularly when the interests of the bourgeoisie and petty bourgeoisie are opposed.

The major subordinate classes

More significant for this study are those groups which are separated from ownership or control over the means of production. As indicated above, the boundary between the "traditional" working class and groups variously described as "white collar", "middle class" or "new petty bourgeoisie" is open to debate. However, there is no doubt that the "traditional" core of the proletariat, the "blue collar" workforce engaged in productive wage labour, remains a basic component of the class structure in all advanced capitalist societies. Struggles over the control of production and the distribution of the product in Australia continue to be centred on this section of the proletariat.

The proletariat neither own nor possess the means of production, and must sell their labour power in order to

survive. They occupy subordinate, generally lower-paid positions. As with other classes, the proletariat contains various cleavages and strata. Only four will be mentioned here; sector, skill, gender and ethnicity.[16]

O'Connor (1973) distinguishes four sectors of the working class; the monopoly, competitive and public sectors, plus the "surplus population". Monopoly sector employees enjoy a privileged place in the workforce, with relatively secure employment and better wages and conditions than those elsewhere in private enterprise. Monopoly capital is often able to pass on wage increases won by the well-organized monopoly sector workers through higher prices. This disadvantages competitive sector workers in a double sense, in that their wages may not keep pace with inflation, and the increased costs to their employers may jeopardize their jobs. State employees are paid by way of tax revenues, which may be perceived by monopoly and competitive sector employees as a drain on their income. Taxation also goes to support part of the "surplus population", who for various reasons do not obtain a livelihood through wage labour. They too are frequently perceived as a "drain" on individual incomes.

The "surplus population", which forms part of the "industrial reserve army", is a major determinant of the relative strength of the two major classes. The industrial reserve army refers to all those who might be able to join the

workforce at a given time but are not employed. Competition for jobs among those who actively seek work serves to keep wage pressures in check. When demand for labour is high and the industrial reserve army is depleted, the ability of capitalists to resist workers' demands is reduced. If the industrial reserve army is large, workers may fear losing their jobs to a more compliant, out-of-work individual.

The concept of the industrial reserve army remains useful, although the relationship between wages and unemployment is not straightforward. Strong unions may seek higher wages despite high unemployment, and often can prevent employers from replacing unionists with less militant non-union labour. In practice it is necessary to examine the situation in particular industries or occupations, as a high level of unemployment may mask shortages in specific areas.

Skill is another source of cleavage. Skill places certain workers in an advantageous position in the market, enabling them to command higher wages. It has also been noted that skilled workers tend to form an "aristocracy of labour", who subjectively distance themselves from the remainder of the working class. This affects the potential for working class solidarity, and may result in conservatism among the "labour aristocrats", though conservatism is not necessarily associated with industrial passivity. Skilled workers in Australia have often been in the forefront of

industrial campaigns, particularly in the metal industry.

The two remaining factors, ethnicity and gender, have long divided the working class. While many Australian workers from ethnic backgrounds have entered higher-paying and prestigious occupations, migrants tend to occupy the least desirable positions and confront significant barriers to advancement. Migrants have long been viewed with suspicion by the labour movement, particularly in times of economic recession, when they are perceived as competitors for jobs (Quinlan, 1983).

The position of women is equally complex.[17] Women tend to be segregated into particular sections of the occupational structure. This was institutionalized by the designation of certain occupations as predominantly "men's" or "women's" work by tribunals, with lower wages historically attached to the latter. Women may also be perceived by men as competitors for jobs. Despite changes in recent years, female workers tend to form a distinctly segregated, low paid and organizationally weak section of the working class.[18]

Changes in class structure

A final point concerns changes in the conditions of employment and attitudes towards work and inequality of the subordinate classes. Three competing themes have emerged.

The first is the "embourgeoisment" thesis. It suggests that manual workers, particularly skilled workers, have taken on the norms and values of the "middle class". In its extreme form, it is argued that class differences are of little importance in modern society. Daniel Bell's phrase "the end of ideology" was widely interpreted as signifying an end to class-based social conflict. The embourgeoisment argument relies on the alleged effects of technological change. These include the need for a better qualified, more highly skilled workforce, more interesting work in more congenial surroundings, better pay and conditions, and enhanced job security. If the working class enjoyed middle class conditions, it was expected that middle class orientations and life style would follow.

Contrary to this view, the "proletarianization" thesis suggests that the position of most manual and non-manual employees is deteriorating in several respects. Braverman (1974) argues that technological change has "de-skilled" the work of many employees, reduced their autonomy in the workplace, and passed control over work to a decreasing proportion of supervisory and technical personnel acting in the interests of capital. Braverman argues that the wages and working conditions of lower white collar workers are now similar to those of most manual employees, and that large sections of the "middle class" are being incorporated into the working class.

A third view may be termed the "convergence" thesis, the most significant contributors to which have been Goldthorpe and Lockwood (1969) and their collaborators. Their argument is that the class structure is becoming more complex. They maintain that changes are occurring among both manual and non-manual workers which suggest the emergence of a new group incorporating sections of each which share certain orientations (such as instrumentalism at work) and work situations. More recent work by Roberts et al. (1977) posits the existence of a "fragmentary class structure", in which a variety of class groups can be discerned.

The research evidence on this debate has provided no definitive answers. Opponents of the proletarianization thesis point to an alleged decline in working class consciousness as evidenced by a shift away from support of working class political parties. On the other hand, there has been a gradual increase in industrial militancy by white collar unions, though this does not necessarily indicate greater class consciousness or radicalism. The increasing level of industrial action among white collar workers suggests that at least their wages and work situations are under pressure (this has been particularly true in the public service), which would correspond with the proletarianization thesis. If this view is correct, it does not necessarily signify its applicability

throughout the workforce.[19] However, some changes corresponding to proletarianization have produced disputes in which Australian industrial tribunals have intervened.

Ideology

The question of ideology raises the issue of the relationship between the levels or instances; economic, political and ideological. Ideology has frequently been relegated to the superstructure[20] in Marxist theory, and it is important to avoid the mistake of conceptualizing ideology as an epiphenomenon or reflection of the economic base. Ideology is an essential support of other levels, and has a significant influence on their operation and development. It is equally mistaken to insist that ideology is completely autonomous of determination by other levels.

In Therborn's (1980, 15) view, "The operation of ideology in human life basically involves the constitution and patterning of how human beings live their lives as conscious, reflecting initiators of acts in a structured, meaningful world". Ideology concerns the lived experience of agents. It is a process whereby the world is apprehended and ordered. Ideology helps reproduce capitalist relations by masking their nature and constructing plausible accounts of lived experience. Laclau (1977) and Mouffe (1979) argue that ideologies are

fragmentary, and acquire a class character through their appropriation to the discourse of a class. They argue that classes attempt to articulate popular beliefs (such as nationalism or democracy) to ideologies associated with that class. This extends class struggle to the ideological level, and incorporates non-class-based groups into popular alliances. In this manner, conflicts may be carried out on grounds other than pure "class interest".

This view underlies recent formulations of the concept of "hegemony". Extending the work of Gramsci, Mouffe (1979) maintains that hegemony involves more than the political domination of a social formation by a given class. Hegemony reflects "...the ability of one class to articulate the interest of other social groups to its own..." (Mouffe, 1979, 183). It refers to the intellectual and moral leadership provided by the hegemonic class. Hegemony is not simply an instrumental alliance, but involves the creation of a "higher synthesis", a "collective will" which incorporates values based on the role of a fundamental class in the relations of production. Ideological elements therefore comprise the "cement" which holds the social formation together.

It is possible to identify particular ideological ensembles with the interests of particular classes. For the bourgeoisie, the ideology of competition associated with an ascendant capitalism has been partly replaced by an emphasis

on the benefits of an organized, regulated, regimented society (Mandel, 1978, 500). While the virtues of "free enterprise" are extolled, the context is no longer the free enterprise of the individual entrepreneur but of the multinational corporation. The benefits of individual initiative continue to be proclaimed, but the need for stable, technologically- based growth administered by a "neutral" corps of experts is increasingly put forward. This has been articulated with the increasing role of the state in economic management. With interventions in the interest of monopoly capital more difficult to justify in terms of the traditional role of the state as "above" economic conflict, emphasis is placed on the need to ensure continued economic growth "in the national interest". As Poulantzas (1975, 173) puts it,

> The ideology of the 'pluralist' state as 'arbiter' between the interests of 'social groups' and bearer of the 'general will' of the 'individual citizens', has been supplanted by that of the state as 'technical' instance in relation to the intrinsic 'requirements' of 'production', 'industrialization' and 'technical progress'.

This has profound implications for Australian industrial relations. The tribunals, which have traditionally sought to appear as an impartial "umpire" in industrial disputes, have come under attack for allegedly obstructing "economic progress". These complaints are often loudest from other branches of the state, particularly the government. Attempts to respond to this view of the state have led to dilemmas for industrial tribunals, which have become particularly severe since the late 1960s.

Turning to the ideology of subordinate classes, Marxist theory must explain how and why they seem to accept or even actively participate in their own exploitation. The assertion that these groups are the victims of "false consciousness" is tautologous. A coherent alternative has yet to be fully constructed, but the arguments of Laclau, Mouffe and Poulantzas suggest that working class ideologies are attacked, pre-empted and disarticulated by bourgeois ideological apparatuses. The concept of hegemony suggests that the ideas necessary to produce an alternative ideological position are either unavailable to the working class or systematically altered or redefined in terms of dominant ideologies. Bourgeois hegemony provides ideologies within which the experience of the working class can be explained in ways which do not fundamentally threaten the established order. Even if dominant perspectives are only partly accepted or largely rejected, counter-ideologies may be penetrated and weakened by dominant ideologies. The maintenance of dominant ideologies is an active process undertaken by a variety of apparatuses and agents. Workers are not passive dupes, but subjects of strong ideological pressures in which their own involvement is institutionalized.

The Relative Autonomy of the State

Unlike previous modes of production, wherein expropriation of surplus labour required the direct political intervention of the ruling classes, the separation of workers from the means of production means that in its "pure" form capitalist exploitation occurs at the economic level alone (Poulantzas, 1973). As it is not necessary for the political level to reflect economic relations directly, the state may operate with a considerable degree of autonomy from social classes. The ideology of state neutrality under capitalism therefore has some basis in reality.

However, complete autonomy is seldom possible. The growth in size and organization of the proletariat poses a real threat to capitalism. To counteract this, the proletariat and their organizations have gradually been incorporated into the polity through various concessions. Real advances have been made, and the state reflects, to some extent, the interests of workers. The ability of the state to concede reforms against the short term interests of capital may be construed as functional for capital in the long run as the working class is "bought off" or otherwise pacified, though this point can be overstated if it is suggested that all reforms are functional.

Competition between capitalists renders voluntary

agreement within the bourgeoisie difficult. The state is able to take charge of capitalist class interests and organize them at the political level. As Mandel (1978, 479) argues, the state is able to act as an "ideal total capitalist", serving the interests of capital as a whole against the interests of particular capitals.

The limits of state autonomy are set by the conditions of existence of capital or key sections of capital. O'Malley (1980, 60) argues,

> ...the state necessarily reflects the demands of the bourgeoisie (and thus of the capitalist mode of production) only where the reproduction of capitalist relations is in jeopardy. Otherwise, the state acts as a relatively autonomous structure which is capable of reflecting the interests of various, often dominated groups and classes insofar as these are expressed in terms compatible with capitalism.

Within these parameters, the state may respond to the "balance of power" in a particular area, with the resources available to the dominant sections of capital giving them a significant advantage. This differs, however, from the instrumentalist view that the state is the "tool" of the ruling class.

The state's ability to maintain the flexibility necessary for the reproduction of capitalist relations is assisted by the existence of liberal democracy. Ideologically, the liberal democratic state provides support for capitalism by taking on the appearance of the representative of the "national will", legitimating its

actions in terms of the expressed wishes of its citizens. In addition, a formal separation is made between "public" and "private" spheres, with economic relations assigned to the latter. This has the effect of depoliticizing economic struggles. State intervention in economic relations is justified in terms of the "national interest", which generally corresponds with the maintenance of the prevailing economic order. Liberal democracy therefore supports the interests of capital with the consent of the dominated classes. This is not automatic, as it depends on constant struggle at the political and ideological level, deflecting, co-opting or repressing working class movements and denying the validity of alternative belief systems.

By actively engaging in crisis management and seeking to disorganize working class unity, the state tends to politicize economic interventions. This undermines the formal separation of public and private power and threatens to expose the partisan nature of the state's decision-making machinery. State activities are not necessarily seen as supportive of capital against the working class, but as the locus of demands for economic action. The flexibility necessary to act on behalf of capital is thereby restricted. As a result, economic crises tend to become political crises, and to the extent that the "solutions" are visible and unavoidably partisan, the legitimacy of the state may be questioned.

Contradictions and the State Apparatuses

The state is not a unified whole. It is an ensemble of apparatuses, linked by an overall institutional unity, but characterized by complex cleavages and conflicts. These are not simply malfunctions within the state, but represent the inscription of class conflict within its structure. The contradictions within capital are reconstituted within the state by means of specific branches or apparatuses forming the site for the representation of the interests of one or more fractions or sections of the dominant classes. According to Poulantzas, the existence of these conflicts within the state make possible its organizational role for the capitalist class as a whole. Despite conflicts within the state, the leading role of the hegemonic fraction establishes a centralism or apparatus unity. Thus, the overall policy of the state will favour the interests of the hegemonic fraction (monopoly capital), while giving a place to the interests of other fractions. This operates through the hierarchical ordering of state apparatuses, and the dominance of the hegemonic fraction over key centres of decision-making (Poulantzas, 1978, 132-139).

The relationship between the ruling and dominated classes is also concentrated within the state apparatuses. While the bourgeoisie are able to crystalize a power of their own within the state apparatuses, the dominated classes exist

within the state as "centres of opposition". Poulantzas (1978, 143) argues,

> The popular classes cannot hold...power within the State because of the unity of the state power of the dominant classes, who shift the centre of real power from one apparatus to another as soon as the relationship of forces within any given one seems to be swinging to the side of the popular masses. But such power is also impossible because of the very material structure of the State, comprising as it does internal mechanisms of reproduction of the domination-subordination relationship: this structure does indeed retain the dominated classes within itself, but it retains them precisely as dominated classes.

Class contradictions can appear as divisions between the state personnel. These conflicts do not correspond exactly to external class struggles, as they are altered by their materialization within the relatively autonomous framework of the state, and are further complicated by the ambiguous class affiliation of subaltern state employees. They appear as disagreements between members or groups within the various state branches or apparatuses.

The capitalist state must therefore be viewed as a contradictory ensemble of apparatuses. The contradictions are a product of, but do not replicate, class struggles. Conflicts appear both within and between the state apparatuses, which nevertheless retain an overall unity in their role in the constitution of capitalist relations.[21] State policy is an outcome of contradictory processes, as pressures placed on the state apparatuses are materialized and altered internally.

The incompatible claims dealt with by the state render consensus or permanent solutions to fundamental problems impossible. The dilemma of actively preserving while not obstructing the capitalist production relation demands "...an opportunism whose adherence to its own principle is unswerving" (Offe, 1976, 49). Offe continues,

> State power subject to such contradictory demands can determine its own strategies neither through general consensus of the citizenry nor through technocratic calculation; for one can neither desire nor calculate opportunistic action.

The anarchy of capitalist competition precludes effective long range planning. While the long run effect of state decision-making may support the interests of the capitalist class, this is done through ad hoc, opportunistic decisions in the context of immediate problems and pressures. The contradictory demands made on the state require great flexibility and the ability to shift the grounds for decision-making. Failure to abide by these "rules", as will be seen later, tends to undermine the state's ability to intervene effectively.

The class character of the capitalist state must be concealed, otherwise its legitimacy would be compromised. This is effected not just by the denial of bias, but by the inscription of bias into the structure of the state. Bias occurs not simply in specific decisions, but more importantly in mechanisms which limit the types of decisions that can be made; through what Offe terms "selection mechanisms". A

selection mechanism "...always actualizes only one section of an area of possible results and...produces a uniformity or consistency of actualized events..." (Offe, 1974, 38). The consistency referred to here does not contradict the previous argument that state policy is inconsistent. State policy is often inconsistent, but this is limited by the necessity to reproduce the conditions of existence of capitalism. Selection mechanisms are institutionalized in the formal rules and procedures of the state, which are not the neutral administrative or problem-solving devices they are purported to be. Rather, they define "acceptable" goals, and determine which issues can be addressed within the political system. This does not necessarily operate by means of overt, conscious decisions on the part of state agents, but more importantly through the range of issues that the political system is structurally capable of handling and the ideological framework which defines not only what is right or wrong, but also what is possible and even what exists. A state which is defined as representative of the "collective will" is well placed to carry out the appearance of neutrality, its actual practices to the contrary.

State Intervention and Policy Formation

State intervention occurs in relation to historically specific struggles, political movements and interests. Economic intervention has at its core the inability of the

capitalist class to establish its own cohesion or to subordinate the working class by economic means alone. Offe (1975) has distinguished several types of intervention strategies that are commonly adopted. His framework is of considerable importance in view of developments in Australian arbitration to be discussed in later chapters. Offe distinguishes between three forms or strategies of state decision-making, which he terms bureaucracy, purposive action and consensus.

Bureaucracy, as outlined by Weber, is based on principles of legal-rational action, impersonality, and strict hierarchical accountability and authority. This is well-suited to routine tasks, but is an insufficient basis for complex, urgent problems with no readily apparent guidelines for their solution. Situations which require the state to initiate policies or actively intervene in crises call forth other decision-making strategies.

Purposive action is based on technocratic rather than legal-rational principles. The main question here is, "What works?". It is suited to innovative or goal oriented tasks, but several conditions must be met for its success. These include a clear set of goals, a relatively stable environment, and the ability to withstand a considerable degree of pressure from class or interest groups. "Clients" must either agree to submit to direction by the state or be unable to establish

effective alternatives. As these circumstances seldom exist for long, purposive action can have only limited success.

The third strategy is consensus. This entails the "...simultaneous determination of inputs and outputs by the clients of state administration or the recipients of its benefits" (Offe, 1975, 139). This has the advantage of being able to absorb a great deal of conflict, but determination of state activity by "private parties" tends to undermine the autonomy of the state. Consensus renders co-ordination and long term planning difficult, and can lead to particularistic decisions which conflict with the state's universalistic role of maintaining the conditions of existence of capital.

None of the strategies discussed above provide long-term solutions to the demands placed on state agencies in capitalist societies. The conflicting underlying principles render combinations of these strategies similarly unsuccessful. It has been argued that the inscription of class conflict within the framework of the state results in inconsistent, opportunistic decisions. It is now suggested that the form of state decision-making is likely to prove unstable as well.

Industrial Conflict

There is a reciprocal relationship between conflicts in

the workplace and struggles of a more general character. While the focus of this research is upon the political management of industrial conflict, particularly at a national level, it is necessary to examine briefly conflict in the workplace. It is at the point of production that exploitation in its "pure" form occurs, and where control is most essential for the capitalist.

Capital seeks to hire labour power on terms which allow either the appropriation of surplus value or the exchange of goods or services for a profit. The capitalist also attempts to control the labour process. It is important that the asymmetrical nature of the wage/labour-power exchange be concealed in order for the capitalist's domination in the workplace to be viewed as legitimate.

The work relationship is the outcome of a "bargain".[22] The "bargain" will be tenuous, as capitalists attempt to gain advantage in their competitive struggle and workers seek to advance their position or defend themselves against the initiatives of employers. As Crouch puts it,

> The interest of the dominant role in such a relationship can be defined as maximisation of control over labour, offset by the extent to which such maximisation will reduce the effectiveness, or incite the revolt, of that labour. The interest of subordinates consists in eroding, evading or replacing domination, offset by the extent to which attempts to do so will either incite coercive sanctions or involve destruction of existing means for securing subsistence.
>
> (quoted in Salaman, 1979, 146)

Industrial conflict therefore centres on issues of distribution and control. Distributive conflicts are concerned with wages, hours and other benefits. These struggles can threaten the survival of individual capitalists, but they do not question the capitalist-worker relation. By focusing on exchange rather than production, distributive conflicts accept the social order as given and divert attention to the relative shares of the product enjoyed by capital and labour.

Control conflicts question the capitalist's right to dominate the production process. Control over production is incorporated in beliefs on "managerial prerogative"; the right to hire, fire and use labour as the capitalist sees fit. This is often viewed as natural or necessary, and control is generally conceded grudgingly. There has not been a unilinear development in either distribution or control. They are subject to negotiation and may be unclear at a given time.

Trade unions and employers

While many instances of worker initiative and resistance are spontaneous or unorganized, one cannot understand industrial relations without discussing the

institutionalized expression of working class struggle, trade unions. In Hyman's (1975, 64) view, the "central purpose" of trade unions is

> ...to permit workers to exert, collectively, the control over their conditions of employment which they cannot hope to possess as individuals; and to do so largely by compelling the employer to take account, in policy- and decision-making, of interests and priorities contrary to his own.

However, trade unions are not necessarily progressive organizations. A tradition based on the work of Lenin, Michels and others views trade unions in themselves as posing no threat to the capitalist order. While threatening the viability of individual capitalists through wage demands, the economism of unions' claims does not challenge the political dominance of capitalists or the ideological legitimacy of the capitalist system. To the contrary, trade union action generally signifies the acceptance of bourgeois order (Hyman, 1971).

This "pessimistic" tradition gives only a partial account of union objectives and capabilities. By concentrating on tendencies towards stability, genuine advances made through trade union action may be overlooked. This does not suggest that trade unions are potentially agencies for revolutionary change, but points to the contradictory character of trade unions and their role as centres of working class struggle. This is brought out in Hyman's (1975) distinction between unions' "power over"

individual members, who must subordinate themselves to the discipline of the union in order for gains to be made collectively through the unions' "power for" working in their interests. It is the "power over" aspect that threatens to undermine and divert union action. This may be due less to the motivations of union officials than a reaction to the power of opposing forces. Trade union economism stems partly from structural constraints such as the "selecting out" of control issues, which directs working class action towards material demands. The accommodation that is frequently found between employers and union officials is "natural", in that there are strong pressures which encourage such a relationship. It would be a mistake, however, to view this as necessary or inevitable. Economistic demands may become political and ideological issues, and actions arising from shop floor initiatives can lead to more general union campaigns, even against the will of union officials.

The willingness of employers to grant concessions varies, depending upon the industry, economic conditions and the history of a particular firm. Competition between capitalists can at times take priority over the conflict between capital and labour. For example, higher wages may be offered during periods of labour shortage in order to obtain a stable workforce or can be paid to "buy" industrial peace. This will depend on the employer's financial position and perception of the economic environment. The action of one or

more major firms can force less prosperous employers to follow suit, as frequently occurs in Australia.

Employers commonly form associations, which may take part in negotiations. However, neither employers' associations nor trade unions can be presumed to "speak for" their constituents without question. Employers are generally reluctant to grant "power over" their own operations to their associations, whose position can be (and often is) undermined by the actions of individual firms.[23] Similarly, while workers may share a common interest in opposing the exploitation of capitalist relations, complete solidarity is rare, even within a particular union. It is common for contradictory actions to occur, with agreements or pronouncements made at one level ignored or rejected at another.

Ideology

Maintaining industrial conflict within levels acceptable to capitalists depends greatly on ideology. Industrial relations ideologies are fragmentary and inconsistent, appropriated for specific and often contradictory uses. In their critical discussion of industrial relations ideology and practice Hyman and Brough (1975, 73) state,

> Ownership and control of economic resources provide the power in large measure to define the

> structure and objectives of employing organizations, and to mould the beliefs and values of those who are employed. Thus the power of work groups is essentially defensive and reactive: if their views and wishes are ignored, employees may be able to obstruct the implementation of managerial decisions; but they are in no position to impose radically new policies or priorities. And even this negative power is constrained by the realistic appreciation within most employee groups that resistance to specific management policies which is carried 'too far' will not be tolerated--a consideration particularly salient for trade union representatives who are especially concerned to safeguard the bargaining relationship with management.

Workers' interests are often expressed in a manner which indicates opposition to employers, but in a form compatible with the continued existence of capitalist relations. Therefore, wage claims show that workers are dissatisfied with their incomes, but the existence of an unequal incomes hierarchy is seldom questioned. Indeed many union actions are designed to maintain or even increase wage differentials.

If dominant industrial relations ideologies are accepted as legitimate by workers, this does not mean that there is consensus over their practical meaning. Although the employer's "right to manage" may be acknowledged, this does not necessarily extend to an unquestioned "right" to fire or demote employees or to alter the labour process at will. Again, although the existence of a wage hierarchy is seldom questioned, there are no objective standards for placing a given occupation within it. Workers are nevertheless well

aware of traditional relationships between wages for their job and other jobs, and often of regional comparisons. As wage relativities are jealously guarded, changes in wage rates can lead to significant industrial unrest as workers seek to restore former comparative relationships. This poses a formidible obstacle to efforts to reorganize work or to "clear" labour markets or reduce overall wage levels.

The dominant beliefs on industrial relations incorporate such terms as the "national interest" and the "public welfare". Strikers are frequently said to be "holding the country to ransom". These slogans presume that there are fundamental common interests shared by all classes, and that these are served by "orderly" industrial relations. It is true that most people, including trade unionists, object to actions which disrupt their work and usual round of activities. However, this cannot be taken to demonstrate the existence of a fundamental concord of interests in capitalist society, although the legitimacy of capitalist relations is one of the most significant effects of dominant ideologies.[24]

Corporatism

A significant recent theoretical development has been the attempt to explain state activity through the use of the term "corporatism". There is no coherent corporatist "school", and both non-Marxists and Marxists have made use of

the concept. Their work provides useful insights, but much of it is specific to European contexts, and it would be misleading to characterize Australia as a "corporatist" society or to be moving steadily in that direction. Some of the tendencies outlined in this literature can be discerned in this country, but it remains to be seen how far various seemingly corporatist innovations are taken.

Panitch (1981, 24) defines corporatism as,

> ...a political structure within advanced capitalism which integrates organized socio-economic producer groups through a system of representation and cooperative mutual interaction at the leadership level and mobilization and social control at the mass level.

This usually entails institutionalized arrangements between capital, labour and the state, often under the direction of the state, for the development of economic policy (though labour is generally a "junior partner" in such ventures). By incorporating representatives of labour into the policy-making process, it is sought to legitimate policies which limit working class incomes and restrict the use of strikes and other forms of industrial action.

This framework is consistent with the common assertion that leadership of the state is shifting from the legislative to the executive branch, which is concomitant with a change in the ideological basis of state action from that of neutral arbiter (the legislature is elected to "represent" the people,

so their majority decisions are "fair") to guarantor of growth (through the technical expertise of the state personnel). As capitalist economies develop and contradictions deepen, the direction and intervention of the state is necessary in crisis management. At the same time, the organized strength of the working class potentially obstructs policies designed to overcome impediments to accumulation. By incorporating leaders of both the capitalist and working classes into the state decision-making machinery, policies are introduced to cater for sectional interests with the objective of obtaining their allegiance.

Jessop (1978) argues that corporatist structures lack the legitimacy of elected legislatures, and in normal circumstances must operate in conjunction with parliaments. This makes the implementation of corporatist policy more difficult, as a wide range of interests are represented in parliaments, particularly non-monopoly capital. Corporatism is also constrained by pressures placed on union leaders by their members. The history of incomes policies in Europe suggests that there are limits beyond which union officials cannot act against the interests of their members. Panitch (1981, 34) notes that trade unions frequently must withdraw from corporatist institutions under rank and file pressure, and national policies may be bypassed by local industrial action. Similarly, agreements may be broken by capitalists (e.g. by granting higher wages outside official income control

machinery). The establishment of corporatism on a long term basis would require extensive revisions to the organizations of labour and capital, such that discipline could be imposed on their members.

Conclusion

The capitalist state was the central focus of this chapter. The class nature of the state was attributed to the inscription of the interests of capital in the state apparatuses. It was argued that the state has developed through class struggle. The organized power of the working class has brought about significant reforms and has had considerable impact on the structure and operation of capitalist states. In particular it was noted that legislatures play a decreasing but still important role, with ruling class interests more effectively carried out by branches of the executive. State policy was seen to be opportunist and inconsistent due to the difficulty of maintaining the conditions of existence of capital without taking measures which have contradictory effects. Classes were seen to be fragmented and split by contradictions at various levels, which in turn are enmeshed in the state apparatuses. While capital and labour have an inherently antagonistic relationship, numerous cleavages exist within classes and along other lines, such as gender and ethnicity.

It is in the context of these relations that the Australian Conciliation and Arbitration Commission must be viewed. It operates within a framework set by class struggles and by other state apparatuses. It is among the most important state apparatuses which deal with economic struggles, but not the only one, and for this reason its activities cannot be understood in isolation. The nature of monopoly capitalism requires the active intervention of the state apparatuses, both to counteract tendencies towards economic crisis and to legitimate these actions and the capitalist system as a whole. To varying degrees, all state apparatuses serve economic, political and ideological functions, the precise nature of which is in each case an historical question. This historical development of the Arbitration Commission's functions cannot be stressed too strongly, as the risk of teleology is great and must be avoided. Given this, it is suggested that the major functions of the Arbitration Commission include the following:

a) Attempting to provide a degree of macro-economic management by setting the cost of labour power for capital;

b) Displacing the object of working class struggle from production to distribution;

c) Providing a legitimate, permanent mechanism for state intervention to ensure the maintenance of capitalist relations in the workplace;

d) Intervening in disputes within the capitalist class that involve the cost of labour power;

e) Helping to manage changes in the labour process, such as the establishment of new relations due to the introduction of technology;

f) Legitimating the continued existence of capitalist relations of production, both by interpreting class struggle in terms of bourgeois ideology and by "selecting out" possible disruptive paths of working class struggle.

The form and content of industrial arbitration are both objects of class conflict. The variations in strategies of arbitration and the content of specific decisions as the Commission is confronted by the demands of employers, unions and other branches of the state will be examined. The theoretical framework developed above is essential for understanding these processes, but cannot in itself provide an explanation for specific actions or conflicts. These can only be analyzed through an historical examination of the Commission (for which the theoretical framework is a necessary basis), and most of the remainder of the thesis will be devoted to this task.

Footnotes

1. See Fine (1980), Hodgson (1977), Mandel (1978) and Wright (1978) for an outline of various positions in these debates. It will be sufficient for the purposes of this thesis to establish that Marxist political economy assumes that crises are endemic to capitalism.

2. Firstly, there can be an increase in the rate of surplus value (the ratio of surplus value to variable capital) resulting from improvements to productivity arising from a higher organic composition of capital (the ratio of constant to variable capital). The value of variable capital is produced in a shorter time, leaving a larger proportion of the product as surplus value. This tends to be restricted, however, due to the likelihood that workers' needs will be extended, raising the value of variable capital. Secondly, another counter-tendency results from a reduction in value of constant capital. If productivity increases, the value of each commodity declines. This increases the proportion of surplus value accruing to the capitalist from each commodity produced and sold.

3. The business cycle does not always manifest itself in the same way, but there do seem to be regularities. The discussion is based on that of Hunt and Sherman (1978) and Mandel (1968; 1978).

4. Hunt and Sherman (1978, 424) address the question of the effect of wages on business cycles. Those who argue that prosperity is ended by high costs maintain that wages should be cut to boost profits, while others hold that a decreasing wage level reduces aggregate demand, inhibiting economic activity and bringing on a depression. Hunt and Sherman argue that both are right. They see wages as being neither too high nor too low. Wages are only a part of costs, which squeeze capitalists from both sides. But reductions in costs, depending on their nature, can squeeze profits elsewhere. This argument was debated endlessly before the Arbitration Commission through the 1970s, not surprisingly without resolution.

5. It is accepted that there does not exist any ideal typical capitalist state. Nor is it assumed that a particular capitalist state is a singular entity. Rather, states may be considered as an aggregation of forms, or state apparatuses, with a greater or lesser degree of institutional unity. Where "the state" appears in the text, it is as a convenient shorthand for a complex phenomenon.

6. The dividing line between economic and political phenomena is in practice unclear. The terminology denotes the existence of certain phenomena which theoretically do not "belong" to the realm of production, distribution and exchange.

7. See especially Mandel (1978) for a discussion of these developments.

8. State involvement in infrastructure development has been particularly pronounced in Australia. See Fry (1979), Connell and Irving (1980).

9. This raises the possibility of state agents acting against the interest of individual capitals, or possibly against capital as a whole. The question of whether capitalism can be replaced gradually through state initiatives is a hotly debated issue, as is the problem of reformism in general. See CSE State Group (1979), Poulantzas (1978).

10. Class as used here is a relational concept, not a set of categories into which individuals are distributed. "The stress here is on the processes producing social groupings, rather than the categories they produce; and on the activity of people, not merely their location in social space" (Connell, 1977, 5). Class is not simply a way to describe a common set of characteristics shared by individuals. Rather, it is an expression of processes in which distinct groups participate.

11. See Poulantzas (1975), Wright (1978), Carchedi (1977) and the contributions to Hunt (1977) and Walker (1979). For a highly critical view of the Marxist debates see Parkin (1979).

12. Poulantzas stresses that the mental/manual distinction is 1) a relation, not a characteristic of a particular job and 2) a tendency, in that agents do not engage in "purely" mental or manual labour. Thus many clerks, while engaging in mental labour, fall more towards the "manual" side of the division than e.g. accountants.

13. This does not mean that the worker literally does not know what techniques are necessary to produce, though in some cases, such as industries using advanced technology, this may be true. Rather, even if the worker possesses such knowledge, its legitimate exercise is the prerogative of capital.

14. Those who work for money and commercial capital provide unpaid labour time, but this does not increase the value of commodities. Struggles in the money and commercial sectors affect the level of profit, but have no effect on the amount of surplus value that is produced (Mandel, 1968, 189).

15. Some authors have argued that the law of value in fact does not apply to monopoly firms. Mandel (1978, 526-531) argues forcefully that such a view is incorrect.

16. The cleavage between "white collar" and "blue collar" work is also of great significance, and has been discussed above.

17. Indeed, one of the major weaknesses of Marxist class theory is its inability to conceptualize adequately the place of women.

18. For a discussion of this topic see Kitay and Simms (1982).

19. Braverman has been criticized for oversimplifying the process of "de-skilling", though the concept, with modifications, is widely used. See Littler and Salaman (1982), Wood (1982) and Zimbalist (1979).

20. I am aware of criticisms of "topographic" models such as the "base-superstructure" and "economic-political-ideological" distinctions (see e.g. Sayer (1975), Urry (1981)). Such models are not useful if taken literally, but appear to have merit as used by Hall (1977). The problems lie in the theoretical status of ideology (is it a distinct level?), the articulation of the instances and the question of "determination in the last instance". Hall argues persuasively that abandoning the base-superstructure metaphor is tantamount to leaving the terrain of political economy.

21. It must be stressed that the state is neither external to nor constituted as a result of class struggle. Indeed, the state plays an integral part in the reproduction of classes.

22. Use of an exchange metaphor is not to suggest the exchange of equivalents.

23. Panitch (1981, 26) states, "Trade union power is based on the effectiveness of its collective organization. But the power of capital is based on control of the means of production, and this control is not transferred to the interest associations of business by individual firms...these associations play a less critical role for their class as agencies of struggle, of representation and of social control than do trade unions for their class, not least because of the role of the state itself in cementing a common interest among capital's competing fractions".

24. The significance of dominant ideologies has been the subject of recent research, suggesting that their influence is at most indirect (Abercrombie et al. (1980), Chamberlain (1983)).

Chapter 3: Historical Background

Industrial arbitration in Australia is generally recognized to be quite different to that intended or envisaged by its founders. The Commission has expanded far beyond its original purpose as an agency which would resolve industrial disputes. It plays a key role in everyday industrial relations, and has come to dominate the wage fixing process. The Commission's actions in seeking to manage struggles between wage labour and capital place it in the fundamental dilemma of all major capitalist state apparatuses; to take measures which preserve the conditions of existence of capitalist relations which do not tend to undermine those relations.

Once arbitration was established, other institutions began to alter and develop in response. Its abolition now would require a major rearrangement of labour relations. Only a brief outline of the development of the relationship between arbitration, capital, labour and other branches of the state can be attempted here.[1]

Prelude to Arbitration

There was no necessary reason for arbitration to be established in Australia. Arbitration is but one solution that could have arisen to deal with comparable problems. However, the course of labour relations and state intervention in the latter half of the nineteenth century provided an environment in which its introduction appears if not inevitable, at least a logical response to the crisis of the 1890s.

Two points stand out above others with respect to the establishment of arbitration in Australia. One was the relatively favoured position of wage labour. The other was the central role of the state in economic development.

Economic conditions varied through the late 1800s, but there was marked growth and prosperity from 1875 to 1889, with heavy inflows of foreign capital. A strong demand for labour placed the working class in an advantageous position. New trade unions were formed in the 1850s, with a stability and industrial orientation lacking in earlier associations. Organizational advances included the establishment of the Sydney Trades Hall Council in 1871 and an intercolonial union congress held in 1879 (Turner, 1978).

Both workers and capitalists sought state intervention in the economy during the last half of the nineteenth century.

The working class desired the legalization of trade unions and improved working conditions, as well as relief in times of economic depression. Capital also encouraged state intervention, and much of the infrastructure necessary for economic development was provided by the state. According to Fry (1979, 2), colonial governments were "sponsors and guardians of private enterprise". Although the state was not active in mediating industrial disputes, "impartial" mediation was occurring by the mid-1880s, with private individuals chairing "Boards of Arbitration" comprised of union and employer representatives (Healey, 1972, 8; Turner, 1978, 28).

The long period of prosperity was broken by a severe depression in the early 1890s. There was an oversupply of unskilled labour, wages were cut, and employers made a concerted attempt to reverse the gains made by unions. The employers were particularly anxious to reintroduce individual negotiations with workers and to overturn closed shop arrangements (Macarthy, 1967, 53; Turner, 1978, 41).

A series of bitter strikes ensued. The employers were victorious in all cases, aided by the ready availability of blackleg labour and the intervention of the state to protect the employers' interests. The unions were not only defeated, but in some cases they were smashed (de Garis, 1974, 229-233; Turner, 1978, 40-47).

Defeated in industrial struggle, the labour movement became increasingly involved in political action, particularly through the Labor Party. Connell and Irving (1980, 196) state,

> [Working class] leaders cannot choose to operate permanently outside the organisations of the State, because the class structure is itself constituted by the State. Moreover, as soon as the collective power of labour appears, the policies of the state are adjusted and new state forms created to integrate a subordinate class.

They add,

> ...workers had to mobilise in relation to the state because the state, through both central and local government activity, was the largest employer, and the central government always played a major part in regulating the supply of labour. Thus workers participted in the political system as workers long before they formed political parties.

Mobilizing in relation to the state rather than in opposition to capital encouraged the adoption of reformist strategies. The electoral success of labour politicians led to the belief that the state could be turned to their ends. With labour representatives in the legislatures, state intervention in industrial affairs was presumably viewed with less suspicion than in other countries, despite state support of capital during the 1890s strikes.

Many unionists favoured the introduction of conciliation and arbitration machinery, and this became a Labor Party policy. Employers generally opposed arbitration, viewing it as unwarranted interference with business. Labor obtained the balance of power in several colonial legislatures, and

arbitration was introduced as "payment" for support of one of the dominant parties. A bill was introduced in South Australia in 1890 for a Board of Conciliation, which was passed in 1894. An arbitration Act was passed in NSW in 1892, while wage boards were established in Victoria in 1896 (Healey, 1972, 10; Turner, 1978, 50).

Conciliation and arbitration was discussed at the Constitutional Conventions in the 1890s. Its strongest supporters, C.C. Kingston and H.B. Higgins, proposed that Parliament should be granted power to legislate for the control of interstate industrial disputes, but this was not accepted. A diluted provision was included at the final convention by a narrow majority (Healey, 1972, 13), which became section 51(xxxv) of the Constitution. Parliament was empowered to establish machinery to resolve industrial disputes, but could not intervene directly.

A Conciliation and Arbitration Act was passed in 1904, after heated debate and the resignation of two governments over its provisions (Sawer, 1972, 26, 37-40).

> The chief objects of the original Act, which are even now only slightly altered, were to promote goodwill in industry; to encourage conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes; to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum degree of legal form and technicality; to provide for the observance and enforcement of agreements and awards made in

> settlement of industrial disputes and to encourage the organisation of representative bodies of employers and employees under the Act.
> (Healey, 1972, 17)

The first President of the Arbitration Court, Justice O'Connor, was appointed in February 1905. He was succeeded in September 1907 by H.B. Higgins.

The Higgins Era

The Court originally played a relatively minor role in industrial relations. Its development under Justice Higgins was gradual. His approach emphasized the protection of low-income earners. He asserted that capital's power to hire and fire gave it an inherent advantage over labour. He declared, "Low wages are bad in the workers' eyes, but unemployment, with starvation in the background, is worse" (Higgins, 1968, 19). In Higgins' view, there should be an irreducible minimum wage based on "need" rather than the economic capacity of employers.

The high level of wages established during the long period of prosperity prior to 1890 was widely viewed by workers as a proper standard. The labour movement continued to press for a return to the pre-1890 standard, and looked to the state for support in achieving this objective. Higgins shared the view that the reduced wage rates were unjust, and considered

arbitration to be the most appropriate method of restoring wages to a "fair" level (Macarthy, 1967). Higgins maintained that if wages were too low, workers would continue to struggle, disrupting industry and undermining prosperity. An "impartial" third party could fix "just" wages, and in so doing abolish the need for strikes to occur. Industrial relations would become a "new province for law and order", replacing the "law of the jungle". There would be no room for strikes and lockouts under arbitration, and Higgins refused to arbitrate while industrial action was underway.

Higgins' approach can be viewed in terms of the relative autonomy of the state. The Arbitration Court established its independence as a state apparatus from the desire of capitalists to keep wages low. However, the pre-1890 wage standard was already being paid by certain larger employers, some of whom viewed arbitration as a useful way to reduce competition from small capital. At the same time, working class struggles would be directed away from paths which threatened capital as a whole.

Higgins is best remembered for his famous Harvester decision in 1907. This established a major theme in Australian arbitration; the need to set a community standard below which wages would not fall. The Harvester judgment was given under the Excise Tariff Act, in which exemption from duty could be obtained by manufacturers if the President of the Arbitration

Court declared that they paid "fair and reasonable" wages. Higgins selected the application of agricultural equipment manufacturer H.V. McKay for his first decision. He concluded that his obligation was to set a wage which would meet the needs of "...the average employee regarded as a human being living in a civilised community" (in Hutson, 1971, 42). His standard was the needs of an unskilled male labourer with a dependent wife and three children who lived in a condition of "frugal comfort". He obtained evidence from housewives, rental agents and shopkeepers in order to determine this "fair" standard, and decided on a figure of 7/- per day. This effectively re-established the pre-depression standard, and was based on what Higgins considered would be the prevailing wage if the parties were of equal bargaining strength. Higgins sought to set a national minimum standard (Macarthy, 1967). He called this a "living wage" for the unskilled, and it soon became known as the "basic wage". Higgins used the living wage concept in other cases. Additional payment, termed a "margin", was granted to skilled workers.

The Harvester decision had relatively little immediate impact, but Higgins' sympathetic treatment of claims created a rush to get Federal awards (and was a tremendous inducement for workers to join unions, which increased rapidly in size). A backlog of cases developed which took years to get through.[2] Inflation increased fairly steadily from 1908 to 1921, eroding the real value of awards, which were adjusted only every three

years. It was only in 1921, after award increases, a fall in prices and the extension of coverage to much of the unskilled workforce that the Harvester standard became a reality for most employed workers. Despite these difficulties, Macarthy (1967, 559) concludes

> Over time...Higgins' continued references back to the Harvester judgment served to erect the Harvester real wage of 7/- a day for the unskilled as a definite economic and social goal: it took on a symbolic form perhaps having no counterpart in any other country.

Once within the system, most organizations made no attempt to leave, though some frequently sought to bypass its machinery.[3]

The federal government took two measures which were of significance for the arbitration system following a number of major strikes during and after World War I. One was the establishment of a Royal Commission into the basic wage. After exhaustive investigation, the Royal Commission determined that the basic wage should be considerably in excess of the real value of the Harvester standard. This was rejected by both the Prime Minister and the Arbitration Court. Higgins viewed the proposed standard as impossibly expensive, and pointed out that the criteria used by the Royal Commission were based on the needs of employees of higher status than unskilled workers (Healey, 1972, 35; Hutson, 1971, 47). The unions pressed for the Royal Commission standard to be adopted, but were unsuccessful.

The second measure threatened to undermine the authority of the Court. The government passed the Industrial Peace Act in 1920, which enabled temporary tribunals to be set up to deal with specific disputes.[4] Higgins resigned over this issue, claiming that special tribunals would threaten the work of the Court.

> From the nature of the case, any such temporary tribunal must be merely opportunist, seeking to get the work of the particular industry carried on at all costs, even the cost of concessions to unjust demands, and of encouraging similar demands from other quarters. On the other hand, a permanent Court of a judicial character tends to reduce conditions to a system, to standardize them, to prevent irritating contrast. It knows that a reckless concession made in one case will multiply future troubles...
>
> (Higgins, 1968, 173)

Little use was made of the legislation (Healey, 1972; Portus, 1979). Where separate tribunals have been established, as in the coal industry, they have been on a long-term basis, and efforts are made to restrict the flow-on effects of decisions.

Several themes emerged from the Higgins era which have remained with the arbitration system since that time. The Court was caught between labour's efforts to obtain "socially just" wages and capital's stress on the capacity of the economy to pay. Closely allied to that is the dilemma of whether arbitration should stress dispute settlement or economic stability. Another tendency is the attempts by governments to intervene in industrial relations when they are unhappy with the approach of the tribunal. This era also brought out the

impotence of arbitration to settle really major disputes, such as the Great Strike of 1917. In these cases, capital usually relies on its power to dismiss labour, the divisions within the working class which encourage strikebreaking, and the legal and repressive powers of the government and the state apparatuses. Most importantly, the Court sought to restrict or eliminate working class challenges to capitalist relations and to exercise control over the remaining areas of conflict, a task at which it was fairly successful. Capitalists soon lost their hostility towards the Court, while its legitimacy has never been systematically challenged by labour.

The Era of Automatic Adjustments

Wages

Although the wage standard proposed by the Royal Commission was rejected, a recommendation to automatically adjust the basic wage each quarter in line with a cost of living index was accepted in 1922. The new President, Justice Powers, also granted a 3/- loading to the basic wage to compensate for previous price increases, but reduced the level of margins on the ground that the recession had reduced the economy's capacity to pay (Hancock, 1975; Healey, 1972; Hutson, 1971; Turner, 1978). The basic wage and margins were treated

differently, with margins often reduced in relation to the basic wage in times of economic recession. Margins were never viewed in terms of need, but as a combination of payment for skill and the capacity of the economy to pay.

Automatic adjustments worked well during the prosperous 1920s, but the idea of an irreducible "needs" basic wage came under attack during the crisis of the Great Depression. Asked by employers to reduce wages, the Court stated,

> The real issue raised in this lengthy inquiry was whether escape from the world economic crisis with added difficulties of local origin can be effected without wage reduction. Or in simple words can the wage standards built up during past years be maintained?
>
> (in Healey, 1972, 55)

The response was to cut the basic wage by 10% in January 1931. This was not restored until 1934.

Healey's (1972, 56-57) account of the case merits quotation at some length.

> The unions argued that the economic collapse was 'transitory' ... They also contended that in the past the employers had made substantial profits and therefore should carry on operation at reduced profits without wage reduction.
>
> The Court's view on this was that much of the reserves of companies had gone into buildings and extension of plant, even though it was generally accepted that the expenditure had been too lavish. If the accumulated undistributed profits of past years were in the employers' hands in the form of liquid assets, there would be much in the argument that for a time at least industry could carry the load without wage reduction. The majority of employers, however, were without such liquid assets and could not obtain from the banks credit on the assets which represented the undistributed

> profits. The real question was therefore whether the general wage level was too high for the present spending power of the country.

The Court had to decide whether or not to save domestic capitalists from a crisis. Rather than let large numbers of businesses fail, with the danger that the entire economic system might be undermined and transformed, it was decided to effect a massive transfer of income from labour to capital. As the legitimacy of such an unadorned shift might be challenged, the decision made use of strong consensus ideology. The Court declared,

> Never in the history of the Commonwealth was there such a need for co-operation between the various factors to check the downward tendency which threatens to end in collapse.

The assumption was that the present system operated in the common interest. It was implied that for their own good, workers would have to bear the burden of the economic debacle created by employers.

Confronted by a major crisis, the Court, followed by other state apparatuses[5], acted decisively in the interests of capital. The crisis posed a limit to their autonomy, and the Court did not resile from abandoning one of its fundamental principles. The Court sought to reinterpret Higgins' early decisions[6], attempting to place less emphasis on "needs" than the economy's "capacity to pay".

The Court's success in imposing wage cuts is largely

attributable to the weakness of the labour movement at the time. The situation was quite different after World War II. Workers sought substantial improvements to wages and conditions, and were able to support their claims through industrial action. This was opposed by those who feared that the claims, if successful, would restrict the expansion of capital and the integration of Australia into the world economy. The conflict was reproduced within the Court. Debate now centred on the share of the national product that should go to labour or capital. This led to several major decisions that were based on the "capacity to pay" principle. While "needs" was not abandoned, it took the more diffuse form of concepts such as "social equity" or "wage justice". The shift reflected the greater economic role of the state in general, and the widespread acceptance of the ideology of economic growth.

In 1950, the basic wage decision was split. Chief Judge Kelly, in the minority, was determined to grant no increase due to the danger he perceived of adding fuel to inflation (d'Alpuget, 1977, 119). Kelly's chief antagonist on the Court, Judge Foster, supported a substantial increase of one pound. The third member of the full bench supported Foster, on the ground that no increase would lead to an industrial relations catastrophe. The result was the largest increase since the Harvester decision.

Prior to this, a series of margins decisions in the metal industry resulted in additional wage increases. Industrial action in support of a 20s margins increase commenced in 1946 and escalated when widespread lockouts were imposed by employers late in the year. After protracted industrial campaigns and a rather confused series of arbitration decisions, the unions were successful, but at considerable expense to themselves (Perlman, 1954, 117-123; Sheridan, 1975, 171-179; Turner, 1978, 100-101). Furthermore, Sheridan (1975, 178) suggests that this conflict was a turning point for employers, who increasingly sought "...legal restraints on the withdrawal of their employees' labour". This would have great repercussions two decades later, when union opposition to legal restrictions on strikes culminated in a massive wave of industrial unrest.

The economic role of the Court was at the centre of debate in the early 1950s. The wool boom generated a high level of inflation in 1951. The combination of the Court's basic wage decisions and automatic quarterly adjustments raised the minimum male wage level substantially over several years. This was viewed with alarm by Kelly CJ.

In the national wage case of 1952-53, no increase was granted and automatic cost of living increases were abolished. The decision was based on the "capacity to pay" principle, which ironically had been the basis of the recent one pound

increase which Kelly sought to repudiate. In a tenuous line of argument, the decision went so far as to argue that "capacity to pay" had been the major criterion for setting the basic wage since Higgins' day (Hawke, 1956, 469-471). In place of a price index, seven "indicators" were put forward as criteria for determining capacity to pay in future basic wage judgments.[7] The Court was now basing both its basic wage and margins decisions on economic criteria. The Court seemed intent on influencing the economy through wages, the one area over which it had control. "Kelly had turned the court into an economic manipulator with one arm tied behind its back. The free hand cuffed the unions" (d'Alpuget, 1977, 139). The 1953 decision, which came at a time of considerable political disunity within the labour movement, met little resistance.

State intervention

The events of the Great Depression demonstrated the limits of the autonomy of the state apparatuses with respect to class conflict, but the period immediately preceding that crisis established the existence of a high degree of autonomy between the branches of the state. This was brought out by the inability of the conservative Bruce federal government to establish control over industrial relations during the late 1920s, or to co-ordinate the efforts of the state apparatuses to this effect.

The lack of uniformity between federal and state industrial jurisdictions was considered to be particularly troublesome. A constitutional referendum in 1926 on a proposal to grant authority over industrial matters to the Commonwealth was opposed by the unions and defeated (Turner, 1978, 77).[8] The Commonwealth amended the Conciliation and Arbitration Act in 1928, with the intention of restraining the more militant unions (Sawer, 1956, 269). This objective was not met.

Prime Minister Bruce then reversed direction and sought to remove the federal government from the area altogether. The Maritime Industries Bill, introduced in August 1929, would abolish all federal arbitration powers except in the maritime industry. Control over industrial matters would revert to the states. The measure was defeated, and the government lost the ensuing general election. Bruce lost his seat in the process (Healey, 1972; Sawer, 1956). This incident resulted in the widespread assumption that the Australian public fundamentally supports the arbitration system. No further attempts to dismantle the federal machinery were made after Bruce's ill-fated exercise.

The fall of the Bruce government confirmed the pattern established and developed since federation; that of a high degree of involvement by the state apparatuses in industrial relations, but a low degree of co-ordination, with the federal government having a fairly low level of direct control.

Exceptions to this, such as the assumption of direct powers by the Commonwealth during World War II and the intervention of the Chifley government in the 1949 coal strike under emergency legislation, were made in unusual circumstances. The relationship between the federal tribunal and other branches of the state, particularly the federal government, has always been uneasy. Despite the tribunal's increasing recognition of its economic role, it has had to attend to the organized strength of the working class, with which it has at times proved unable to cope. The Commonwealth has tried, through legislative changes, constitutional referenda and economic policies, to acquire more control over industrial matters, but has been relatively unsuccessful.

A Time of Transition

A major change in the tribunal's structure took place in 1956. A High Court appeal against a fine imposed on the Boilermakers' Society for failure to obey an Arbitration Court order was upheld on the ground that the Court was performing both a legislative and a judicial role, which contravened the doctrine of separation of powers (Sykes and Glasbeek, 1972, 487). The tribunal was split into two distinct halves, the Conciliation and Arbitration Commission, which incorporated the

dispute resolution function, and the Industrial Court, which retained the judicial powers of interpretation and enforcement. The first President of the Commission was Justice Richard Kirby, a pragmatic man with considerable abilities as a conciliator.

The Commission still had to contend with the 1953 decision and the seven economic indicators. Although Kirby later maintained that he was never happy with the framework created in 1953, it remained intact through the remainder of the decade.[9] The result was a very hesitant wage policy and a steady erosion of real wages. The unions applied for a reintroduction of automatic adjustments plus increases for prices and productivity in the national wage cases, which became an annual event in the late 1950s. The former was always rejected, the question of productivity avoided, and increases for prices granted cautiously.

The Commission's actions attracted less hostility from the trade unions than might be expected in a time of low unemployment. In part this can be attributed to the divisions within the labour movement and their exploitation by capital. The influence of communist leaders in a number of unions was challenged by a conservative, Catholic-based organization called the Movement. The Movement encouraged the ALP to establish Industrial Groups within the unions, with the objective of securing the election of ALP members in union

elections.[10] The Movement came to dominate the Groups, which enjoyed a number of notable successes in the early 1950s, defeating communist leaders in elections in unions such as the FIA, the Clerks, and several other metal, transport and building unions.[11] The Movement widened its attack, and soon non-communist labour leaders in both the political and industrial wings were challenged from the Right. The ALP reacted strongly against this threat. The Industrial Groups were disowned, and the party adopted a policy of non-intervention in trade union affairs. Although the Movement eventually lost many of the positions it held in the unions, a split developed in the ALP that ensured the dominance of conservative governments for many years. The split affected the unions as well, as a great deal of effort was expended on internal fighting. While the prosperous conditions of the 1950s can account for part of the industrial peace at the time, the political and ideological splits within the labour movement played a significant role as well (McKinlay, 1981, 115-120; Rawson, 1971; 1978, 101-110; Turner, 1978, 111-114).[12]

The Commission's approach to wages began to alter by the end of the 1950s. d'Alpuget (1977, 121) cites Foster's one pound increase in 1950 as a turning point. The size of the 1950 decision forced the parties to pay closer attention to the economic implications of wage decisions. The judges and most advocates lacked the expertise to deal with economics competently. This was changed by Bob Hawke's appearance as

ACTU advocate, whose training as an economist obliged the bench to deal with economic matters on a more sophisticated level. The tribunal had been struggling with the question of economic management since its inception. The post-war growth of the Australian economy, coupled with Australia's increasing integration into the world capitalist system, created conditions which required increasing levels of state intervention and management. The state apparatuses responded differently to these developments, but the growth in importance of economic expertise in government is a common theme in the post-war years.[13] It must be stressed that the Commission did not abandon "dispute resolution" for "economic management". Under the leadership of Kirby and his successor, Sir John Moore, dispute resolution often seemed to dominate and the latter role was regularly explicitly rejected.[14] However, an economic management role was inescapable.

The Commission's caution diminished in 1959. With the economy in sound condition, the basic wage was increased by 6% and margins by 28%. Justice Foster, in the minority in the 1959 basic wage decision, went so far as to support the ACTU's call for a return to automatic adjustments.

The approach established in 1953 was overturned in 1961. The Commission would not restore automatic cost of living adjustments, but decided to hold annual reviews to be based on price movements. Economic capacity and productivity would be

considered at three-yearly intervals. In the annual reviews, "...the only issue in regard to the basic wage should be why the money wages fixed as a result of our decision should not be adjusted in accordance with any change in the Consumer Price Index" (in d'Alpuget, 1977, 167). The Commission accepted that wage increases were not necessarily to blame for inflation, and added that some inflationary pressure was not sufficient reason to deny a wage rise. The CPI was steady for the next two years, so no basic wage increases were awarded, though margins were raised by 10s in 1963 on the basis of changes in prices and productivity since 1959 (d'Alpuget, 1977, 159-167; Hagan, 1981, 294-298; Sheridan, 1975, 277). Overall, 1959-1963 was a time of union success in the Commission, as their prices plus productivity approach gradually came to be accepted by basic wage and margins benches.

In the years immediately following the Commission's establishment, labour was unable to mount major industrial campaigns as it had in the late 1940s, while prosperity enabled capital to absorb wage increases with little difficulty. The Commission approached its economic role with greater sophistication, and the economic climate enabled it to stress industrial harmony. The 1961 principles sought to incorporate both roles, a feat requiring continued prosperity and the acquiescence of labour and capital.

The Total Wage Cases

Having overturned the 1953 decision and established a new set of wage fixation principles, the Commission looked set for a period of consolidation. Such was not to be the case. The years 1964-1966 proved particularly difficult.[15] The conditions for a stable wages policy no longer applied. The unions had overcome most of their internal difficulties and employers were taking a hard line in opposition to their claims. With full employment, the unions began to press their claims through industrial action, and the employers responded with an increased use of penalties under the Act. The industrial climate deteriorated through the decade.

The 1964 Basic Wage Case was decided on the casting vote of the President, with Kirby CJ. and Moore J. in the majority. Gallagher and Nimmo JJ. wrote separate dissenting judgments. The majority and Gallagher J. reaffirmed the 1961 principles, but left it to the parties to determine whether the annual review should be of money wages or real wages. They also argued that as the unions had followed the 1961 guidelines in good faith, it would be unjust to alter the principles with no warning (1964 IIB 486-488). The majority decision emphasized industrial relations considerations. Economic factors, while important, would not be taken up unless specifically requested by the parties.

In his dissenting judgment, Nimmo J. rejected the 1961 principles. He argued that the overriding criterion for wage fixation was "capacity to pay", and said it was inappropriate to take any one factor, such as price movements, as the prime determinant of wage levels. It was necessary to look at a variety of factors each time wages were adjusted in order to obtain a proper indication of capacity to pay.

The 1964 case was also significant for a new initiative by the employers. Basic wage and margins cases were now both argued largely on economic grounds, and the unions were accused of using changes in one to argue that the other should be increased in order to re-establish relativities. The employers proposed that the basic wage and margin should be combined to form a single "total wage" for each employee. This was strongly opposed by the unions, given no support by the Commonwealth, and rejected by the Commission. The employers also put forward a revised version of a proposal which would link wage increases with changes in productivity. As productivity was said to be increasing at a long-term rate of 1-2% per year, the employers suggested that the Commission determine where, within that range, increases should fall. To do otherwise, they argued, would lead to inflation. This view was shared by most economists, as well as by Sir Richard Kirby. The President also believed, however, that it was unworkable on industrial relations grounds in a full employment economy. Kirby believed that the unions' claims (and increases) could

not be kept within the productivity guidelines. He also viewed the idea as potentially unjust, unless all incomes were controlled. d'Alpuget (1977, 189) states,

> ...although Kirby accepted that if wages outstripped productivity movements there would be higher prices or lower profits, he had entertained doubts about the practical application of productivity gearing. More importantly, as a judge, he believed it was unjust to inflict the burden of achieving price stability, even if this could be done, on to wage earners, while allowing rentiers, investors, executive staff and speculators to gambol around gathering up money as merrily as they pleased in an expanding economy.

Kirby contended that the industrial unrest which might arise from such policies would undermine the supposed economic benefits they were designed to foster.

In 1965, the majority national wage decision of Gallagher, Sweeney and Nimmo JJ. completely overturned the principles of 1961 and 1964, over the dissent of Kirby CJ. and Moore J. Justice Moore's decision (1965 AILR 260) stressed that failure to account for price movements would probably result in industrial action aimed at maintaining the value of real wages. The majority argued that

> ...[T]he basic wage and margins should, so far as the latter are determined on general economic grounds, be fixed at the highest level which the capacity of the economy is estimated to be able to sustain for the ensuing year.

The decision was vague as to how economic capacity was to be determined, but the judges indicated that price stability was their main objective. The majority did not accept the employers' productivity-geared wage fixation formula, but the

decision effectively gave the employers what they wanted by elevating "capacity to pay" to the primary position in wage fixation. They also declared that henceforth the basic wage and margins hearings would be held together, an acceptance in principle of the total wage.

The decision was unrealistic in the current industrial climate. Kirby maintained that the unions had shown their faith in the 1961 principles by submitting a moderate claim and dropping their demand for a return to automatic adjustments. In his view, failure to confirm the guidelines broke faith with the unions. The decision created serious tensions within the Commission and lowered the tribunal's public standing. The unions sought a review of the decision, which was refused by Kirby (d'Alpuget, 1977).

The 1966 decision again reversed the Commission's principles. Inflation-fighting was relegated to a secondary, though not inconsequential role. The bench of Wright, Gallagher and Moore JJ. unanimously decided to grant a substantial increase of $2, but they published separate judgments. Gallagher softened his stance of 1965, acknowledging the importance of maintaining real wages. He added, however, "To state that price increases constitute an important matter for consideration is one thing. To state that wages may be geared to prices without regard to real capacity is quite another...".

Justice Moore continued to be concerned with industrial relations considerations.

> It is my firm opinion that the Commission should endeavour to ensure that the wages it fixes at a given time as just and reasonable continue to be able to purchase approximately the same amount of goods and services unless there is good reason why they should not. It should not leave the adjustment of its wages to market forces which would be the logical outcome of the employers' submission. In my view the question of adjustment for past price increases is more a matter of equity than economics.

Moore stressed the difficulty of assessing the degree of inflation resulting from the Commission's decisions. By implication, a wages policy based on price stability would be arbitrary, for how could one use as a precise criterion something which cannot be predicted with any confidence?

The presiding judge, Wright J., sought to have the best of both worlds. He declared,

> ...questions of political or economic policy have no place in my thinking; because I believe them to be extraneous to the Commission's function of determining industrial disputes. But I would not like to give the impression that my mind is closed to consideration of the expected consequences of the Commission's decisions.[16]

Having further confused the wage fixing picture, the Commission announced its acceptance in principle of the total wage. The implementation of this would wait for the outcome of a work value hearing in the metal industry, proposed by the bench on its own initiative. It was hoped that once margins were at "proper" levels in this key industry, an appropriate

base for the introduction of the total wage would have been established.

The full bench introduced a new concept in this decision; the "minimum wage". This was designed to provide protection for low-income earners. Unlike the basic wage, it was not to serve as a foundation for the wage structure, nor would it be used as a basis for altering other rates. The minimum wage was to provide a floor below which no adult male employee could fall. The new arrangement would allow the Commission to look after those on the lowest incomes, which it considered to be one of its prime responsibilities, without flow-on effects (Sykes and Glasbeek, 1972, 603-608).

The employers were jubilant at their apparent victory in the total wage, not recognizing its inflationary potential.[17] The 1964-66 national wage decisions, while of interest in their own right, were indicative of the deepening contradictions in labour relations and the economy. These contradictions were reproduced within the Commission, manifested in its inability to agree on a suitable policy; a dilemma resulting from the Commission's role of intervention in class struggle rather than lack of ability or insight on the part of its members. The Commission's plight was a variation on problems emerging in all advanced capitalist societies at the time, and its efforts to formulate workable policies highlighted these difficulties in a particularly clear manner.

Conclusion

The years following World War II were characterized by marked changes in the economy and in the labour movement. Unemployment remained low for a long period, but prosperity and the ideological split in the labour movement helped to subdue militancy among the major blue collar unions.

The trade union movement had become far larger, more highly centralized, and at the same time more diverse since the introduction of arbitration. This produced a tremendous increase in the Commission's workload, with accompanying problems of co-ordination.[18] Wage fixation became more complex, not only because of the greater sophistication of economic analysis, but also due to the rapid growth of the range of classifications for which the Commission was responsible. Fixing margins for skill among manual tradesmen was difficult enough in the early years of the century. The Commission now had to establish rates for professional, technical, clerical and managerial employees as well. This was far removed from the tribunal's original area of activity. As more employees became unionized and the unions increased their capacity for organization and research, the pressures on the Commission to set and maintain "fair" wages and salaries grew. New issues, such as the quality of working life and job security were introduced before the Commission, in response to

changing economic circumstances and expanding perceptions of the role of trade unions. This challenged established understandings of the "proper" role of unions and management, and called on the Commission to overturn old principles and establish guidelines in unfamiliar areas.

By the late 1960s, women and migrants comprised a significant part of the workforce, filling the increased demand for unskilled labour, clerical and service work. This introduced an additional element of complexity in trade unions. The special problems of migrants and women have only slowly been recognized by unions, and have often been ignored entirely (Quinlan, 1983). The massive growth of unions such as the Clerks and the Shop Assistants, partly through their registration of large numbers of women, has added to the strength of the Right, but has also directed the attention of unions to such problems as part-time work and maternity leave. The dependent status of many women and their relegation to "secondary" labour markets, along with migrants, deepened divisions within the working class, but with long-term implications for increased union strength if these could be overcome.

White collar employment more than doubled between 1947 and 1971, while jobs in secondary industry increased by nearly 50% (Turner, 1978, 115). The white collar sector has traditionally been marked by conservatism and low levels of

trade unionism, so the growth in union membership did not match the increased size of the workforce. However, the organization of white collar work along the lines of mass production of paperwork, and the low levels of pay and poor conditions available in this sector and the service industry contributed to the expansion of the relevant unions. Industrial action, previously unheard of among most white collar employees, became increasingly common. This was particularly true of the major federal public service unions, the ACOA and the APSA. Again, this has not necessarily meant a growth in overall working class solidarity, as Lansbury (1980) points to the existence of a gulf between higher and lower level white collar workers. This results from the ideological and political differences within mental labour, discussed by Poulantzas (1975), as well as from their divergent economic interests.

While new areas of union growth have emerged, there has been a decline in membership of the traditionally militant stevedoring and mining industry unions due to technological change. By the late 1970s, new technology was also threatening the powerful metal unions. Increasingly, a leading role in industrial struggle was taken by unions in industries such as transport, oil and communications. Whether these trends continue will be of great significance for the direction of class conflict and for the work of the Commission.

These developments in the workforce have led to tendencies towards integration and division, both within the working class and the wider society. Rawson (1978, 141) states,

> On the one hand, unionism is in some respects moving towards greater uniformity and cohesion within its own ranks and also towards greater integration within a predominantly capitalist system. On the other hand, there are respects in which differences between unions and other social forces are not only wide but becoming wider.

The ACTU increasingly became the "voice" of Australian unionism, but it presided over a diverse body of trade unionists, and was reliant upon persuasion more than other sanctions to maintain order among its affiliates. Union co-operation was widely seen to be necessary to ensure continued economic well-being, but this raised the prospect of union influence over economic decision-making, a development long opposed by employers in Australia.

The uneven development of unions was paralleled among capitalists. Connell and Irving (1980, 306-307) point to an increasing concentration of capital in Australia, but this was accompanied by conflicts between large and small capital, and by the high level of control over Australian capital by overseas interests. During the era of prosperity in the 1950s and 1960s these developments could be contained without serious social conflict, but with full employment, an uncertain economic climate and the resurgence of militant unions, the

management of the economic and industrial life of the nation became extremely complex.

This was reflected in the history of the Conciliation and Arbitration Commission. The question of the relative importance of economic versus industrial considerations had always been a dilemma, but it grew more serious in the immediate post-WWII years and became a crisis for the Commission in the mid-1960s. The problem did not diminish, as will be seen below. The form and content of the Commission's activities, always subject to criticism, became a constant topic of controversy. Criticism was raised not only by unions and employers, but increasingly by governments as well. By the mid-1960s the working class had recovered from its post-war defeats and was strongly pressing for advances. Again, as will be seen, this could not be managed either by the use of repressive sanctions or by trying to "buy off" the unions.

The themes of economic, political and ideological conflict, posed in the theoretical framework developed in Chapter 2 and traced briefly in this chapter through the history of Australian federal arbitration, reached crisis proportions at several times in the years following 1967 for the Conciliation and Arbitration Commission. These developments will be examined in detail in the following four chapters.

Footnotes

1. Numerous sources examine aspects of the Commission's development. My understanding has been influenced by the work of Macarthy (1967), Merritt (1967), Sheridan (1975), Hawke (1956), Healey (1972), Hutson (1966; 1971), Turner (1978; 1979), Mitchell (1980), and d"Alpuget (1977).

2. A good example of this was the Federated Ironworkers' Association, whose first award took fifteen years to obtain (Merritt, 1967).

3. See Sheridan (1975) for an account of the AEU, a powerful union of metal craftsmen (which later amalgamated with other unions to form the AMWU, the AMWSU and then the AMFSU) which has had a most uneasy relationship with the arbitration system. The AEU persistently denounced and sought to bypass arbitration, but has never been prepared to stay entirely outside the system for long. Loss of registration under the Act leaves an organization open to loss of members to other unions.

4. Hughes had become impatient with the Court's approach to dispute settlement, in which a speedy resolution to the conflict was not always the primary consideration.

5. Shortly after the Court's decision, all Australian governments instituted the Premiers' Plan to reduce public expenditure by 20%.

6. See Hawke (1956) and Macarthy (1967).

7. These were employment, investment, production and productivity, overseas trade, overseas balances, competitive position of secondary industry and retail trade. No basis for weighting these factors was given, nor did a generally accepted measure of concepts such as productivity exist. One prominent academic economist termed the seven indicators to be "incapable of any sensible quantification" (in d'Alpuget, 1977, 156).

8. This was the fourth referendum on proposed amendments to expand the Commonwealth's powers over industrial relations matters. All were defeated, as were similar initiatives in 1944, 1946 and 1973. An amendment to permit Commonwealth control over prices was defeated in 1948 (Richardson, 1973).

9. See d'Alpuget (1977, ch 11) for an account of this era.

10. The potential influence over the ALP of communist-led unions concerned many people at the time, particularly ALP leaders and moderate union officials.

11. See Merritt (1967) and Sheridan (1975) for accounts of developments in the FIA and AEU. For a general discussion, see Murray (1970).

12. Sheridan (1975) demonstrates that Grouper union officials were not necessarily less militant than the communists or radicals they replaced. However, the overall effect was to reduce the ability of labour to mobilize and take industrial action, regardless of the ideological persuasion of union officials. Connell and Irving (1980) argue that labour suffered not only from internal divisions but from a successful offensive by capital. The two developments were related. While Menzies successfully used the division between the Left and Centre of labour brought out by the 1949 coal strike, the subsequent split on labour's Right consolidated the Coalition's hold on political power. The strength of the Right must be attributed at least in part to the ideological offensive launched by capital.

13. See Bulbeck's (1979) work on the IAC/Tariff Board.

14. Fisher (1983) argues that the economic management role was clearly dominant, despite the protests of senior members of the Commission to the contrary.

15. The account of this era is based on the work of d'Alpuget (1977), Hagan (1981), Healey (1972), and Hutson (1971).

16. This is reminiscent of a statement by Dixon CJ. in a High Court judgment handed down in 1953. In The Queen v. Kelly; ex parte Australian Railways Union, the Chief Justice said, "While an arbitral tribunal deriving its authority under an exercise of the legislative power given by s.51(xxxv) must confine itself to conciliation and arbitration for the settlement of industrial disputes including what is incidental thereto and cannot have in its hands the general control or direction of industrial social or economic policies, it would be absurd to suppose that it was to proceed blindly in its work of industrial arbitration and ignore the industrial social and economic consequences of what it was invited to do or of what, subject to the power of variation, it had actually done" (89 CLR 475-476).

17. Previously, smaller increases could be given by moving either component and leaving the other constant.

18. See Dabscheck and Niland (1981, ch 9).

Chapter 4: The Maintenance of Centralized Wage Fixation: 1967-1970

There was relatively little pressure on the Commission in the years immediately following its establishment in 1956. The 1961 wage fixation principles would have routinized the Commission's activities considerably. As indicated in the previous chapter, this strategy did not last long.

The main factor which prevented the principles from working was the growth in strength and organization of the working class and the mobilization of capital in opposition to their demands. The Commission was called on to avoid inflationary wage increases (economic management) and to make equitable wage decisions (industrial dispute resolution). In trying to do both, the Commission made a series of inconsistent decisions which left the country without a clear wage policy. The Commission sought to deal with the mounting wage pressures by centralizing wage fixation. The total wage reduced the options open to labour for wage increases, and the Commission

went further by seeking to minimize increases outside national cases.

During 1967 to 1970, the Commission attempted to impose a purposive wage policy, in conjunction with the employers' use of repressive sanctions enforced by the the state. The unions resisted these policies and the Commission's efforts were only partly successful. Some decisions, as will be seen, were costly failures. By the end of the decade the Commission had shifted more towards a consensus strategy, though the fragmented structure of the tribunal allowed it to continue seeking to impose wage restraint. The Commission's actions during this time were therefore increasingly contradictory.

The 1967 National Wage Case

The 1967 national wage case abolished wage fixation concepts which had been in use for sixty years. In its decision of 5 June 1967, a full bench of Kirby CJ., Gallagher and Moore JJ. and Commissioner Winter[1] replaced the separate basic wage and margins components of workers' pay with a single, total wage.

The Commission argued that while the basic wage provided protection to workers, increases on economic grounds

and a foundation for the wage structure, the total wage would be more "flexible", "realistic" and "modern". Retention of the minimum wage, introduced in 1966, would provide protection for low-income earners. Union concerns were dismissed as "groundless", and the President expressed confidence that "We are creating new up-to-date fixation procedures and not changing principles of wage assessment" (118 CAR 659). The total wage was to be reviewed annually on economic grounds, the first case to be heard in August 1968.

Summarizing the expected benefits of the new scheme, the decision stated,

> ...the adoption of the new procedures will enable the Commission to act flexibly, to ensure that economic gains are reflected in the whole wage each year, to give more reality to its award-making both in economic and work-value cases, and to give proper attention to the low wage earner. It will simplify the procedural difficulties in economic cases, which would not be entirely overcome by the unions' agreement to simultaneous hearings of basic wage and margins cases. It will eliminate the present awkward necessity for different benches contemporaneously dealing with different parts of the wage[2], it should simplify the rapid and proper spread of economic decisions throughout awards and determinations under this Act and the Public Service Arbitration Act; and it should put those who give and receive over-award payments in a better position to deal with their problems.
> (118 CAR 659)

A $1 increase was awarded to the total wages of all adult employees. There was little discussion of the wage increase in the decision, although it was noted that prices,

productivity and capacity to pay were taken into account.

> An increase in award wages now should add to economic activity and, if it were large, might create difficulties about prices and inflation. The increase we propose is within the capacity of the economy expanding as it is at present and should not cause any undue pressures particularly, if...another general economic review should not take place before the second half of 1968. This consideration of likely economic consequences is consistent with the attitudes we have always adopted in the past namely to consider the economic consequences of our decisions but not to attempt to create a particular economic climate.
>
> (118 CAR 657)

The latter point reflected the view of Kirby CJ. and his successor, Justice Moore, that the Commission's role was not that of an economic arm of the government. This frequently produced conflict between the Commission and other branches of the state. However, to do otherwise would have greatly reduced the autonomy necessary for the Commission's dispute resolution role.

Finally, applying the total wage decision and the $1 increase to both male and female awards was seen by the Commission as a step towards equal pay for women. This will be considered in more detail below.

The decision was greeted favourably by the employers. They were particularly pleased that the total wage had been introduced. The secretary of the Australian Metal Industries Association, D.G. Fowler, called the decision "...a milestone of tremendous importance in Australia's arbitration history"

(SMH, 5 June 1967, 9).[3] The employers suggested, however, that the wage rise would result in higher prices, a possibility that concerned the government as well (AFR, 6 June 1967, 1).

The unions were dissatisfied with the decision, which touched off resentment which had been brewing over other issues. Some minor industrial action took place or was called for at the time (Age, 6 June 1967, 1). ACTU Secretary H.J. Souter called the $1 increase "hopelessly inadequate" and warned, "The Commission is atrophying its own powers by this decision, because unions will be forced to bypass the arbitration system and bargain directly with employers" (SMH, 6 June 1967, 9). This threat was often made by the unions. When they were in an advantageous strategic position they acted on it, though they usually came to the Commission afterwards to ratify negotiated settlements. The legal basis of arbitration decisions has always been a powerful mechanism tending to bring unions back within the system when they entered into direct negotiations with employers.

Perhaps the most trenchant criticism of the decision came from the man who had written it. Speaking years later, Sir Richard Kirby said,

> The system of basic wage and margin was flexible: we had refused on many occasions to keep a set relativity between the two, despite assertions by unions that we should, and by employers that we had. If there were a big price rise, you could adjust the basic wage accordingly and let the

> margins lag for a while, so as not to exacerbate inflationary pressures. But a total wage, which superficially looked attractive, was inflexible. If there were large price rises, and the bench were obliged to adjust the total wage, the pressure on the economy would be more than doubled. I believed that with the total wage the employers were creating a rod for their own backs ... The unions should have jumped at the total wage and the employers ought to have eschewed it instead of the reverse. It was extraordinary how long it took people to recognize the implications of total wage, even Bob Hawke.
> (quoted in d'Alpuget, 1977, 207)

After the repeated policy reversals since 1953, it is understandable that Kirby was unwilling to reverse the intention of the 1966 decision.

A High Court appeal by the unions (1967 AILR 515) arguing that the Act required the Commission to set a basic wage was unsuccessful. Barwick CJ. stated "Parliament could not have seized upon one method of determining a wage in settlement of a dispute as to wages and direct the Commission to follow that method and none other". Despite attempts by the unions to persuade the Commission to reverse their decision, this effectively ended the total wage debate.

The Metal Trades Work Value Inquiry

This lengthy case had a profound effect upon industrial relations in Australia. It sought to impose a purposive wage strategy, and it proved unsuccessful. Actions by capital and

the judiciary escalated what began as an economic struggle into a political one, which the Commission hastily defused.

The Metal Trades Award was central to the entire wage structure, and covered some of the country's most militant unions. Its significance rests on the concept of "comparative wage justice", which the Commission has defined as, "That employees doing the same work for different employers or in different industries should by and large receive the same amount of pay irrespective of the capacity of their employers or industry..." (134 CAR 165). Comparison between "equivalent" occupations, some of which might seem to have little in common (such as fitters and truck drivers), became a central principle of wage fixation in Australia. Movement in one classification generally led to a similar movement in all through "flow-ons" to related awards and outward in a "ripple" effect.

The key to the entire wage structure became the margin of one classification, the fitter in the Metal Trades Award. Any change to this rate spread throughout industry. This tendency developed slowly, but "...after the 1937 Metal Margins Case, subsequent cases increasingly took on the appearance of, and became acknowledged as, national test cases, despite initial attempts by the Court to prevent flow-ons" (Plowman et al., 1980, 298). Peak councils and numerous intervenors, notably the Commonwealth government,

appeared regularly in major metal industry cases.

By the early 1960s, it was widely believed that the Metal Trades Award had become too cumbersome and complex. This view was shared by Wright J., one of the senior members of the Commission, and Commissioner Winter, under whose jurisdiction the metal industries fell. Sir Richard Kirby considered the award an "Augean stables", but believed that it would be unwise to undertake a thorough revision for fear of unsettling established practices and relativities (d'Alpuget, 1977, 219).

Wright's determination to "clean up" the Metal Trades Award can be seen in his 1966 National Wage Case decision, in which the full bench refrained from increasing margins or implementing the total wage pending a work value inquiry into the metal industry. Wright

> ...said he was very reluctant to continue making percentage additions, on the basis of a general economic consideration, to a wage pattern which, on deeper examination would probably be revealed as obsolete.
> (Healey, 1972, 139)

This would be the first major inquiry into the award since 1952. The previous investigation based on what might be termed work value grounds had been in 1937. It is important to realize that the Commission instigated the investigation. There was little enthusiasm expressed by the parties.

A full bench was assigned to the matter.[4] Commissioner Winter began his investigations shortly after the 1966 national wage case decision. He noted that there were 330 job classifications with "...as many as 53 separate wage rates with refinements as low as a cent a day between classifications", spread across 63 industries (Transcript, pp 2420, 2423), and he suggested that considerable rationalization should occur. He stated that examination of a selected number of "pilot classifications" would allow relatively easy alteration of the wage structure by extrapolation through agreement or arbitration (118 CAR 47).

The unions submitted a list of four pilot classifications, which they suggested should form the basis of a decision. The employers disagreed, and argued in favour of a full work value inquiry (118 CAR 34-36). The Commonwealth submitted a list of twenty-five classifications, noting that half had already been inspected (118 CAR 42). The unions rejected these proposals as unnecessarily time consuming (118 CAR 44). Convinced that agreement could not be reached, Winter decided on a list of ten classifications which would form the basis of the investigation (118 CAR 50).

The unions' margins claim had been pending since November 1965, and they desired its speedy resolution. However, this was not in the interests of employers. d'Alpuget (1977, 221) argues that

> The employers, frightened that a large increase in awards would be the result of the inquiry, began delaying tactics to keep the case going as long as possible, thus putting off the hour of settlement. This made the unions resentful. By the end of 1967 there was union ill-humour over the length of the hearing, mitigated only by confident optimism that there was treasure in store: an increase of between $4.40 and $6 for the fitter was rumoured.

Many days were lost due to industrial disputes.[5] There were accusations of delay on all sides, and Commissioner Winter complained "There seems to be a peculiar belief that reliance on a naked exhibition of brute force will force somebody to do something" (121 CAR 938).

Industrial action continued, at times on a large scale. One significant instance in April 1967 showed cleavages between the unions. The delay to the Winter Inquiry was discussed at metal trades shop stewards' meetings in Victoria, and two four-hour stoppages were planned. The unions claimed that the hearings were being delayed by the employers, and pointed to the erosion of the value of wages taking place due to price rises (AEU Monthly Journal, May 1967, 16). News reports (Age, 4 April 1967, 3) indicate that 30,000 workers were involved, while the AEU (Monthly Journal, May 1967, 15) puts the number closer to 45,000. Five metal unions participated; the AEU, the Boilermakers' and Blacksmiths' Society, the Moulders' Union, the Sheet Metal Workers' Union and the FEDFA. The ETU abandoned plans to participate, under pressure from federal officials, and the action was boycotted

by the conservative ASE and FIA. Four of the unions were then suspended[6] from the Melbourne Trades Hall Council, which was dominated by the Right. This was a significant incident in the ideological split in the THC, which had become particularly deep at the time.[7]

Another, more widespread four-hour stoppage occurred on 25 July 1967, this time with the approval of the ACTU. Action was taken by approximately 200,000 workers in five states (AEU Monthly Journal, Sept 1967, 6; Age, 26 July 1967, 3), and continued pressure was called for by militant unionists.

An interim increase in margins was granted by the reference bench on 22 December 1966 (1966 AILR 479). Increases ranged from 1 to 2 1/2%. The Commission suggested that an interim adjustment would lessen the effect of the final decision, which it was acknowledged would not be handed down for some time. The ACTU applied for another interim increase in August 1967, but the Commission urged that the application should be withheld so the inquiry could be completed.

The decision was handed down on 11 December 1967. The judgment, a majority decision with Moore J. dissenting, antagonized everyone. Contrary to expectations, Gallagher and Winter had set new rates for all the classifications within the award. These ranged from no increase for those on the

lowest wages to $10.05 for some at the top of the scales (1967 AILR 517). Skilled tradesmen (including the fitter) received $7.40, the full extent of the unions' claim, which was higher than expected. No clear reason was given for the size of the increases, but the basis of the decision is not hard to find: the Commission sought to impose its control over the wage structure. Plowman et al. (1981, 308) point out that the increases were of similar amounts to the overaward payments common in the metal industry at the time. This was the key to the decision, because in a recommendation that created the most serious industrial dispute in Australia since 1949, the majority declared that the increases should not flow on to other awards and that they could be absorbed in overaward pay. The majority sought to establish control over all wages by incorporating overawards into award rates, and to set industry awards on the basis of criteria other than comparative wage justice.

With regard to flow-on, Gallagher J. stated that the increases were specific to the metal industry and were not grounds for a general wage movement (121 CAR 677). Concerning overaward pay, he held that

> ...there is nothing in principle to prevent an employer from using existing over-award payments to offset the increases whether in whole or in part...any over-award payment made by an employer should be voluntary and should not be the result of industrial pressure whether in the form of strike action, bans, limitations or the like.
> (121 CAR 680)

Justice Moore would have awarded $5 to tradesmen, and accepted that some flow-on would occur (1967 AILR 517). His judgment does not mention the absorption of overaward payments. d'Alpuget (1977, 221) maintains that "Had Moore's judgment prevailed the bitterness which followed need not have arisen".[8]

The Absorption Conflict

The furore which followed the 1967 Work Value Case was mainly concerned with overaward pay.[9] These payments were a complicating factor in the wage structure, and some members of the Commission felt they should exercise control over them. Commissioner Winter stated "We thought the commission's authority vis-a-vis over-award pay had to be tested" (d'Alpuget, 1972, 221). Sir Richard Kirby was more cautious.

> As for over-award pay, it was terra incognita for us on the bench. We were never sure, when making an award, were it say, a meagre increase, if this would lead to strikes for over-award pay...or, if a generous award would be used as a springboard for further over-award pay. Solomon in all his glory couldn't work out what was going to happen.
> (in d'Alpuget, 1977, 221)

Signs of the impending conflict appeared well in advance. The majority judgment in the 1965 NWC, written by Gallagher J., noted that overaward payments had not been absorbed in recent years, but implied that the Commission

would not discourage employers from doing so (110 CAR 260). A $4.30 margins increase for shipwrights was absorbed in 1966 after a united stand by employers and use of the Act's penal clauses (Wright, 1968, 8). ACTU policy called for overaward payments to be maintained regardless of changes to award rates (AFR, 14 December 1967, 4). The stage was set for a strong reaction from all sides to the absorption issue.

The employers requested a meeting with the ACTU to be chaired by Sir Richard Kirby (AFR, 12 Dec 1967, 1). Kirby declined, thinking that this would show a lack of confidence in the Work Value bench. A meeting was chaired instead by Gallagher, but was inconclusive (d'Alpuget, 1977, 222). However, Gallagher took the opportunity to rebuff criticism of the decision, particularly that of the federal government (AFR, 20 Dec 1967, 5).

At hearings held in January, the employers sought to fix the new rates as maxima (eliminating overawards) and ban industrial action over the absorption issue. This was rejected by Gallagher J. and Commissioner Winter (Hutson, 1971, 198), though they repeated that overawards should be absorbed.

Strike action began in mid-January, at first largely confined to NSW. A number of shops were closed and a 24 hour stoppage was called for by the metal unions. Some employers

began to buckle, and promised to maintain overaward payments, but most continued to display a united front (AFR, 22 January 1968). The employers made an application to the Commission on 25 January that the 11 December award be rescinded, claiming that unions were not accepting the basis of the majority decision. The application was referred to Kirby CJ. for hearing on 6 February, the day for which the national metal trades stoppage was planned.

There was considerable opposition to the stoppage within the unions, particularly from the FIA and ETU (Hutson, 1971, 200). The moderates were prepared to wait for Commission moves to resolve the dispute (AFR, 5 Feb 1968, 3), and were concerned about the hearing to be held the same day. The number of strikers was in the vicinity of 200,000 (Age, 7 Feb 1968, 3; SMH, 7 Feb 1968, 4). Kirby, not wishing to inflame the situation, ignored the strike and conducted the hearing.[10] The dispute was referred to a reference bench of Kirby, the three members of the Work Value bench and Senior Commissioner Taylor.

Meanwhile, the employers were making liberal use of the penal clauses of the Act, ss. 109 and 111. There was strong support for confrontation with the unions, but some influential business leaders, such as G. Polites, were reluctant to apply the penalty clauses given strong (and growing) union antagonism towards their use (d'Alpuget, 1977,

223-224). The "law and order" faction won out, which d'Alpuget suggests was due in part to the inability of small employers to withstand a lengthy shutdown of their businesses.[11]

Industrial Court rulings favourable to the employers were handed down regularly by early February. However, the large number of strikes (all told there were about 400 during the absorption conflict) soon led to an unprecedented, blanket no-strike order against seven metal trades unions in NSW for an indefinite period.[12] On 21 February alone the Court heard 107 contempt charges. During the conflict 275 fines were handed down (Hutson, 1971, 200), with fines and costs to the unions in excess of $100,000 (AFR, 14 Feb 1968, 6). The Court placed the responsibility for ending the disputes entirely on the unions (AEU Monthly Journal, May 1968, 17; d'Alpuget, 1977, 222).[13]

On 21 February the reference bench headed by Sir Richard Kirby handed down a majority decision (Gallagher J. dissenting) to defer 30% of the increases granted on 11 December. The date of application for the remainder would be determined by the next national wage bench. All increases of $1.60 or less would be paid in full immediately (122 CAR 171). The Commission stated that "...substantial absorption in over-award payments of the wage increases recently granted has not in this industry except in special cases been practicable

in the existing circumstances" (122 CAR 170). The "existing circumstances" were a clear reference to full employment and the industrial strength of the metal unions. The decision added that had the dispute been forseen, the full increase would not have been granted immediately. Gallagher's dissenting judgment (122 CAR 172) adhered to his 11 December decision. He argued that a settlement eventually would have been reached in conference. Commissioner Winter held that the original rates were fair, but in view of the "new circumstances" of widespread industrial disruption, agreed with the majority (122 CAR 173).

Employers and unions expressed displeasure with the decision. ACTU President Monk called the decision "a really pathetic industrial exercise" (Hutson, 1971, 203), and the ACTU Executive promised to press for full payment of the 11 December increases (AFR, 23 Feb 1968, 3). However, the matter quickly settled down, with little further disruption. The remaining 30% was granted in August 1968 (123 CAR 652). The decision was made without submissions from the parties and prior to the the NWC proceedings (Hutson, 1971, 207).

The absorption struggle threatened to turn an economistic conflict over wages into a political confrontation over the penal clauses of the Act. The Industrial Court, whose members were not in everyday contact with industrial relations, inflamed the problem by taking a

hard line approach. The Commission sought to minimize the damage done by the Court, accepting a loss of face and possible inflationary consequences in preference to a direct challenge to the repressive powers of the state. The wider conflicts were reproduced within the Commission. Kirby and Moore "...viewed strikes as a fact of life" in industrial relations, while Gallagher found industrial action unacceptable (d'Alpuget, 1982, 119-120). While this did not correspond exactly with a "big capital/small capital" division, larger firms can generally both absorb the costs of a strike and pass on increased wages through higher prices more easily than smaller employers. While strikes and inflation are hardly encouraged by capital, they pose less of a threat to fundamental economic relations than the extension of economic conflict to the political level.

The 1968 Work Value Round and NWC

The majority in the 1967 Work Value decision opposed automatic flow-on of the increase. However, Moore J. believed that it would not be realistic to expect no flow to occur (1967 AILR 517). The majority position was reaffirmed in the decision of 21 February 1968, in which the full bench (including Moore) stated that increases to other awards should be based on a genuine work value case, not on comparative wage justice (1968 IIB 224).

Such rulings provide guidelines, but are not binding. The arbitrators who hear individual cases have considerable autonomy. Their decisions are subject to appeal at the discretion of the President, but at the risk of industrial unrest if the appeal is lodged by the employers. In the work value cases which followed the metal trades decision, the strictures concerning flow-on were followed erratically.

Specifying criteria for a "genuine" work value case is difficult, as work value is a very vague term.[14] What takes place in a work value review is very much up to those involved. A pattern soon emerged, as awards and classifications that were closely related to the Metal Trades Award were granted similar increases by consent or arbitration. However, the Commissioners denied that a flow-on was occurring (Hutson, 1971, 207). For other classifications and awards, short work value cases were conducted. Following the Metal Trades inquiry procedure, a number of key classifications were examined and the remaining rates set around them. The wage scales were similar to those established in the metal industry, with tradesmen generally obtaining higher increases than the semi- and unskilled.

In Senior Commissioner Taylor's decision in the Vehicle Industry Award on 17 May 1968 (1968 AILR 185), he discussed the role of the Metal Trades Award and claimed it was not an

overriding consideration. However, the new rates were similar. The decision also contained a list of criteria which Taylor said he had taken into account, but he declined to assign weights to the individual elements.[15]

A different attitude towards the Metal Trades Award was shown by the arbitrators in cases involving the furnishing trades and the pulp and paper industry. In the furnishing trades, Commissioner O'Reilly argued that the fitters' rate in the metal trades had not "outlived its usefulness". The Commissioner ruled that the nexus which had existed between the tradesmen's rates in the two awards for forty years should be maintained (1968 AILR 461). The widening of relativities between tradesmen and non-tradesmen was also followed. O'Reilly declined to conduct a work value case, and although the parties agreed that there had been no significant changes to work value since the award was made in 1964, the Commissioner stated that he could find no grounds for breaking the nexus between the fitter and furnishing tradesmen. The employers submitted that there should be no flow-on, but Commissioner O'Reilly declared

> It seems elementary that some standard or measuring rod is indispensable in any measuring assignment. The adequacy of any wage or salary cannot be meaningfully assessed unless it is considered in relation to other wages or salaries. This seems just as fundamental whether the jobs concerned have common features or not.

Various precedents were cited to support this view, and he noted that the rates set in the metal trades decision had been

reflected to a greater or lesser extent in a number of cases since then.

Commissioner Gough's position in a work value case in the pulp and paper industry was less straightforward than Commissioner O'Reilly's, but he too placed importance on existing relativities. He noted that the fitter's rate had long been an important benchmark for the pulp and paper industry. He stated,

> Though it was not demonstrated that the fitter was compared explicitly in point of work value with production classifications, it is not surprising that the unions concerned, and no doubt their members, have taken the implication that there has been a work value connection between such classifications. There has, therefore, been generated an expectation that relativities established some 20 years ago would remain.
> (1968 AILR 448)

Commissioner Gough held that recent alterations to the wage structure necessitated a work value examination of key classifications, but that pre-existing relativities "...will have an important and substantial bearing". He awarded increases ranging from $2 to $6.10, making what he termed "moderate" changes to relativities favouring the higher classifications.

In general, employees who were able to establish some connection with the metal trades seemed to have more success with their claims than other workers, particularly those in white-collar employment. A union source argued that the main

exceptions occurred where strong industrial pressure was applied (Hutson, 1971, 210). Although full, automatic flow-on did not occur, and a number of work value investigations were conducted, a definite pattern emerged: similar increases tended to be granted to those classifications with an historical nexus with the metal award. The increases favoured skilled workers, and were smaller in the less militant white collar area. Once the first decision was made, the pressures for flow-on through the workforce were substantial. The work value round also brought out differences within the Commission and illustrated the autonomy of its individual members.

The 1968 National Wage Case

The substantial wage increases granted in the work value round provide the context for the 1968 national wage case, the first held since the introduction of the total wage. The unions sought restoration of the basic wage and margins, and an increase in the basic wage of $11.40. Failing that, they applied for a total wage increase of $7.70. Union advocate R.J. Hawke argued that the reasons put forward by the 1964 and 1965 benches for declining to implement the total wage had not been dealt with satisfactorily in the 1966 and 1967 decisions. Finally, he submitted that the basic wage had protected workers' interests, allowed arbitrators to set margins for skill, and had "important social and moral value" (1968 IIB 1203). Hawke argued that the wage increases should

be granted in order to maintain their real value. He stated that this was an important factor on industrial relations grounds, a criterion which had been stressed in most national wage decisions since 1961.

The Commonwealth's submission emphasized economic factors. They noted a decline in the rate of increase of GNP, due mainly to problems in rural industry, but a strong level of demand. Commonwealth advocate A.E. Woodward argued that over the long run, wages had increased faster than productivity, placing upward pressure on prices. He warned that continued high wage increases posed a threat to price stability and the balance of payments.

The employers argued that the 12% increase in minimum weekly wage rates over the previous two years was approximately three times what the economy could stand without inflation, given an estimate of increased productivity of about 2% per year.[16] The employers also claimed that a clear statement on the nature of wage cases was needed after the work value round. They argued that general wage increases should only come through annual "national wage reviews". Work value cases, which they said should be termed "classification reviews", should be solely concerned with whether the work of a particular classification had increased.

In its decision of 4 October 1968, the full bench of

Kirby CJ., Gallagher and Moore JJ. rejected the unions' application for a restoration of the basic wage and granted a general wage increase of $1.35 to all adult employees (124 CAR 465). They also rejected the employers' productivity theorem, stating "We all agree that in the present circumstances of full employment and in the absence of an incomes policy it is just not practicable for increases in wages and salaries to be kept confined within productivity increases" (124 CAR 466).

The full bench listed factors which they had taken into consideration in their decision, which included movements in prices and productivity since the last national wage case, the state of the economy, and the capacity of the economy to pay. The Commission also cited the recent work value increases, which were "...exceptional in that they have had a wide range and have been granted over a short period and in that they have not been absorbed to any appreciable extent..." (124 CAR 466). However, the Commission added that the workforce had reason to expect an annual wage increase on economic grounds, and suggested that this was the employers' view as well. The economy was considered to be sound, but the Commission ruled that a "cautious" increase was advisable. Having allowed large increases to occur at industry level, the full bench sought to exercise restraint in its national review.

No action was taken on the employers' request for a statement on work value cases. It was considered best to be

left for a bench specially constituted for the purpose.

The Nature and Incidence of Strikes in Australia

Before discussing further developments in arbitration, it will be useful to place the industrial disputes of the late 1960s in perspective. Most of the matters with which the Commission is concerned are "paper" disputes, created in order to set the arbitration machinery in motion. However, overt industrial action is also of concern to the Commission, and the events of 1968 and 1969 had a significant impact upon the arbitration system in subsequent years.

Strikes are only one form of industrial action. Other tactics such as bans and slowdowns are also used. Industrial conflict also takes individual forms such as absenteeism, sabotage, industrial accidents, high workforce turnover and inefficiency. Compared with some of these, strikes are relatively unimportant in terms of their cost and frequency. However, they receive a disproportionate amount of attention. The level of strike activity is usually assessed by reference to official statistics. Like all such data, the official statistics on strikes in Australia must be viewed with caution.[17] With this qualification in mind, a general outline may be given.[18]

Compared with previous experience, the period 1950-1966 was characterized by a large number of fairly short strikes. Plowman et al. (1980, 54) suggest that this pattern arose because strikes "...have been used as demonstration stoppages to bring grievances to the attention of management, unions and tribunals".[19]

There was an increase in frequency and duration of strikes from 1966 to 1974 (Bentley, 1980, 23). Peaks for both number of strikes and working days lost occurred in 1974. The late 1970s brought a return to the previous pattern of shorter strikes, with a higher frequency than the pre-1967 period.

Coal mining and stevedoring traditionally contributed a disproportionate share of the number of strikes and working days lost in Australia. The contribution of these industries to the overall figures has declined, but they remain relatively "troubled" sectors. Manufacturing has taken over as the "leading" sector for strikes, particularly the metal industries. Plowman et al. (1980, 53) suggest that this can be related to the key role of the metal industries awards in wage fixation. It is often suggested that the gains won through the militancy of the leading unions obviate the need for significant strike activity by other groups of workers[20], as these increases flow through the arbitration system.

The incidence of strikes is often related to the level

of unemployment. Ford and Hearn (1980, 10) suggest that full employment is favourable for working class militancy, while periods of recession usually restrict the scope for strike action, but this can mask variations between industries or regions. Rawson (1978, 128) points to the decline in industrial disputes in the coal mining industry beginning in 1958, when demand for labour dropped due to mechanization. A similar pattern can be seen in stevedoring. Rawson (1978, 130) adds, though, "The relationship between unemployment and working days lost for industry as a whole is less clear, and at times cannot be seen at all". Waters (1982, 191-193) finds an inverse relationship between unemployment and various measures of strike activity for most, but not all of this century. For the period with which this thesis is concerned, the relationship is weak.

Most strikes in Australia end without any negotiation taking place. The industrial tribunals settle relatively few stoppages; 16% in 1978 (Plowman et al., 1980, 54). This is largely attributable to the short duration of most strikes and their localized nature, usually concerned with a grievance in a single firm.

The costs of strikes are hard to measure. Plowman et al. (1980, 54) note that lost production can often be made up and that some strikes are induced by management in order to save on costs. They suggest that "...the economic costs of

strikes are greatly exaggerated" (Plowman et al., 1980, 57).

Strikes continue to be dominated by the "conventional" issues of wages, hours and conditions within the blue collar sectors of the workforce, but several developments should be noted. Firstly, there has been rapid growth among white collar unions, which have become less passive than previously. Secondly, there have been major strikes over new "political" issues, including "green bans", health care (the Medibank strike in 1976), uranium mining and other aspects of state policy. The 1969 penalties strikes, to be examined next, fit into this category. Thirdly, it appears that the Australian economy is increasingly vulnerable to action by small groups of workers in key sectors. The ability of workers in transport, communications and energy production to cause economic dislocation is well known. These developments have increased the complexity of industrial relations and have placed many key disputes outside the jurisdiction or effective control of the Commission.

Finally, some mention should be made of the role of union officials in strikes. Despite their notoriety in the mass media, particularly if they have Left-wing political affiliations, major studies of militant unions such as the AEU (Sheridan, 1975) and the coal miners (Gollan, 1963) suggest that their leaders are pushed from below as often as they lead from above. Generalizations on this topic, like most in the

area of industrial relations, should be treated with caution.

O'Shea and the End of Penalties

The actions of the state apparatuses are ultimately backed by the state's monopoly over the legitimate use of force. The penal clauses under the Conciliation and Arbitration Act represent a low level of repressive sanctions. They were increasingly used through the 1960s, culminating in the absorption struggle. Their use aroused great antagonism among unionists, and penalties became the focus of industrial action in 1969. As with absorption, the unions were successful. The offending clauses were not deleted from the Act, but were made more difficult to apply. More importantly, they were no longer used by employers, eliminating what had threatened to become a serious drain on union resources.[21]

Opposition to the use of penalties developed gradually. ACTU Congress resolutions condemned penalties in increasingly strong terms, calling for their repeal in 1957 (Hutson, 1966, 214-215), but no direct action was taken. Senior ACTU officials stressed that abolition of the penal clauses should be brought about through political rather than industrial action (Fieldes, 1976, 26).

Strike activity increased in 1964, and the number of

fines jumped from 37 in 1963 to 119 in 1964, with $59,000 being assessed against the unions in the latter year (Fieldes, 1976, 51). The number of fines then dropped for several years until the absorption campaign.

The use of penalties in the absorption conflict aroused widespread resentment. Even moderate unions such as the FIA had been fined, and they now became strong opponents of penalties. A confrontation developed in 1969, triggered by an incident involving the Victorian branch of the Tramways Union.[22]

Some unions were unable to afford their fines and began to pay in instalments. The Tramways Union was in this position. They had been involved in a lengthy dispute with the Melbourne and Metropolitan Tramways Board, during which twenty-four fines were imposed between 1964 and 1967 (Healey, 1972, 147). The union had been paying its fines at a rate of $100 per month, when the federal government demanded $3000 of the outstanding debt of $9000. On 30 November 1967, $3741.56 was garnisheed from the union's bank account. The union did not make further payments (Healey, 1972, 146-147; Fieldes, 1976, 36-37). The metal trades absorption conflict occurred soon afterwards, greatly increasing the tension between employers and employees throughout industry.

In early 1969 additional fines were imposed on the

Tramways Union (Sykes and Glasbeek, 1972, 551). On 18 February 1969 the secretary of the Victorian branch of the union, Clarrie O'Shea, was ordered to appear before the Industrial Court with the union's books, but he evaded the summons. A new order was issued on 20 March, but he did not appear at two further hearings. He was found guilty of contempt, fined $500 and ordered to appear on 15 May. O'Shea, a communist, appeared at this hearing after addressing a rally and marching part of the way to the court. He refused to be sworn or examined, and made a defiant statement opposing the penalties imposed on his union. He was then sentenced to prison by Kerr J. (Healey, 1972, 148; Fieldes, 1976, 38).

O'Shea's imprisonment resulted in a massive wave of strikes.[23] A 24-hour protest strike was held in Victoria on 16 May, and stoppages spread to other states the following day. Amidst fears of a nationwide general strike, meetings were held between ACTU officials and federal ministers (Healey, 1972, 149).

The fines of both O'Shea and the Tramways Union were paid in full by a private party on 20 May. O'Shea was ordered released from prison on 21 May by Kerr J., on instructions from the federal Attorney-General's office. O'Shea had not expunged his contempt, and he emerged from prison still defiant (Healey, 1972, 149; d'Alpuget, 1977, 234).

The ACTU Executive resolved that affiliated unions should pay no more fines imposed by the Industrial Court. Employers agreed to a moratorium on the use of the penal provisions, at the request of the federal government (Healey, 1972, 149-151). Without recourse to penalties, many major employers turned from a policy of confrontation with the unions to one of accommodation.[24] This change on the part of the government and employers was not opposed by the Arbitration Commission. The President, Sir Richard Kirby, apparently "...believed the penal powers caused more trouble than they were worth" (d'Alpuget, 1977, 233). A marked change in industrial relations resulted from these events, which will be examined in the next chapter.

New legislation was foreshadowed following consultations on the penal powers between the unions, employers and government. Penalties were not abolished, but it became more difficult to impose them. Previously, employers could go directly to the Industrial Court seeking redress for non-compliance with a bans clause. The new provisions required a Presidential member of the Commission to certify that the matter had been brought before the tribunal for resolution (Healey, 1972, 152). It also became more difficult for large fines to be imposed for ongoing breaches.

After 1971, use of the penal powers effectively lapsed. This removed an important element which could sustain the

Commission's purposive wage strategy. The unions were able to pursue wage increases outside the Commission in the context of full employment and prosperity. With alternative avenues of increases available and penal sanctions removed, the conditions outlined by Offe for a purposive state strategy no longer applied. Although the Commission gradually retreated from this strategy, it never fully accepted that it could not work.

The 1969 Equal Pay Case

The subordinate status of women in Australian society was for many years institutionalized in the awards and determinations of the Commission. The basic wage introduced by Higgins J. in the Harvester Judgment in 1907 contained a "family" component which assumed that the responsibility for supporting a family should and did fall to men. In the Fruit Pickers Case in 1912, Higgins said

> I find the minimum in 1907 at 7s. per day by finding the sum which would meet the normal needs of an average employee, one of his normal needs being the need for domestic life. If he has a wife and children, he is under an obligation - even a legal obligation - to maintain them. How is such a minimum applicable to the case of a woman picker? She is not, unless perhaps in very exceptional circumstances, under any such obligation.
>
> (quoted in Equal Pay[25], 1968, 10)

Women's wages were not uniformly set below those of

men. In the Theatrical Employees Case in 1917, Powers J. said

> ...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.
>
> (in Equal Pay, 1968, 11)

Women's wages were generally below men's, despite the gradual eclipse of the "needs" concept underlying the basic wage. Fifty-four percent was common, a figure based on a judgment in the Clothing Trades Award in 1919[26] (Equal Pay, 1968, 10). During World War II, the responsibility for wage fixation covering many women was removed from the Arbitration Court and given to the Women's Employment Board, which set female wages in many traditionally male occupations at 90% of the male rate. Female wage levels began to drop again after the war, but 75% of the male rate had become standard by the 1950s. This remained the position until the late 1960s.

State governments set the pace on equal pay. In 1958, New South Wales required equal pay for, "...male and female employees performing work of the same or a like nature and of equal value..." (Sykes and Glasbeek, 1972, 624). The legislation had little practical effect, as work "essentially or usually performed by females" was excluded. Furthermore, employers often claimed that work done by women was different from or of a lesser value than that performed by men. Hutson

(1971, 119) notes that only 14% of the women working under NSW state awards had received equal pay by 1969.

Nevertheless, the climate for equal pay was becoming more favourable. d'Alpuget (1977, 228) states that the position of women was of increasing concern to some members of the Commission, including Kirby CJ. d'Alpuget (1977) and Ryan and Conlon (1975) argue that the decisions of the late 1960s showed considerable initiative on the part of the Commission, as unions in many cases were either apathetic or hostile towards equal pay. Whelan (1979) is less convinced of the Commission's enthusiasm for equal pay, but shares the low opinion of other commentators towards the unions.

The Commission's change of direction was signalled by two decisions in 1967. In the Clothing Trades Award, a bench of Kirby CJ., Moore J. and Commissioner Findlay "...endorsed the view that persons performing the same work should be paid the same margins for skill, irrespective of sex" (1969 AILR 149). The principle of equal margins for skill had been espoused in the past by the Commission, but had never been applied in a systematic manner. The result was a very confused wage structure for females, with some women receiving equal pay, some equal margins but a lower basic wage, others a lower basic wage and margin, and a large group who performed "women's work" where the wage rate was not directly compared with male classifications. The latter group were invariably

relatively poorly paid.

In the 1967 national wage case, the Commission clearly invited the unions to prepare a test case on equal pay. In an oft-quoted passage, the Commission said

> The community is faced with economic, industrial and social challenges arising from the history of female wage fixation. Our adoption of the concept of a total wage has allowed us to take an important step forward in regard to female wages. We have on this occasion deliberately awarded the same increase to adult females and adult males.[27] The recent Clothing Trades decision affirmed the concept of equal margins for adult males and females doing equal work. The extension of that concept to the total wage would involve economic and social sequels, and calls for thorough investigation and debate in which a policy of gradual implementation could be considered.
> (1967 AILR 219)

The unions lodged a claim for a variation in the Meat Industry Interim Award on 11 July 1968. This was selected because many females were covered by the award, and equal margins had already been granted. The application was for abolition of the inequality remaining from the 25% differential in the old basic wage. Similar claims were lodged with the Public Service Arbitrator by eight white collar unions.

Opening submissions by the employers stressed the high cost of the unions' claims and the undesirability of altering the wage structure, which was weighted in favour of the needs of families (24 IIB 206). ACTU advocate R. Hawke pointed to the gradual decline of the "needs" concept and argued that it was "...inconceivable for the Commission to continue to fix

the female basic wage in accordance with a concept which had been long ago abandoned" (24 IIB 545). The ACTU presented statistics to show women's increased participation in the workforce, particularly married women, and claimed it was not valid to view men as the sole breadwinner in families, and inequitable to grant lower wages to women given their substantial contribution to the economy. The ACTU's submissions were supported by several unions and women's groups.

The Commonwealth accepted the principle of equal pay for equal work, but opposed the claims. They argued that the economic cost would be too great, and favoured an award by award examination to determine which classifications merited equal pay. In addition, they submitted that where equal pay applied, it should be phased in over five years. The Commonwealth submitted five conditions which should be met before equal pay was granted.

> a) each classification in the award must be examined to ascertain which ones were eligible for equal pay;
> b) such comparisons must be made between classifications in the same award;
> c) females must be doing the same work as males or like work; it must also be of the same range and volume as that of males;
> d) females must perform work under the same conditions as males; and
> e) the work must not be work essentially or usually performed by females.
> (24 IIB 707)

The employers rejected the unions' conceptual

arguments. J. Robinson, for the Meat and Allied Trades Federation and the NEPC, argued that one must distinguish between a "needs" basic wage, which had been abandoned, and a wage which recognized special "social requirements". The employers argued that while there had been changes in society, these were not sufficient to warrant granting the unions' requests. They added that a union claim of this magnitude should only be dealt with in a national wage case. Robinson (24 IIB 708) submitted that frequent "one-off" cases would undermine the status of national wage hearings and eventually "strangle" them.[28]

The judgment was handed down on 19 June 1969. It effectively followed the submission of the Commonwealth; to accept the principle of equal pay for equal work, but to establish guidelines for its application in individual cases rather than to abolish sex-based differences in one stroke. The decision read in part,

> While we accept the concept of "equal pay for equal work" implying as it does the elimination of discrimination based on sex alone, we realise that the concept is difficult of precise definition and even more difficult to apply with precision...We have certain values which have in part been created by our own institutions, including a complex wage system. This Commission cannot escape its own history, including the history of the Court, even if it wanted to. If the arbitration system had in the past not concerned itself with a needs or family wage, but had fixed a rate for a job, irrespective of the sex, marital or parental status of the worker, the probabilities are that the rate for the job would lie somewhere between the current male rate and the current female rate. This is speculation on our part, but it does highlight the

> difficulties of finding a satisfactory solution to the issues now before us. We consider it preferable to start from a decision on principle in this case and let that principle be worked through the system.
> (24 IIB 919)

The Commission set out a list of guidelines, which incorporated aspects of the Commonwealth's submissions and provisions from the legislation of the four states which had equal pay Acts at the time.[29] The matter had effectively been passed back for determination in individual cases, much along the lines of work value proceedings. No guidance was given for deciding whether work was "of the same or like nature and of equal value". It excluded work "...essentially or usually performed by females but...upon which male employees may also be employed" (24 IIB 921). Where equal pay was granted, it was to be phased in over a period of approximately three years, in annual steps of 5%, with full parity by 1 January 1972.

The applications of the public service unions for equal pay were granted on 2 September, but female meat workers were less successful. After an inquiry by Commissioner Gough, equal pay was only granted to a small number of women (Hutson, 1971, 127). Despite considerable discussion by the parties of the meaning of the equal pay principles, the Commission declined to "interpret or refine" their meaning (1969 AILR 520). The guidelines remained rather vague.

An application for equal pay under the Metal Trades Award was granted to female process workers in February 1970. In his decision, Commissioner Winter said the case for equal pay was "inescapable".[30] He concluded, "A machine line is oblivious to the sex of the operator" (1970 AILR 34).

The employers had opposed the claim, and appealed against the decision. They argued that the Commissioner did not have sufficient material to decide the case, and that he had not properly applied the 1969 guidelines. The appeal was rejected by a full bench of Kirby CJ., Moore J. and Senior Commissioner Taylor (1970 AILR 70). The appeal bench was somewhat critical of Commissioner Winter's decision, however, saying

> We would not ourselves have said some of the things Mr Commissioner Winter said and in particular we consider that when dealing with applications for equal pay members of the Commission should confine themselves to considering whether or not the principles laid down in the Equal Pay Case 1969 apply to the circumstances of the award in question.

They did not specify what boundaries the Commissioner had overstepped. His judgment (131 CAR 663) was quite long and detailed, and contained a lengthy consideration of the equal pay guidelines. One might speculate that the appeal bench would have preferred that the guidelines be applied without further elaboration, as had been done by Commissioner Gough in the Meat Industry Interim Award decision. As shown by the Metal Trades Work Value decision and as will be seen later

during wage indexation, clear statements of principle tend to restrict the Commission. It is a basic premise of this thesis that the Commission's interests are generally best served by avoiding such restrictions.

Hutson (1971, 128) points out that a relatively small proportion of the female workforce was eligible for equal pay under the guidelines.[31] Furthermore, those who were awarded equal pay did not necessarily receive the same wages as men, due to the operation of the minimum wage. The minimum wage provided a threshold below which ordinary time earnings could not fall, but it applied only to men. Hutson noted that the process workers' award wage was below the level of the minimum wage. Depending on the level of overaward payments, the majority of female employees under the Metal Trades Award would in theory continue to receive lower wages than men, despite their successful equal pay claim. The Equal Pay Case thus went only part way towards implementing equal pay.

The Equal Pay Case recognized the increasing participation and contribution of women in the workforce. While there was little industrial pressure to grant equal pay, there was growing political and ideological pressure on governments, reflected in the legislative measures taken by several states and the Commonwealth's qualified acceptance of the concept. These measures, including the 1969 decision, did not grant equal pay, being partial concessions to reduce

political pressure. It was not until the election of an ALP government which was more committed to equality for women than the Coalition, that sufficient pressure developed for all formal inequalities to be removed. The extent to which gender is a major division within the working class is suggested by the long period it took from the first union application for equal pay in 1949 to the final abolition of legal inequalities in pay in 1974.

The 1969 National Wage Case

In the 1969 NWC, the unions claimed substantial wage increases, with particular emphasis on the minimum wage. The employers sought wage restraint and a clear statement by the Commission on the relationship between national wage cases and industry hearings. They saw the existing arrangements, in which the loosely co-ordinated nature of the Commission permitted substantial industry award increases, to be unsatisfactory.

The ACTU applied for restoration of the basic wage and an increase of $12.30 per week on the last amount set for the basic wage before its abolition. Failing that, they claimed a minimum wage increase of $12.30 and $9.65 for the total wage. The white collar unions applied for an increase of 19% in the total wage (Hughes, 1970, 72). The ACTU's case was based on

price and productivity movements since 1953, the base year[32] from which they had long worked in their national claims.

The unions argued that the low-wage earner needed special protection because the minimum wage was falling behind average weekly earnings. ACTU advocate R. Willis "...said that the Commission had a responsibility to provide a reasonable wage and that the current wage could not be described as being reasonable" (24 IIB 1750). Willis claimed that on the criteria of a Melbourne University study of poverty the minimum wage of $38.90 could be described as "marginal poverty". He declared that "No man...should have to depend on child endowment and welfare services to ensure a reasonable standard of living" (24 IIB 1751). This implied the continued validity of the "needs" component of the Commission's awards. The unions sought to separate wage rates from a more widely based "social wage", a concept they came to support a decade later.

Advocates for several white collar unions supported the ACTU's case, but argued for a percentage increase in order to avoid disturbing relativities. They claimed that recent decisions had narrowed the gap between the skilled and unskilled by awarding flat money increases.

The Commonwealth proposed five principles which could be used as guidelines in national wage and work value cases.

i) increases should only be granted in national wage cases when there was capacity to pay them;

ii) national wage cases should be the only cases in which economic capacity increases were passed on to wage and salary earners;

iii) work value cases should only be concerned with assessing and valuing work demands and relevant circumstances associated with the work;

iv) work value increases should only be granted if there was economic capacity to support them; and

v) existing relativities were not sacrosanct and could be changed. (24 IIB 1753)

Turning to the economy, the Commonwealth noted that there was high growth and low unemployment, but expressed concern about inflation. The 2.7% annual increase in average weekly earnings was seen to be the main cause of the current inflationary tendencies. It was claimed that the wage rises were both increasing costs and generating excess demand.

The employers termed the unions' claims "completely unrealistic" (24 IIB 1754). They again called for a "wage charter" setting out clear wage fixing guidelines. Counsel J. Robinson warned against awarding general wage increases on non-economic grounds, such as had occurred in the recent work value cases, as this gave two avenues for increases, and "...there was only one economic capacity to draw on". He argued that work value increases should only be granted if the

nature of the work had altered to such an extent that a new classification existed.

The employers repeated the productivity formula they had been putting forward since 1963. They argued that capacity to pay had been "overdrawn" after the work value round and that an inflationary gap existed between wages and productivity increases (24 IIB 1756). The employers' criticisms were expressed more strongly by the advocate for the state of Victoria, who declared that "...in the last two years the Commission had created more disputes than it had resolved..." (24 IIB 1760). He called for clarity and consistency in the Commission's actions.

In reply, the unions argued that the employers' wage charter would unduly restrict the Commission and deny wage justice. ACTU advocate R. Hawke also attacked the employers' productivity formula, claiming that it was unfair and impractical to base an incomes policy on control over only one form of income. Hawke closed his submissions by citing Moore J., who said that "...the Commission should always give a priority to industrial relations and should not get tied up with economic formulae or theorems" (24 IIB 1762).

The Commission's decision was given on 1 December 1969 by a full bench of Moore, Williams and Franki JJ., Senior Commissioner Taylor and Commissioner Winter. They awarded a

3% increase. A percentage rise was granted in order to avoid upsetting the relativities established in recent work value cases. The minimum wage was increased by $3.50, after a promise was obtained from the ACTU that they would not attempt to apply this to any other award.

The Commission viewed the economy as being buoyant. However, the Commonwealth's concern with excessive demand was taken into account. The wage increase was higher than national productivity gains, but was not expected to have a significant effect on prices.[33] The increase was said to be economically sound and industrially just. The Commission stated, "It is commonplace for the community to be told how much is lost through strikes and bad industrial relations, but the converse, the result of good industrial relations is rarely mentioned" (24 IIB 2193).

The employers' "wage charter" was rejected, but lengthy comments on wage fixation principles were included in the decision. Hughes (1970) argues that these gave the employers much of what they wanted, but they seem vague enough to provide considerable leeway to the Commission. The key point, concerning work value cases, was,

> The task of fixing wages in work value hearings will involve consideration of the non-economic factors which used to be considered in fixing the secondary wage, namely, things such as training, skill required, arduousness, conditions under which work is usually performed, etc. In such cases it will not be appropriate to bring the total wage up-to-date for economic reasons

> (including consideration of price and productivity movements), because this will be happening continuously through national wage cases. Whereas prior to 1967, periods of much longer than a year often elapsed between the fixation of secondary wages even on economic grounds, employees can now each year normally look forward to having their whole wage increased for economic reasons.
> (24 IIB 2196)

Although economic criteria were excluded from work value cases, the economic consequences of work value decisions would not be ignored. This was particularly true of major awards such as the Metal Trades Award, where the potential for flow-on was considerable.

Reaction to the decision was restrained. Both unions and employers expressed disappointment with the amount of the increase, but the employers were pleased that the relationship between national wage cases and work value proceedings had been clarified (Age, 2 Dec 1969, 13). Employers' association officials saw the increases as too high, and warned that price increases might result to accommodate them. Militant unions responded to this threat by warning, "Unless we can achieve a halt to the ever increasing rise in general commodities any wage gains will be of little value..." (AEU Monthly Journal, February 1970, 7).

Although this national wage case was relatively "quiet", it was significant on theoretical grounds. The issues before the Commission were clearly presented by the

parties. The unions called for "wage justice", and the more rapid increase of average weekly earnings than award wages suggests that they were prepared to go outside the Commission to get it. The employers demanded wage restraint and sought to tie the Commission to a definite commitment to the centralization of wage increases in national wage case decisions. Accepting the employers' arguments would have committed the Commission to cut real wages in a time of full employment and rising prices, which the full bench implied would have led to widespread industrial unrest. At the same time, the Commission appeared to accept a need for centralization and "moderate" increases.

The decision followed the theoretical model well. The full bench equivocated, affirming the need for centralization but not making promises, and doing nothing to restrict the autonomy of individual Commissioners through whom wage increases could flow. The Commission sought to provide industrial peace and economic "prudence", while refusing to be pinned down to a clear policy or statement of what it intended to do. The buoyant economic conditions and fragmented internal structure of the Commission allowed it to be both cautious and generous at once, displaying the inconsistency expected by the theory and maintaining the autonomy necessary to manage both specific industrial problems and general economic stability. The Commission appeared to be retreating somewhat from its purposive wage policy, without giving the overt impression of doing so.

The Oil Industry Case

The capacity of industry to pay higher wages has always been an important criterion in arbitration decisions. Although it is a vague concept, it has been used in national cases to determine whether the economy as a whole is able to support wage increases. In industry hearings as well, employers have been able to plead that their industry did not have the capacity to pay higher wages. The unions have never been able to obtain rises on the ground that a particular industry or firm is highly profitable. This principle was clearly established in the General Motors-Holden's case in 1966 (115 CAR 931). The unions argued that the firm's high profits should either be returned to the public in the form of lower prices or distributed to its employees. The Commission rejected the claim, ruling that this would play havoc with centralized wage fixation and long-established relativities. Furthermore, individual employers would then be in a position to seek lower wages if profitability declined.

The unions tried a different approach in 1970. They based their claims on the profitability of the oil industry in general, rather than on one particular company, though the matter was a challenge to the GM-H decision. ACTU President

R. Hawke argued that the GM-H principles tended to undermine industrial peace. As the capacity of an industry or firm to pay and improvements in productivity were commonly used in overaward bargaining, he reasoned that the Commission removed itself from the field of dispute resolution by refusing to admit these criteria in other than national cases. The unions further maintained that these factors were not even adequately taken into account in national cases. With regard to comparative wage justice, Hawke pointed out that workers in identical classifications were often paid different rates, even within the same industry. He added that the Commission frequently dealt with profitability in conciliation, and to refuse to admit this in arbitration proceedings "...would amount to saying: 'Go back to the jungle'" (25 IIB 1491).

The claims were opposed in separate submissions by the NEPC, the Commonwealth and the oil companies. NEPC advocate B. Maddern argued that the unions' position "...would involve the abandonment of national wage cases and the principle of comparative wage justice, and would breed industrial discontent" (25 IIB 1727). These lines were followed in the other submissions, with an additionl argument that it would be impossible to determine at what point profitability or capacity had become high enough to redistribute to employees. Furthermore, this would involve "double counting", as employers could be assessed on grounds of capacity and productivity twice; once in industry cases and once in

national wage cases.

A full bench of Kirby CJ., Moore and Williams JJ., Senior Commissioner Taylor and Commissioner Clarkson gave their decision on 16 October 1970 (25 IIB 2022). The Commission reaffirmed the GM-H principles, with two exceptions; if the parties agreed to use capacity to pay or profitability as a criterion, or where it had been commonly used in negotiations leading to earlier consent awards and agreements. These exceptions did not fit the present circumstances. The employers did not deny that they had the capacity to pay the claims, but were unwilling to use capacity as a criterion in industry wage fixation, nor had they done so previously.

The Commission rejected the unions' general arguments as well, but admitted that many of their points were valid, as the principles set out by the tribunal did not always stand up in practice. For example, on the principle that "increased prosperity should be shared amongst employees generally and not be confined to employees in the prosperous industries", the Commission said

> Like most things in our area, the idea does not work out perfectly. We are aware that through agreement and over-award payments, there are divergencies from the concept and we agree with Mr Hawke that these agreements and over-award payments make it impossible to eliminate completely the "double-counting" referred to in the GMH case. We work in an area of imprecision, and although it is not possible precisely to divide the fruits of national growth so that all

> are distributed in national wage cases, we consider the Commission should continue to approach national wage cases as a means of effecting so far as it can a general distribution.
> (25 IIB 2027-2028)

A similar view was taken on comparative wage justice. The Commission added that using a new principle in industry cases would probably heighten industrial unrest and create economic difficulties. They also rejected the unions' contention that principles used in conciliation should be admitted in arbitration.

The decision provides insight into the relationship between conciliation and arbitration, and the Commission's thinking on its role in settling industrial disputes at that time. The preliminary statement by the President said

> In assessing the rates to be paid, we have thought it proper in all the circumstances to put ourselves in the position of the negotiators and to regard the proceedings before us as a prolongation or extension of the negotiations. We have done the best we can to resolve their problems by looking at the matters they looked at, even though they may not have been normally looked at by the Commission ... We have attempted to assess their motives in making...offers and counter offers and we have looked at the material...considered by them.
> (25 IIB 2023)

The majority decision added

> ...parties may be of the view that if conciliation fails, any subsequent arbitration would be more realistic if the arbitrators are able to put themselves in the position of the negotiators and to regard the arbitration as a prolongation or extension of the negotiations.
> (25 IIB 2025)

The judgment stopped far short of eliminating the distinction between conciliation and arbitration, as shown by the refusal to allow the principles used in one to be used automatically in the other. However, the direction of their approach fits in with the "accomodative" type of arbitration outlined by Romeyn (1980), and more importantly, with the "consensus" strategy discussed by Offe.

The 1970 National Wage Case

The Commission continued to seek centralization. A large national increase was granted in 1970, in the hope that this would satisfy the unions and reduce the level of claims outside national hearings. The 1970 NWC took place in a particularly difficult environment for the Commission. The economy was sound, but this did not make wage fixation easier. With full employment and what appeared at the time to be an inflationary situation, the unions were seeking substantial wage increases. Opposition to the unions now appeared to come as much from the Commonwealth government as from the employers, many of whom were willing to pay higher wages in the hope of achieving industrial peace. Despite this, the number of strikes increased, even over the industrially troubled years 1968 and 1969.

Other developments added to the Commission's

difficulties. Some of the metal unions were amalgamating, including the militant AEU. These unions pressed for pay increases outside arbitration if award rises were not satisfactory. A similar line was taken by new ACTU President R. Hawke, whose aggressive style and Left-wing support aroused fear in conservative quarters (d'Alpuget, 1977, 241). Hawke and other leading union officials complained that the Commission seemed too willing to follow the submissions of the conservative Commonwealth government. The unions also criticized the government's opposition to wage increases while ignoring the employers' ability to raise prices at will, and their regressive taxation policies.[34] This was emphasized by an ACTU-sponsored national protest against the federal budget. On 25 August 1970, the day the opposition replied to the budget in Parliament, approximately 750,000 workers across Australia walked off the job for three hours to demonstrate their disapproval of government policies (SMH, 26 Aug 1970, 1).

The government defended its policies, and attacked both the unions and the Commission. Prime Minister Gorton "...blamed the country's inflation on wage rises", and some senior government officials evidently considered the Commission "...an economic bugbear" (d'Alpuget, 1977, 242). The attacks by Gorton on the Commission were widely seen to be warnings not to undermine government economic policy, particularly its attempt to reduce aggregate demand.

The 1970 national wage case was heard by a full bench of Moore, Williams and Aird JJ., Public Service Arbitrator Chambers and Senior Commissioner Taylor (135 CAR 244). The ACTU claimed an increase of $9 for both total wage and minimum wage. They also asked for automatic wage adjustments in line with CPI increases. The white collar unions applied for a 16% increase.[35] The employers offered a 2% rise.

In their Reasons for Decision, the Commission found that the economy appeared to be strong.[36] The potential for further inflation was noted, as was the introduction of government measures to reduce the level of demand. The Commission concluded that a wage increase should be granted, and that this should take the form of a percentage in order to maintain existing relativities. The blue collar unions had made a particular point of arguing for a flat money increase in order to assist low-wage earners, and the Commission decided to increase the minimum wage for their benefit.

All parties had agreed that wage increases might result in higher prices. However, the unions saw increased demand as more important, while the employers considered both factors to be "inextricably mixed". The unions maintained that the Commission was overly concerned with inflation, which was denied by the bench. The Commission argued that its primary task was the regulation of industrial relations, with

due regard for the economic consequences. The bench wryly commented that "It could fairly be said that the Commission has never had any specific knowledge as to the precise economic impact of its decisions but it is not alone in this respect" (135 CAR 254).

The Commission argued that equity must be a primary concern in its decisions, otherwise those who relied on national wage hearings for increases could feel that they were treated unfairly, while the stronger unions would seek improvements through industrial action. The bench warned, however, that excessive industrial pressure and a willingness by employers to give in to union demands "...may inhibit the Commission in future national wage cases" (135 CAR 254). Taking into account prices, productivity, and movements in award rates, the Commission increased the total wage by 6%, the highest increase since its inception in 1956. The minimum wage was increased by $4. The Commission rejected the unions' application for automatic wage increases, but agreed that maintaining the purchasing power of award wages was desirable.

The decision concluded by referring to the consistency of the principles applied in this case with those developed in recent years, as confirmed by the Oil Industry decision. The Commission argued that "...the fruits of national growth should be distributed generally in national wage cases". This suggests that the Commission was anxious to maintain its

authority and central importance in the wage fixation process. On theoretical grounds, this may be viewed as an attempt to maintain control over a situation in which both economic and industrial stability were coming under pressure. Awarding a substantial wage increase recognized that the unions would bypass the Commission unless an acceptable proportion of their claims were met. The shift towards a consensus wage fixation strategy was becoming increasingly evident.

Employers objected to the size of the increase, but the most severe criticism came from the Commonwealth government. Prime Minister Gorton had continued to warn the Commission to exercise restraint, and after the 1970 national wage decision was announced, "Canberra was alive with rumours...that the government was going to 'do something' about the commission" (d'Alpuget, 1977, 243). Sir Richard Kirby responded with a strong defence of the Commission in his Annual Report to Parliament for 1969-70. He stated

> Members of the Commission decide matters before them on the arguments and material presented in the Commission's Court rooms and not otherwise. This is the position whether or not the speakers are Prime Ministers, Ministers, Opposition Leaders, Presidents of the ACTU or of organised employers and so on.

Kirby discussed the question of keeping wage increases within productivity improvements, a position propounded by the employers since 1963 and more recently by the Commonwealth. He concluded

> Productivity in varicus ways has been studied and argued about at Commission hearings...for many years but examples of full employment countries keeping wage and salary increases inside productivity increases have yet to be produced. Those who directly or indirectly seek to advise the Commission to perform this feat should send someone along to a hearing to advise how it could be done.

Gorton responded with a highly critical speech on 25 February. Amending legislation to the Act was evidently being prepared, causing serious disagreements within Cabinet, when Gorton was deposed. His replacement, W. McMahon, backed down from his predecessor's stance against the Commission (d'Alpuget, 1977, 244-245).

As the unions took advantage of their position in a full employment economy, cleavages within the state began to appear. Inflation, always of great concern to the Liberals' small business constituency, was looming as a political issue, and the Commonwealth demanded that wages be contained. The Commission's concern with maintaining industrial peace precluded acquiescence to the government's requests. The strength of the working class was such that the Commission was prepared to resist the government's threats, and support for the Prime Minister's position was apparently not strong.

The Professional Engineers' Case

One of the more important white collar cases decided by

the Commission was the 1961 Professional Engineers' Case. This marathon case took over four years, entailed two High Court decisions and cost the claimant unions about $200,000. The case was argued on both work value and comparative wage justice grounds. The objective was to obtain, "...a standard of living and a status in keeping with the reasonable needs of a profession" (97 CAR 265).

Substantial increases were obtained by the engineers in this case. Successful claims were then brought by various professional and non-professional white collar groups, which eroded the comparative gains won by the professional engineers. In August 1967, they lodged a new claim based on comparative salary movements since 1962 and work value, but due to delays, proceedings did not begin until October 1968 and the case ended a year later.

The unions were opposed by the Commonwealth, which employed a substantial number of their members, and the private employers. They denied that the claims were justified on the basis of either work value or comparative wage justice (Professional Engineer, Nov 1969, 2). However, the employers were split when the Commonwealth Public Service Board announced increases ranging from 11% to 15% for engineers. This was criticized by both the unions and the private employers, the former claiming that the increases were inadequate, the latter that they were too generous (Professional Engineer, Oct 1969, 1; Nov 1969, 2).

The decision was announced on 3 December 1969, by joint benches of Wright and Moore JJ. and Public Service Arbitrator Chambers for the public service claims, and Wright, Moore and Commissioner Portus for the remainder (24 IIB 2199). There was disagreement within the benches, and the case was decided by a majority judgment of Moore and Chambers for the public service claims. While there was no necessity for the other bench to follow suit, it nevertheless did so.

The majority rejected the unions' comparative wage justice argument, but accepted that some increase should be made on work value grounds, but not to the full extent of the unions' claims. Their decision was to ratify the increases granted by the Public Service Board. They implied that this decision should not be seen as a signal for a new round of white collar pay increases, stating "In our view it is the end, not the beginning of a cycle".

Both Wright J. and Commissioner Portus would have awarded higher increases, Wright on the basis of work value, Portus on comparative wage justice. They were not prepared to depart from the majority on the public service bench, which would have been contrary to the concept of a uniform minimum standard for the profession established in the 1961 decision.

The unions were outraged. Wright's opinion that "I have concluded that the revised salary rates lately promulgated by the Public Service Board do not do full justice to the professional engineers under examination" was prominently displayed under the heading "Justice denied?" in the APEA journal (Professional Engineer, Dec 1969, 1). The engineers warned that they would not willingly accept the Commission's decision. On 12-13 December 1969, the APEA's Federal Council met, and

> ...recorded its disillusionment and anger at the decisions of the Joint Benches and its concern that the decisions echoed the determinations of the Public Service Board, a major respondent to the claims. The Commission appeared to have been directly influenced by the policies of the Federal Government as reflected in the complete acceptance of the amounts and operating date determined by the Public Service Board. Council considered that the Commission's decision was a direct incitement to militant action by an Association that had consistently shown a responsible and temperate approach.
> (Professional Engineer, Jan 1970, 1)

The APEA engaged in an intensive lobbying campaign directed at politicians, apparently with some success (Professional Engineer, March 1970). Further negotiations were requested with the PSB, with an increase of 15% being sought, but the talks were unsuccessful and the PSB indicated that it would not negotiate further (Professional Engineer, July 1970). The traditionally non-militant engineers then took limited industrial action in pursuit of their claims. They placed bans on all overtime except where essential services were concerned, as well as on various other tasks (Commonwealth

Professional, Sept 1970, 4). The PSB then agreed to further discussions. A comprehensive salary review was announced, and industrial action was called off (Supplement to Professional Engineer, Sept 1970, 1). The PSB offered a 15% increase, which was accepted. The unions applied for this to be extended to private industry, which was rejected by the Commission (Professional Engineer, June 1971, 4). However, employers agreed to the increases after negotiations, and this was ratified by the Commission.

Employers, including the state, could no longer rely on a passive white collar workforce. Conflict increased in the white collar sector, and its management required a greater role for the Commission. This not only added to the responsibilities of the Commission, but increased the likelihood of conflict with other state apparatuses as the Commission's decisions affected their employees.

Conclusion

In conditions of full employment, the Commission's work became increasingly difficult. The blue collar unions resorted to industrial action in support of their claims, and were successful. As seen from the final case discussed in this chapter, previously passive white collar unions followed suit. The response of capital was to resort to the repressive

powers of the state. The full force of the repressive apparatuses were never brought to bear, and the unions successfully resisted these initiatives after a protracted struggle which culminated in massive strikes.

Capital also sought to combat the wage campaigns within the Commission. Tribunal members were aware of the inflationary potential of the wage increases, but were equally cognizant of the likely industrial unrest if they sought to impose restraint. The consequences became apparent after the metal trades work value decision. The Commission was increasingly pushed towards a consensus wage policy as the unions took action against employers, who were no longer prepared to offer significant resistance. The employers nevertheless continued to argue for restraint and were joined by the Commonwealth, which became increasingly critical of the Commission's actions. With economic developments in contradiction with political and ideological pressures, the Commission sought to establish its autonomy and retreat from any firm policies that would reduce its freedom to manoeuver. It partially shifted to a strategy of consensus at the economic level (which yielded large wage increases) and a somewhat contradictory political and ideological approach. Both the Commission and the Commonwealth government backed down from political confrontation with the unions, which could have threatened the legitimacy of the state, but the government increasingly mounted an ideological attack against

the unions and at times against the Commission. The tribunal took a softer approach, hoping to restrain wages without inciting industrial action. It was only partly successful in accomplishing this.

Footnotes

1. Originally Wright J. was to have presided, but withdrew due to ill health. His place on the bench considering the basic wage applications was taken by the President, while the total wage decision was technically made by Gallagher and Moore JJ. and Commissioner Winter.

2. Commissioners were precluded by law from sitting on basic wage benches.

3. See also the editorial in the MTEA's Metal Trades Journal (15 June 1967) which said "No tears should be shed about the elimination of the artificial basic wage which in recent years has in fact offered no meaningful protection to employees and has only forced the Commission into procedures which generate anomalies and new disputes.

4. Wright, Gallagher, Moore JJ. and Commissioner Winter.

5. As Commissioner responsible for the metal trades, disputes arising in this area would be referred to Winter. Clearly, the more disputes he felt it necessary to attend to, the longer the work value inquiry would take.

6. The exception being the FEDFA, which had few members involved (Age, 7 April 1967, 1).

7. See Plowman (1983).

8. This viewpoint was endorsed by AEU Research Officer J. Hutson (1971, 205), whose union was central to the ensuing industrial action.

9. The Commission's awards set minimum rates of pay. Higher payments are up to the parties. Higgins J. wrote in 1915, "I can only say plainly that there is no breach of the award or impropriety in a man refusing his services...unless the employer pay more than the minimum" (quoted in Plowman et al, 1980, 129). Overaward payments were not widespread until the full employment conditions of the post-World War II era, and even then, Portus (1979, 12) suggests that they comprised only a small proportion (approximately one-ninth) of the total wages paid in private employment in the mid-1960s.

10. It is common practice for arbitrators to refuse to hear disputes if industrial action is occurring. However, in this case it was an employers' application.

11. The transcript of the 6 February 1968 hearing before Kirby CJ. contains several pages of debate over whether the names of firms which had agreed to non-absorption could be entered into the record by the unions. This was refused by Kirby, who nevertheless agreed that they included major businesses. The transcript (p. 21) reads:

    Mr McGarvie [for unions]: Your Honour having now ruled that I am not entitled to read the names to Your Honour, will Your Honour assume that a number of those are very influential and important companies in the Australian economy?

    His Honour: Yes.

    Mr McGarvie: Thank you. I do not want to be faced with the position that it is said they are not the leaders of industry.

    His Honour: I suppose the ones that normally would be the important ones would be those that would not have to worry as much as perhaps the less fortunate undertakings.

12. An experienced member of the Commission termed this a "panic" response by the Court, which seriously undermined the legitimacy of penalties. (Interview)

13. In the NSW no-strike ruling mentioned above, Dunphy J. declared "Never before, in my memory, have employers had more reason to fear industrial disruption on a grand scale which is in evidence before us in NSW. We must endeavour to see that peace in industry is maintained and secured" (AFR, 9 Feb 1968, 1).

14. Hancock (1968, 19) argues that "...the use of the term 'work value'...gives the process of wage determination a spurious air of rigour where there is in truth no rigour at all". Hutson (1971, 212) simply maintains that it is impossible to define. Sir Richard Kirby recognized the ambiguities as well as the dangers in the process, saying "I've never been able quite to see how someone goes and looks at a chap working and then says, 'He's worth halfpenny an hour more than the chap over there who's doing a slightly different exercise'. You've got to go on practice and tradition and be very cautious in making any change, unless people cry out for it" (d'Alpuget, 1977, 221).

15. The list included, "1. The qualifications for the job; 2. The training period required; 3. Attributes required for the performance of the work; 4. Responsibility for the work, material and equipment and for the safety of the plant and other employees; 5. Conditions under which the

work is performed such as heat, cold, dirt, wetness, noise, necessity to wear protective equipment, etc.; 6. Quality of work attributable to and required of the employee; 7. Versatility and adaptability (e.g. to perform a multiplicity of functions); 8. Skill exercised; 9. Acquired knowledge of processes and plant; 10. Supervision over others or necessity to work without supervision; and 11. Importance of work to overall operations of plant" (1968 AILR 185).

16. The Commonwealth's estimate was slightly higher.

17. Some of the major qualifications that must be accounted for are outlined by Plowman et al (1980, 45-47).

18. A detailed sociological discussion of Australian strike patterns can be found in Waters (1982).

19. It is often claimed that Australia's strike pattern is greatly influenced by the existence of the arbitration system. Critics of arbitration, such as Niland (1978), argue that arbitration encourages a high number of strikes, an allegation that seems well-founded. To go from this to the conclusion that the overall level of industrial disputation would be reduced if arbitration were abandoned or curtailed, as some writers do, is an unwarranted assumption. For the purposes of this thesis, it is sufficient to accept that arbitration creates conditions in which short, demonstration stoppages are likely in order to have claims processed more quickly in the tribunals. There is no doubt that a claim can often be expedited by means of industrial action.

20. Rawson's (1978, 138) data show that over 40% of unionists have never been on strike.

21. d'Alpuget (1977, 232) notes, however, that the threat of penalties was on occasion used by union officials to get employees to return to work during unwanted or difficult strikes.

22. The Australian Tramways and Motor Omnibus Employees' Association.

23. O'Shea's sentence was for contempt, and was not directly related to the penal provisions of the Act. However, this was not the view of trade unionists. Sykes and Glasbeek (1972, 552) state "...Mr O'Shea had substantial backing in the Union movement, and...this support did not just arise out of sympathy for the Tramways Union because of its particular problem, but rather out of discontent with the whole system of enforcing Commonwealth arbitral decisions".

24. According to MTIA official Ron Fry, "When O'Shea was gaoled, the federal government was faced with a situation of industrial disobedience with which it could not cope. The assistance we got from Gorton [Prime Minister] and Snedden [Minister for Labour] was absolutely minimal. We had been fighting a foundry strike in Melbourne for six weeks and knew the government would not collect the fines if we took the union to the Industrial Court. All we could hope for was our costs. We decided 'Why let our businesses go to the wall?'. We were trying to fight the community's battle against rising costs and there appeared to be no government or community support for us" (d'Alpuget, 1977, 234).

25. Department of Labour and National Service, Equal Pay, 1968. Cited in the text as Equal Pay. A supplement in 1972 will be cited as Equal Pay Supplement.

26. Sykes and Glasbeek (1972, 617) state, "It is of interest to note that the tribunal did not regard itself as discriminating on the basis of sex. In dealing with female rates in the clothing industry, Higgins, J., said: 'The fact that an employee is lame or red-haired, or belonging to a particular creed, is no ground for a lower minimum rate. Why should sex be a ground?'".

27. Previously, females had received a proportion of male basic wage increases.

28. Underlying the employers' position was the "capacity to pay" principle. If wages are set at the maximum level that the economy can sustain, then increasing the wages of one group of workers would automatically necessitate a reduction for another group. In this case, raising the wages of working women would disadvantage those families with one (presumably male!) breadwinner.

29. New South Wales, South Australia, Western Australia and Tasmania. The Commonwealth was constitutionally prohibited from enacting such legislation except in the case of its own employees, which it declined to do, deferring to the authority of the Public Service Arbitrator.

30. Commissioner Winter provided some support for the view expressed by some commentators that the unions were not particularly zealous in their attempts to obtain equal pay. He stated "...female process workers would obviously have been for some time receiving a higher wage than they are now receiving but for the agreement between the parties (1970 AILR 34).

31. For a list of awards granted equal pay after the 1969 decision, see Department of Labour and National Service, Equal Pay Supplement, 1972, pp 7-19.

32. It will be recalled that automatic quarterly adjustments to the basic wage were abandoned in 1953.

33. Average weekly earnings increased by 8.4% and award wages by 6.5% in 1968-69. The CPI had risen by 2.9%.

34. See especially the AEU Monthly Journal through 1970.

35. A $9 increase for the fitter would have been approximately 16%.

36. GNP had increased by 5.5% in the past year, unemployment was 1.2% in September, and consumption and investment were high. Productivity had increased by approximately 2.2%. Average weekly earnings rose by 8.9%, 3.8% more than the increase in award rates, showing that the unions were successfully pursuing wage increases outside the Commission. The CPI was up by 3.7%.

Chapter 5: The Retreat from Centralized Wage Fixation: 1971-1974

During the period to be covered in this chapter, centralized wage fixing declined in significance, as wage movements were increasingly determined by agreement between the parties. Negotiated settlements had always played a part in Australian labour relations, but employers and unionists now took matters into their own hands to an unprecedented extent.

A number of reasons account for this change. Full employment enhanced the unions' bargaining position, and prosperity enabled employers to grant increases rather than suffer a strike. At times, employers bid up the price of labour in an attempt to alleviate staff shortages, and in some cases this had a flow-on effect. The demise of the penal powers removed an obstacle to union militancy.

The Commission responded ambivalently. While many decisions, particularly major full bench judgments, contained warnings that wage movements could "get out of control",

industry awards outraced increases from national wage cases. As the parties seemed prepared to reach agreement outside the Commission, the tribunal had little alternative to this approach. The Commission's response was inconsistent, conducting a consensus strategy in industry cases while seeking to re-establish an effective purposive strategy in national cases.

The actions of the Commonwealth were also significant, particularly after the change in government in 1972. After early support for collective bargaining, the ALP government changed in favour of greater centralization. It was not until after the "wages explosion" of 1974 and the onset of economic recession that the decisions of national wage benches once again took on the importance of the mid-1960s.

Industry Award Movements 1971-1972

The fragmented structure of the Commission allowed contradictory policies to be pursued within the one state apparatus. Individual Commissioners were able to permit increases within specific industries, while the national wage bench sought to restrain the wage structure as a whole.

Two tendencies accelerated during this period. One was the rate of increase of wages, particularly increases

outside national wage cases. The other was the fragmentation of awards. In some cases, such as the vehicle building industry, awards came to cover the employees of only one firm, and in some cases one plant. With each judgment covering relatively fewer workers, the chances of distortions to traditional wage relativities were enhanced.

These tendencies were shown in the Metal Industries Interim Award, handed down by Commissioner Hood on 16 July 1971. As mentioned earlier, the Metal Trades Award was the centrepiece of the wage structure. The 1967 Metal Trades Work Value Inquiry had sought to rationalize this award, and the decision foreshadowed that it would be split into smaller components (121 CAR 750). Commissioner Hood's decision began this process, though the new Metal Industry Award remained very important.

What occurred in the case remains unclear. No reasons for decision were published, which led to accusations that the Commissioner simply rubber-stamped a negotiated settlement between the parties. This was denied by the employers.[1]

The parties held a series of conferences in June and July 1971. Most commentators agree that the major metal industry employers were no longer willing to bear the brunt of industrial action by some of the country's most powerful and militant unions.[2] However, the negotiations were inconclusive,

and the unions announced plans for a major stoppage (held 13 July). The employers then referred the dispute to the Commission (MTIA News Bulletin, 11 Oct 1971, 4). In Commissioner Hood's decision, tradesmen received a significant increase of $6 (about 9%), with others getting amounts ranging down to $4.50. The parties maintained that this was a genuine arbitrated decision, but it was widely believed that the increase was largely, if not entirely, by consent.[3]

Union and employer officials criticized the decision at the time (SMH, 17 July 1971, 9), but soon expressed a different attitude. The AEU declared that "...a new psychology is developing among the Metal Employer organisations which may bring about better industrial relations" (Monthly Journal, Sept 1971, 1) and similar hopes were expressed by the employers (Metal and Engineering, Dec 1971, 1).

The Metal Industries Interim Award was granted in the context of recent consent awards for similar increases in related industries and the Commonwealth Public Service (MTIA News Bulletin, 11 Oct 1971, 5). Further claims for flow-on soon followed. The Commonwealth estimated that at least 15% of the male workforce received increases within three months (Commonwealth Submissions, 1971-72 National Wage Case, 12). Perhaps the most interesting decision was in the Carpenters and Joiners Award (1971 AILR 647). The unions stressed the

recent Metal Industries Interim Award increases and claimed that a nexus existed between carpenters covered under the metal award and the Carpenters and Joiners Award.

The full bench examined the circumstances surrounding Commissioner Hood's decision and declared

> Notwithstanding the size of increases of wages, which with the exception of the work value increase of 1967 are the largest ever awarded to tradesmen generally in the industry, there was no appeal by any of the respondent emloyers. We also point out that there had been no application for a hearing by a reference bench ... These circumstances are worthy of note against the history of the metal trades general wage increases being the subject of Full Bench hearings from 1954 until now. Further this conduct of the parties precluded the Commonwealth from exercising its statutory right of intervening in the public interest and perhaps other interested people from seeking leave to intervene.
>
> Economic consequences are not discussed in Mr Commissioner Hood's decision. However, as large employer bodies such as the Metal Trades Industries Association and the Victorian Chamber of Manufactures were parties to those proceedings one would be entitled to assume that they must have taken such matters into account either when formulating their attitudes to the employees' claims or when deciding whether or not to seek a reference or later appeal against the decision. It seems that as no reference was sought and no appeal was lodged the employers' organisations did not regard the claims made or the increases awarded as being unduly inflationary or opposed to the public interest generally.

The Commission granted the unions' claims and acknowledged the likelihood of further flow-on. However, they sounded a warning which was repeated throughout the period.

> We point out that the totality of award wage increases which have occurred in the preceding year may well be relevant in a National Wage

> Case. Indeed such increases may inhibit the Commission in such a case. That inhibition would not arise specifically from this decision but from the general movement in wages and may of necessity as a matter of equity work against those who have benefited from that movement because those who may have received no increases have to be protected.

This decision accepted that if the parties sought to establish new wage rates without recourse to the Commission, there was little that could be done. The full bench recognized that flow-on pressures would result, but implied that trying to stop comparative wage justice claims was both fruitless and inequitable. However, the decision showed that some of the senior members of the Commission hoped to reassert their authority. The dilemma was whether "holding the line" in a national wage case would counteract the effects of industry award increases. There was the further problem of whether seeking to impose wage restraint would cause more industrial unrest than the results would be worth.

Pressure from the Hood decision was augmented by a 9% increase granted by the State Electricity Commission of Victoria to its salaried employees. This began to work its way through the white-collar wage structure in late 1971 and early 1972. The Commonwealth intervened in a number of cases to oppose the increases, but this did little to check the rises (Mills, 1972, 308-309). A 7.5% increase was granted to Commonwealth public servants in June 1972.

The Metal Industry Award came up for review in 1972, with even less disagreement than the previous year. Conferences were held from June through August before Williams J., and the unions voted to accept a negotiated package on 13 September. The MTIA's journal heralded this as an "Award Breakthrough", and remarked that "...the prospect of 18 months of industrial peace is very big news indeed" (Metal and Engineering, October 1972). The metal unions received a $3 increase, with an additional $3 in nine months. The unions made little comment on the settlement, but the absence of critical comments from the more militant organizations is significant.[4]

Negotiated agreements had become an important factor in what had recently been one of the most disputatious sectors of Australian industry. The Commission responded ambivalently, applauding the parties' ability to reach agreement[5] while expressing concern over the economic impact of industry increases. Basing their decisions on inconsistent principles, the Commission sought to manage the pressures that were building up.

National Wage Case 1971-1972

In this decision (143 CAR 290) the Commission

attempted to achieve a similar objective as in the 1970 NWC by using the opposite approach. In the earlier judgment they sought to minimize pressure for industry award increases by granting a large national wage rise. By 1972, it seemed that this strategy had not worked. As the unions continued to seek increases outside the NWC6 it was only considered possible to grant a small general increment.

The ACTU sought a flat $12.50 increase, while the white collar unions claimed either a percentage or percentage plus a flat sum. The ACTU also applied for an increase in the minimum wage to $70 per week (up approximately $23) and for quarterly adjustment of the minimum wage.

The ACTU's claims were based on movements in prices and productivity since 1953. Even taking into account only changes since the previous NWC, they argued that an increase of between 4.7-6% was justified.[7] The unions attributed the high rate of inflation to past demand pressures and international factors. However, demand had eased, which had been accentuated by the 1971 federal Budget. The unions maintained that the proportion of national product going to labour had declined and the share received by profits increased. This was disputed by the Commonwealth (Commonwealth Submissions, 1971-72 NWC, 32). The unions submitted that they did not expect the Commission to attempt to regulate the relative shares going to labour and capital,

but that failure to provide wage increases in line with movements in prices and productivity would be contrary to its role of settling industrial disputes. They suggested that a low increase would result in wage pressures inside and outside the Commission.

The Commonwealth opposed any increase to the total wage, but was not averse to a moderate increase in the minimum wage. The fall in demand and rise in unemployment were noted and it was submitted that steps had been taken to alleviate these problems. The Commonwealth argued that recent wage increases were far in excess of productivity improvements, and contended that if inflation was to be held down, wages would need to be kept in check (Commonwealth Submissions, 1971-72 NWC, 14).

The private employers opposed any wage increase at all. They emphasized arguments similar to those of the Commonwealth, particularly the inflationary implications of wage increases in excess of productivity and the significance of industry award movements in 1971. The employers argued

> ...that if general increases in the rates in industry awards were to continue national wage cases would 'lose their meaning and purpose and must be abandoned on economic grounds'. It was because of the increases awarded in industry cases that the present economic capacity was exhausted and there was no room for further increases.
>
> (143 CAR 298)

The unions were arguing that wages should be increased to compensate for increased prices. The employers held that wages were the main source of higher prices, and they submitted that a wage increase under the present circumstances would only lead to more inflation.

The decision was given on 5 May 1972. The full bench[8] awarded a $2 increase to the total wage and $4.70 to the minimum wage. The application for a quarterly adjustment to the minimum wage was rejected.

The Commission singled out inflation as a cause for concern. A lengthy section from the 1970 NWC decision was quoted to the effect that inflation had a variety of sources, including wages. The passage stated in part, "We accept that an increase in award wages may have an influence on prices and the larger it is the larger the impact is likely to be". The Commission considered the large industry award increases in 1971 to be contrary to the intention expressed in the 1969 and 1970 decisions that general wage increases should only result from NWCs. They again warned that some account would need to be taken of this tendency, including the prospect of restricting national increases to those who had not received rises from other avenues (143 CAR 304).

The Commission then posed the question of the future of national wage cases. Significantly, they did not attempt

to provide an answer, but satisfied themselves with a series of queries, also unanswered. They implied that the nature of national wage cases might need to be reconsidered, but did not suggest what changes might result. The full bench appeared to be warning the parties that recent developments were unacceptable, but were not prepared to bring down new guidelines or enforce the existing framework (vague though it might be). This left their options open, quite apart from the fact that an attempt to pursue a purposive strategy might be rejected by the parties in any case.

The $2 increase granted in this decision was a compromise. The small amount signalled the Commission's intention to restrain wages. At the same time, it sought to avoid the industrial pressures which would arise if no increase was given at all.

An employers' strategem

The Victorian Chamber of Manufactures did not oppose a full flow-on of the $2 NWC increase, but immediately sought a variation of the Metal Industry Award "...so as to ensure that the increases granted in the National Wage Case were the only wage increases granted in the metals industry unless a Full Bench of the Commission determined otherwise by arbitration" (VCM Weekly Services Bulletin, May 12, 1972, 1). This would freeze wages in the metal industry until the latest

NWC order expired on 19 February 1973. The news media and the unions immediately accused the VCM of trying to institute a "wages freeze", which the employers' group denied.[9]

The VCM apparently attempted to gain the support of the MTIA in their application and implied that the MTIA either would be or was in agreement (VCM Weekly Service Bulletin, May 12, 1972, 1; and especially June 2, 1972, 4). However, the MTIA does not seem to have offered any support.[10] The National President of the MTIA, F. Morgan, stated that while the MTIA was not in favour of further wage increases, it supported the processes of conciliation and saw rigid opposition of flow-on to the metal unions from other awards as injurious to industrial relations and by implication unrealistic (Metal and Engineering, June 1972, 1). The VCM, representing a more diverse group of employers, consistently took a harder line on industrial relations issues during this period than the MTIA. Employers represented by the latter group were probably better able to absorb or pass on wage increases, which were strongly resisted by small enterprises represented by the VCM.[11]

The Commission sought to sidestep the proposal, and with the employers in disagreement over its merits, they were able to do so successfully. The application came before Senior Commissioner Taylor, who referred the matter to the President, Sir Richard Kirby. Kirby, in an attempt to defuse

the situation, declined to convene a full bench, and referred the matter back to Senior Commissioner Taylor. Kirby went on to suggest that if taken literally, the VCM's request that there be no further increases under the Metal Industry Award until the following February was unrealistic, and added that it was unclear precisely what the VCM had in mind (MTIA News Bulletin, May 25 1972, 8). The hearing was then deferred.

Conferences to update the Metal Industry Award were scheduled to take place shortly thereafter. The unions refused to meet with employers who were party to the VCM's application, and on 15 June the MTIA met with the unions without the VCM, a further indication that the MTIA was continuing its conciliatory policy. The VCM finally relented and agreed to drop their claim. When the conferences resumed in July under Justice Williams, both the VCM and the unions were present (MTIA News Bulletin, July 20, 1972, 8).

This episode highlights the divisions which were emerging within capital. Some employers were experiencing difficulty in coping with the wages push, and those who were continuing to do well saw little need to form a united front with their weaker colleagues. The Commission was able to exploit this cleavage, avoiding an issue that would have placed it in an untenable position if the employers were unified in their support for the proposal. The Commission was able to wait until the MTIA had undermined the VCM's position. A

decision on the matter would either have undermined the recent NWC decision's call for restraint in industry cases or antagonized the militant metal industry unions and further reduced the Commission's weakened control over wages.

1972 Amendments to the Conciliation and Arbitration Act

The conservative Commonwealth government had been expressing increasing concern over the rise in industry award wages and the level of industrial disputation, and foreshadowed a major review of the Conciliation and Arbitration Act. The Minister for Labour and National Service, Phillip Lynch, outlined problems that he considered to be arising for the government's policy of maintaining full employment.

> Labour costs are a vital element in preserving the balance of our economy. If they increase beyond the level of increases in productivity an acceleration in inflation is inevitable and our capacity to maintain full employment is seriously undermined. Thus, the determination of wages and conditions of employment cannot always be left to the parties themselves to decide without regard to the social and economic effects on the community as a whole.
>
> (Hansard, H of R, 7 Dec 1971, 4177)

The Minister declared that the industrial "balance of power" now favoured the unions, and implied that this was being exploited by the stronger unions to the detriment of the "community as a whole". This ideology equated the welfare of employers with that of the whole community. It sought to

place the state (the government in particular) in the position of an economic overseer acting in the "national interest". The Liberals were ready to abandon their traditional espousal of "free market" forces whenever the interests of significant sectors of capital were threatened. Lynch noted a tendency on the part of some employers to give in "too readily" to union demands, a recognition that the interests of certain capitalists were often in conflict with those of others, requiring the intervention of the state. The government desired greater involvement by the Commission in wage fixation (Hansard, H of R, 4181). The government also hoped to impose greater control over industrial relations by increasing its own ability to intervene and to reduce the degree of fragmentation within the Commission. While expressing support for conciliated agreements, the government sought the power to refer a conciliated award to a full bench for review if it was in the public interest.

In addition, the Commission's structure was to be altered. The conciliation and arbitration functions would be completely separated. Arbitration would be carried out by Presidential members and Arbitration Commissioners, with conciliation in the hands of Conciliation Commissioners. The Commission would be split into panels. Each panel would contain a number of industries, under the jurisdiction of a Presidential member. This was intended to centralize control under the more senior members of the Commission. At least

one Conciliation Commissioner and one Arbitration Commissioner would be assigned to each panel. Disputes would be assigned to the Conciliation Commissioner in the first instance, and settlements would have the status of awards or orders of the Commission. Unresolved disputes would be referred to arbitration.

New penal legislation was introduced which was somewhat stricter than the 1970 amendments. A Presidential member's first obligation would be to bring about a cessation of the conduct in question, rather than to resolve the dispute. If a quick settlement appeared unlikely, he would be required to allow the matter to go to the Industrial Court.

Unions and employers were critical of the government's proposals. In particular, the plan to make conciliated awards subject to review by a full bench was not acceptable to either side. The MTIA stated that the parties would be unlikely to take the trouble to come to agreements if they could be easily overturned (Metal and Engineering, January 1972, 2), and the AEU argued that negotiated settlements would become meaningless, as concessions could be granted with the knowledge that they could then be disallowed. The AEU saw the proposal as part of an incomes policy which sought to control wages while letting prices and profits rise unchecked (AEU Monthly Journal, January 1972, 1). The proposals for review of conciliated settlements were dropped in the final

legislation, but many of the original provisions were incorporated into the Act.[12]

During the second reading debate, the government stressed the importance of combating inflation, for which the unions were blamed. Prime Minister W. McMahon referred to inflation as a "pernicious economic and social evil", and stated

> As part of our total planning in our fight against inflation we are strengthening also provisions of the Act to deal with irresponsibilities of trade union power. We are convinced that certain powerful elements in the trade union movement have exercised their strength on too many occasions in a totally irresponsible fashion. Unfair and undue pressure has been placed upon employers by the use of the strike weapon. This has resulted in excessive rises in wages and salaries relative to national productivity. I must stress here and now that we have long held the view that it is important to the community that there be a strong trade union movement. We do not wish to see a weak trade union movement but, by the same token, we have to see a balance of power between employers and unions in the settlement of industrial disputes.
> (Hansard, H of R, 26 April 1972, 2340)

The amendments were opposed by militant unions such as the AEU. This union was particularly incensed by provisions restricting union amalgamations, in which it saw the hand of the DLP[13] (AEU Monthly Journal, May 1972, 1; June 1972, 18; July 1972, 5). The employers, however, were pleased with the new legislation.

Phillip Lynch claimed that the legislation contained "...the most significant amendments to the Act since 1947", but

it had little direct impact on the Commonwealth's ability to restrain wage increases. Without the power to refer conciliated settlements to a full bench, there was little the government could do about consent awards. The penal provisions remained unused, and industrial disputes continued at a high level. A new section 39(2) stated that "...the Commission shall, in considering the public interest, have regard, in particular to the state of the national economy and the likely effects on that economy of any award...", but this was hardly an innovation. In short, the Commonwealth proved unable to have a significant, direct impact on industrial relations in 1971 and 1972, despite attempts to do so in hearings and through legislation. The attempt to thwart negotiated agreements was opposed by the unions and by important groups of employers, and the government was unable to introduce changes rejected by both.

1972 National Wage and Equal Pay Cases

A number of matters were joined and heard by a full bench of Moore, Robinson and Coldham JJ., Public Service Arbitrator Taylor and Commissioner Brack. The unions sought increases in the total and minimum wage, the application of the minimum wage to women and the formulation of new principles on equal pay for women (147 CAR 175).

In their submissions on equal pay[14], the unions attacked the principles in the 1969 equal pay decision, arguing that most women (over 80%) still did not receive equal pay. It will be recalled that the 1969 guidelines effectively restricted equal pay to those women who were performing identical work to men. ACTU advocate R. Willis stated that this denied equal pay to women performing work of equal value. The unions contended that the social climate was changing rapidly, reflected in state legislation granting equal pay to a larger number of women since the 1969 decision.

The unions denied that the source of unequal pay could be traced to a "family component" in the Harvester Decision of 1907. Willis claimed that there was no family component in the Harvester basic wage, but that this wage had been based on supply and demand pressures operating at the time. The same was held to operate for women's wages (AMWU Monthly Journal, Dec 1972, 20). Given Higgins' later pronouncements on the subject, this reasoning seems spurious.

The unions proposed a set of ten principles for awarding equal pay. The most important was that women who performed work of the same or like nature to that of men would receive equal pay. This would be determined by a work value case. Female rates would be raised to the level of corresponding male rates, unless it could be shown that the work was of lesser value. In that case, a new classification

should be established.

Turning to their money claims, the ACTU sought a $12.00 increase in the total wage and $14.00 in the minimum wage. The ACTU's submission was supported by various women's organizations and other unions. White collar peak councils argued for a percentage increase (Professional Engineer, Dec 1972, 43).

The Commonwealth opposed any pay increases. They argued that the recent national wage decision was still in force and that recent industry award movements had absorbed any capacity to pay (VEF Report, 10 November 1972, 4). The concept of equal pay for work of equal value was not opposed, but it was stressed that each case would require a proper work value study, and that increases should be phased in over at least three years (Ryan and Conlon, 1975, 160).

The private employers maintained that the unions' application was nothing more than an appeal against the May 1972 NWC decision (VEF Report, 17 Nov 1972). They argued that significant economic problems still existed and that a wage increase would only add to inflation (MTIA News Bulletin, Nov 23 1972, 1). The employers opposed the equal pay applications as well. They suggested that the 1969 decision provided a satisfactory basis for equal pay, and referred to those guidelines as "a charter of common sense".

They stressed the importance of a "family needs" component in wage fixation and denied that Australia was out of step with international developments in the area (VEF Report, 24 Nov 1972, 6).

Shortly after the hearings concluded, federal elections were held and an ALP government entered office. The incoming government was granted leave to re-open the hearings so a new submission could be made. The submissions on equal pay were more positive than those of the previous government. It was argued that six of the nine principles set out in the 1969 decision were contrary to the concept of equal pay for work of equal value. The government submitted that the same principles of wage fixation should apply to all workers regardless of their sex. Where a job was performed only by women, comparisons should be drawn with women who had been awarded equal pay (Transcript, 13 Dec 1972, 839). The Commonwealth indicated that it would support the extension of the minimum wage to all adult employees and to adjust the minimum wage quarterly in line with the CPI.

The Commission's decision was given on 15 December (147 CAR 172). The applications for general wage increases were deferred until March 1973. The 1967 national wage decision had envisaged one national wage case each year, and this had already taken place in May. The application to extend the minimum wage to females was rejected on the ground

that it was still considered to contain a family component applicable only to males.

The Commission accepted the principle of equal pay for work of equal value, defining this as "...the fixation of award rates by a consideration of the work performed irrespective of the sex of the worker" (147 CAR 179). The full bench took note of more liberal legislation passed since 1969, and concluded that altered circumstances required the adoption of new principles rather than amending the old guidelines. The economic costs were considered to be heavy, but "In our view the community is prepared to accept the concept of equal pay for females and should therefore be prepared to accept the economic consequences of this decision" (147 CAR 178). To alleviate the economic cost, equal pay would be phased in over two and a half years. Equal pay would only be awarded after a work value inquiry or by agreement, though in some cases pre-existing award relativities could be taken into account. No automatic formula would be applied.

The decision was influenced by political and ideological factors. The favourable submissions by the new federal government were apparently persuasive, as "the community", which the Commission often took to be reflected in government submissions, was said to be ready for the new principle. The "needs" criterion ascribed to men lingered, however, as the minimum wage continued to apply to men only.

1973 National Wage Case

This case was technically a continuation of the applications for increases in the total wage and minimum wage which had been deferred in the decision of 15 December 1972 (149 CAR 75).

The ACTU sought a total wage increase of $11.50 and an increase in the minimum wage to $65, up from its national average of $51.10. The white collar unions requested a percentage increase or combination of flat and percentage increases. The Commonwealth supported a flat money increase without specifying an amount. The Commonwealth and unions all supported the ACTU's minimum wage claim. The applications were opposed by the employers, who argued that no increase should be given.

ACTU advocate R. Jolly declared that national wage rises in the 1970s had been "relatively insignificant". He maintained that this had caused dissatisfaction among trade unionists and warned of growing industrial unrest. The unions had been particularly disappointed by the Commission's failure to decide on the wage claim in December.

Jolly argued that the proportion of GNP going to wage

earners had declined since 1953 and that the ACTU's claims provided equitable redress for this. The low-wage earner received special attention in the ACTU's submission. Jolly stated that the poverty line established by the Institute of Applied and Social Research of the University of Melbourne was $6.90 above the current minimum wage. He suggested that the minimum wage had fallen so low that it had become a "meaningless theoretical concept". The ACTU supported its claims by pointing to improvements in the economy over the past year, and suggested that the current inflationary situation was due more to prevailing levels of inflation internationally than to wage increases in Australia (Age, 14-16 March 1973; VEF Report, 16 March 1973, 8).

The Commonwealth's submission was in sharp contrast to the arguments put forward by the previous government. It supported the ACTU's application for a large increase in the minimum wage. Counsel J. Sweeny argued that the minimum wage should be "...a social wage in the sense of the lowest paid for least work" (Transcript, 16 March 1973, 224). The Commonwealth maintained that the minimum wage was too low and that it should be kept at a higher level by means of quarterly adjustments.

Turning to the total wage, the government submitted that "...there is scope in the capacity and the flexibility of the Australian economy for an appreciable increase in wages

without undesirable inflationary consequences" (Transcript, 16 March 1973, 192). The Commonwealth accepted responsibility for dealing with the effects of the Commission's decision, and outlined changes in economic policy it was undertaking, particularly with regard to reducing inflation. These initiatives included increasing the level of economic activity, altering the labour market through manpower and decentralization policies and stimulating competition in the economy through tariff, exchange rate and trade practices policy, and intervening in the setting of prices through a new government agency (Nieuwenhuysen, 1973, 326).

The employers submitted that although the economy was improving, there was no scope for increased wages. They maintained that adding to the increases since the previous national decision in May 1972 would cause prices to rise rapidly. As in the past, the employers viewed wages as the primary cause of inflation (VEF Report, 30 March 1973, 2).

The Commission's decision on 8 May granted an increase of 2% plus $2.50 to all adult rates and a substantial $9 rise to the minimum wage. The Commission noted that the total wage increase was close to the unions' expectations based on developments since the previous NWC rather than their customary base year of 1953.

The Commission considered that the economy was

recovering, but inflation continued to be a problem. Industry award movements from May 1972 to January 1973 had increased by approximately 3%, which was lower than in recent years, but new award increases were impending. These increases were still considered to be a problem, but the Commission did not view it as practical to alter the existing wage fixation arrangements as a result.

The form of the increase sought to assist lower-paid workers while not disturbing wage relativities unduly. The lower-paid were also assisted by the minimum wage rise. The Commission presumably took account of union submissions that the minimum wage was too low in absolute terms and covered a declining proportion of the workforce. Requests for quarterly adjustment of the minimum wage were rejected.

Criticism of the decision from union and employer sources was generally restrained. Nieuwenhuysen (1973, 329) observed that "...the weight apparently placed by the Commission on the Commonwealth's submission is something of a landmark". The Commonwealth's submission did seem to influence the decision. The new government's expansionary economic policies and support for negotiated settlements, combined with an improving economy, reduced the pressures on the Commission and allowed what was in the circumstances a moderate increase to be awarded. The presence of a new ALP government no doubt restrained the militant unions from

initiating a wage campaign that might create political difficulties. Prosperity and political weakness did little to unite the employers, whose divisions had become increasingly apparent in recent years. The 1973 decision was made in circumstances which allowed the Commission to maintain industrial peace without placing much inflationary pressure on the economy.

The Industrial Relations Policies of the ALP Government

The economic, political and ideological influence of governments on class struggle in Australia is substantial. The degree and success of intervention into industrial conflict varies, as does the content of these interventions. Governments are significant employers in their own right and can influence the standard of terms and conditions of employment for the whole workforce. Governments also have a major impact upon the economy and the climate of industrial relations. Intentionally or otherwise, state actions can result in higher inflation or unemployment, and an anti-union stance such as that of the Fraser government in the late 1970s can create conditions in which conflict is likely to occur. Governments may also intervene in major arbitration cases. The tribunal gives careful attention to submissions by the Commonwealth on the state of the economy, and judgments often appear to follow the government's suggestions. Finally,

governments can affect the arbitration system, whether directly in the case of the states or through changes to the Conciliation and Arbitration Act by the Commonwealth.[15]

Policies

The election of a federal ALP government in 1972 for the first time in 23 years presented the possibility of a major change in industrial relations policy. The new Minister for Labor, Clyde Cameron, a former official of the Australian Workers' Union, claimed that his government would effect a "...radical transformation of industrial relations" in Australia (Lansbury, 1975, 288). This did not eventuate, due in part to a hostile Senate and more significantly, to the onset of a severe economic recession.

The ALP's industrial relations platform for the 1972 federal election emphasized policies that would reduce state intervention. This was favoured by militant unions, an important source of ALP support and a significant influence within the party. Their industrial "muscle" and the ideological suspicion of arbitration among Left-wing union officials provided the basis for policies favouring collective bargaining. In his major policy address on 13 November 1972, ALP Leader Gough Whitlam stated

> The great aims of Labor's industrial policy will be:
> -to reduce government interference and intervention in industrial matters;

> -to put conciliation back into arbitration;
> -to abolish penal clauses which make strikes in Australia alone in the English-speaking world, a criminal offence.

To achieve the first two objectives the ALP promised to amend the Act to provide for the appointment of conciliation committees and employer-employee councils (Policy, Constitution and Rules, 1971, 22-27). It was hoped that agreements reached between the parties through conciliation would improve industrial relations. A modified form of collective bargaining which would operate within the framework of the arbitration system was proposed. Other policies included: the partial elimination of the separation between conciliation and arbitration enacted by the L-NCP government; the reduction of legal barriers to union amalgamation; and the encouragement of greater participatory democracy in trade unions.

The ALP promised various benefits to Commonwealth employees, including a 35 hour week, at least 4 weeks' annual leave with 5 weeks' pay, equal pay for women and preference in hiring for unionists as a condition for all government contractors and sub-contractors. While the Commonwealth could not legislate for these matters in the private sector, it was planned to make favourable submissions before the Conciliation and Arbitration Commission.

Finally, the ALP proposed machinery that would review

price increases. The existence of state control over wages through the Commission without a corresponding power to influence prices and non-wage incomes had long been a grievance of the unions.

Legislation

The Labor government quickly granted improved leave conditions for its employees (Public Service Board Report, 1973, 55-59). Its intervention in the Equal Pay Case has already been mentioned. The most significant early initiative was an attempt to pass a number of amendments to the Conciliation and Arbitration Act. The Bill was introduced in the House on 12 April 1973. Among its provisions were:

a) Removal of the penal clauses and establishment of a degree of immunity from tort liability for unionists;

b) Enhanced immunity for shop stewards and other unionists from unfair dismissal or other discriminatory acts, even if the terms of an award had been breached;

c) Agreements were to be certified by the Commission unless its terms would prove "a major detriment to the public interest"; the terms should be acceptable to a majority of members of the parties concerned;

d) Partial reversal of the separation between the Commission's conciliation and arbitration functions;

e) Easier amalgamation of trade unions (Mills, 1974, 165; Lansbury, 1975, 288).

The legislation was opposed by employers' groups (see e.g. Supplement to VEF Report, 11 May 1973) and was defeated in the Senate on 6 June. A revised version was passed by the House in August with the sections on sanctions and torts removed. This was still unacceptable to the opposition, and many of the provisions were again rejected by the Senate. The Bill was finally passed in a greatly watered-down form.

The most significant alteration eliminated the distinction between Conciliation Commissioners and Arbitration Commissioners. Now any member of the Commission could perform both functions, though either of the parties could refuse to have the conciliator go on to arbitrate. The proposals for certification of agreements were eliminated and there was no easing of the provisions for union amalgamations (Mills, 1974, 167).

The opposition had two major objections to the amendments (Lansbury, 1975, 290). Firstly, the Act was seen as a means to control unions, which might be weakened by abolition of the penal clauses.[16] The second objection concerned dangers allegedly posed to the arbitration system by collective bargaining. Mills (1974, 166) argued that for the opposition, "...collective bargaining was more or less an alien process and therefore inferior". In particular, they maintained that collective bargaining could have serious inflationary consequences.

The government again attempted to amend the Act in 1974, with little success. Two Bills similar to some aspects of the 1973 proposals were introduced. One provided for easier certification of voluntary agreements, the other for less restrictive rules for union amalgamations. Both were rejected by the Senate (VEF Report, 5 April 1974, 4; Lansbury, 1975, 291).

Prices and incomes referendum

The restrictions imposed by Sec 51 (xxxv) of the Constitution have often been a source of frustration to federal governments. A number of unsuccessful attempts had been made to pass constitutional amendments allowing the Commonwealth to legislate directly in industrial relations. All had failed. The Whitlam government was determined to try again.

Strong inflationary pressures had emerged by mid-1973, reaching double figures at an annual rate in the September quarter (Hughes, 1980, 58-59). This level of inflation had become common in the industrial capitalist nations by the end of the decade, but it was viewed as a serious aberration in 1973-74 (Covick, 1974). The ALP government decided to seek constitutional power to control prices. Needing support to get legislation for the referendum through the Senate, the

votes of DLP Senators were obtained by adding an amendment to give power to control incomes as well (Hurst, 1979, 147).

The referendum was fought on party lines. The L-NCP campaigned for a "no" vote on both proposals. They were supported by a number of employers' and conservative organizations.[17] The ALP did not run a strong campaign (Paul, 1974, 118). This was compounded by the unions' opposition to the incomes proposal. Unionists had been arguing for price controls for many years, on the ground that as wages were controlled by the Commission but employers were free to raise prices[18], they were unwilling to have state control over wages increased any further. They suggested that their wage demands would be reduced if the rate of inflation diminished.[19] The ACTU Executive favoured the prices amendment but opposed the incomes proposal (AMWU Monthly Journal, Nov 1973, 17).

On 8 December 1973 both amendments were defeated, with 43.8% in favour of the prices question and 34.4% voting for the incomes proposal. Neither question received a majority in any state. The result was undoubtedly affected by the split within the labour ranks. Rydon (1974, 24) also suggests that the Whitlam government failed to clarify what the proposals meant or how they would work.

The referendum campaign showed the ease with which

divisions within the labour movement could be exploited. The Right was able to fight the issue on ideological grounds, for which the ALP had no persuasive reply. Ideology was extremely important in the political counter-offensive against the ALP, and the government was never able to present a systematic alternative, in large part due to its own ideological and political inconsistencies.

The Prices Justification Tribunal

Another initiative foreshadowed in the ALP's 1972 election platform was the establishment of a Prices Justification Tribunal. A Bill was passed in May 1973 and the Tribunal was established in August. Its chairman was Mr Justice Williams, a Deputy President of the Arbitration Commission.

The Constitution prohibits the Commonwealth from exercising direct price control, so the Tribunal was only able to require companies to justify price increases. Its provisions were mainly directed at large firms, which were required to notify the Tribunal if they planned to raise prices for any goods or services above those applying during the previous month or if any new goods or services were introduced. Infringements could bring a fine of $10,000. The Tribunal could hold public inquiries into proposed price rises, though it was unable to enforce its findings. Despite this, it

would appear that the PJT became a factor, if not a dominant one, that companies had to reckon with (Nieuwenhuysen and Daly, 1977, 208-210).

The early actions of the PJT created the potential for a clash with the Arbitration Commission. The Tribunal would allow only "unavoidable" costs to pass into higher prices. When increased costs were due to arbitrated wage rises, the Tribunal seldom objected, but consent awards and overaward payments came in for careful scrutiny.[20] By late 1974, while remaining particularly firm with non-arbitrated wage increases, the PJT was requiring some absorption of labour costs in many cases regardless of how they were arrived at.

Firms became increasingly wary of consent settlements and turned to the Commission for arbitrated decisions. This was strongly opposed by the Commission, which had been encouraging conciliation. However, the policies of both agencies began to converge, aided by the adoption of wage indexation by the Commission in April 1975 (Nieuwenhuysen and Daly, 1977, 136).

The ALP's industrial policy was initially directed towards the encouragement of conciliation and the easing of legal restrictions on unions and gaining control over prices. These policies were consonant with the ALP's integral connections with the trade unions. Attempts were made to

fight inflation without increasing unemployment or interest rates and without placing too much pressure on unions to restrict their wage demands. However, inflation continued to increase and the ALP's industrial policy changed. These developments will be considered below.

The PJT turned an initiative by labour into a mechanism which acted against the interests of unions. The form of the Tribunal was limited by political constraints, such that pro-labour decisions began to be "selected out". This was but one instance of tendencies within the state during this period. Despite the avowedly pro-labour stance of the ALP, the state apparatuses often resisted initiatives which were detrimental to the interests of capital. As the economy worsened, these tendencies strengthened, augmented by a major political shift by the federal government. The structure of the state, based on such factors as the Constitution, High Court rulings and the hierarchical, fragmented nature of the bureaucracy, was a significant limit to actions of the ALP government.

The 1974 National Wage Case

The 1974 national wage case took place in a turbulent industrial relations climate. Amidst high inflation, labour shortages, seemingly ample financial resources and with the

industrially "permissive" policies of the Whitlam government, an unprecedented "wages explosion" developed. There were large movements in industry awards and overaward payments, with increases being granted in a number of awards more than once during the year. The Commission could do little more than ratify gains won by (or offered to) the unions in the field. The wage push was accompanied by a very high level of disputation.

A number of union claims were heard by a national wage bench. The ACTU asked for an increase of $11 to both the minimum wage and the total wage. They also applied for the minimum wage to be extended to women and to be automatically adjusted quarterly. The peak white collar councils sought percentage increases.

The ACTU argued that the current high rate of inflation was not the result of wage increases. The primary causes were said to be excess demand, the domination of the economy by imperfect market structures, and price rises on imported goods. Advocate R. Jolly added that the role of the Commission was not to combat inflation, but to settle industrial disputes. The ACTU declared that the economy was strong and would be able to absorb wage increases (VEF Report, 22 Feb 1974, 4). The unions stressed the importance of real wage maintenance. Jolly stated that capacity to pay was usually expanding and that "Given the current rate of

inflation it becomes imperative that more frequent, regular and guaranteed wage adjustments occur" (VEF Report, 1 March 1974, 4).

Women's groups and the Commonwealth argued in favour of extending the minimum wage to women. Commonwealth advocate M. Gaudron submitted that women should receive the minimum wage on grounds of equity. She maintained that the minimum wage should not be a "family needs" rate for male breadwinners (VEF Report, 22 March 1974, 4). On other matters, Commonwealth advocate J. Staples supported the ACTU's submissions for flat wage increases, and quarterly cost-of-living adjustments. Staples argued that the Commission should emphasize its industrial relations role and leave economic management to the government (VEF Report, 8 March 1974, 4).

The submissions of the unions and Commonwealth were opposed by the employers. Their advocate, B. Maddern, asserted that the inflationary situation was largely the result of domestic factors. In particular, he blamed increasing wage levels. Maddern stated,

> Wage increases have more than kept pace with price movements. In the light of these facts how the trade union movement can continue to claim further increases on the basis of past movements in prices is beyond comprehension. They have already been more than compensated for recent movements in prices and at this point may I simply interpose the fact that productivity has been increasing at a rate of approximately 1.5 per cent per annum and increases of 9 per cent

> and more in award wages have more than compensated for both prices and productivity. (VEF Report, 22 March 1974, 4)

The parties were continuing to base their arguments on the positions they adopted in the mid-1960s — productivity for the employers and prices plus productivity since 1953 for the unions.

The employers spoke against automatic wage adjustments. As wage increases were alleged to be the main source of inflation, this would only worsen the situation. They added that the economy had fallen from the government's control and that the Commission had an obligation under the Act to ensure that the situation did not deteriorate (VEF Report, 11 April 1974, 4).

The full bench[21] gave their decision on 2 May (157 CAR 293). The Commission stated that the most significant economic development in the past year was the rate of inflation, which had risen by 13.5% to the March quarter 1974. The most important component, which accounted for about half the increase, was food. With the exception of inflation, the economy appeared to be good, having recovered from the previous year's recession. "(T)he submissions made to us differed only in the degree of optimism about the near future of the economy...Nobody suggested that a major decline in economic activity was imminent in Australia" (157 CAR 297).

The Commission decided to extend the minimum wage to women, deleting the "family needs" component. It was noted that when introduced in 1966, the minimum wage was simply the lowest permissible wage for males. According to the Commission, a family component was not mentioned until 1969, and this was by the ACTU. The Commission said it was difficult to assess the family needs of workers, as their obligations varied greatly and little information was available. The full bench stated that the tribunal was not a social welfare agency, and that "...the care of family needs is principally a task for governments" (157 CAR 299).

The Commission found considerable support in the community for the minimum wage to be extended to women. As the gap between male and female award rates was narrowing and the lowest female rates were now close to the minimum wage, this was economically feasible. However, women were concentrated in certain industries, so the minimum wage would be extended in three stages, to be completed by June 1975. The level of the minimum wage was increased by $8 for males. The Commission emphasized that the considerations influencing minimum wage adjustments differed from those related to the total wage (157 CAR 300).

The total wage was increased by the same amount as the previous year, 2% plus $2.50. This was a small increase under the circumstances. The Commission stressed that it had

repeatedly urged that the bulk of wage increases should result from annual national cases, but that industry awards and overaward payments had risen sharply after a respite in 1973. In particular, a $15 increase in the metal industry was noted, and it was likely that this would result in a general flow-on. However, the full bench accepted that many workers still relied on the NWC for their adjustments. While a general rise would be added to the wages of those who had recently obtained industry award increases, this was considered to be unavoidable. The Commission stated that "...in the present conflict between doing justice to groups of wage earners and adding to inflation, we believe that our duty is to the former" (157 CAR 303-304).

Applications to introduce wage indexation were rejected, but the Commission was "...impressed by the suggestions that indexation could have positively beneficial economic, social and industrial implications" (157 CAR 306). All parties seemed dissatisfied with the current methods of wage fixation, and a conference was announced, to be chaired by the President, Justice Moore.[22]

The dilemma of the Commission was outlined by Nieuwenhuysen (1974, 289). The Commonwealth had once again submitted that "the government assumes full responsibility for the management of the economy", and that the Commission should not seek to assume "responsibility for economic

guidance, economic leadership or economic regulation". The Commission accepted this, though it was difficult "...to ascertain the nature and magnitude of its economic responsibilities [under the Act] and how much weight to give to them as against its industrial relations responsibilities" (157 CAR 297). As the government seemed to be delegating its economic authority to agencies such as the Prices Justification Tribunal and the proposed Trade Practices Commission, it was unclear to what extent the Commission could rely on government policy to provide a stable environment and a clear set of guidelines within which to operate. The Commission suggested that if the wage fixation conference was to be strictly concerned with methods of wage fixation, then it would be fruitless (157 CAR 307). What Nieuwenhuysen points to is the inevitability of the Commission having to accept an economic policy role.

This dilemma was at the basis of the 1974 decision. There was a strong inflationary trend being fed by wage increases. The Commission believed that an increase would add to inflation, but no increase at all could make matters worse as the unions would simply bypass the Commission entirely. The choice seemed to be inflation partly under the Commission's control, or an unfettered wage upheaval with unknown but potentially damaging consequences. The increase granted was too low to have much effect on industry or overaward claims. Without any restraint being shown by the

federal government, the Commission presumably sought to give a small increase and hope for the best. The emphasis given to the Commission's industrial obligations suggested that there was little that could be done under the circumstances. This was the height of the time during which the Commission followed a consensus wage policy (in the sense used by Offe), though still seeking to influence the nature of wage movements.

The Wage Explosion

Unprecedented wage increases occurred during the early and middle part of 1974. This has been popularly termed the "wage explosion". It was not unique to Australia, as it occurred to a varying extent in a number of industrial capitalist societies. In Australia, it pushed industrial relations to the limits of a consensus form. The result was a return towards more centralized wage fixation.

Economists such as Hughes (1980) argue that Australia's high inflation rate in 1973 resulted largely from imported price inflation, particularly for food. However, the wage explosion is generally considered to be the main ingredient in the CPI rise of 16.3% in 1974. Average weekly earnings per employee rose by 29.7%, and award wages rose even faster, reflecting a decline in the availability of overtime. Average

male award wages increased by 33.8%, while females, for whom the equal pay decisions were finally taking effect, enjoyed an even greater rise of 41.7% (Australian Economic Review, 1st Quarter 1975, 4).

The increases

In late 1973, BHP negotiated a settlement with metal unions representing its steelworkers, principally the FIA. The agreement, for $15 per week, was ratified in the NSW Industrial Commission on 2 January 1974. This provided a rise of approximately 25% for labourers and about 18% for skilled tradesmen (Hughes, 1980, 78).

This increase had implications for the Metal Industry Award. The unions' claim for a $30 increase was rejected by the employers. The employers sought a closed award, which would preclude variation during its life (apart from national wage increases) and overaward bargaining. The first conference on 7 November 1973 was told that "...if employers could not be assured that...cost stability would result from an agreement, there was no real reason for them to enter into an agreement" (MTIA News Bulletin, 15 Nov 1973, 2). This approach was rejected by the unions.

> These terms are aimed at binding the trade unions to the employers' objectives and to contain their trade union activities, which if carried to the ultimate conclusion, would be a denial of the traditional role of the metal industry unions. Their leading position has set

> the standard over the past two decades for increased over-award payments and improved conditions which have consistently flowed to all other industries.
> (AMWU Monthly Journal, Mar 1974, 3)

The employers' offer included an $8 pay increase, an additional week of annual leave and a "no further claims" clause lasting twelve months (MTIA News Bulletin, 28 Feb 1974, 1). This and a subsequent increase of the wage offer to $12 were rejected by the unions.

Amidst a major campaign of industrial action by the unions, agreement was reached for a $15 increase. A statement issued by Justice Coldham on 24 March 1974 noted that the unions "...state that they cannot give undertakings not to continue to press for economic justice" (AMWU Monthly Journal, May 1974, 4). The unions were apprehensive about economic conditions and it was agreed that the parties would confer if "significant circumstances arose".

The unions' fears were quickly realized. Other awards jumped ahead of the metal unions' $15 increase, amidst high levels of disputation. A record number of working days were lost through the first three quarters of 1974, most of this due to wage disputes. Each increase could be claimed to upset relativities, as could the flat money increases awarded, which compressed the wage structure. The taxation system added to the workers' concerns, as rapid wage increases pushed them into higher tax brackets (Yerbury, 1980A, 466). The length of

time between cases in each award was reduced, as unions chased both inflation and each other; a "wage-price" and "wage-wage" spiral combined to produce a seemingly chaotic situation. The award increases equal to or greater than that in the Metal Industries Award are too numerous to list.[23] The national wage case decision of 2 May only added fuel to the fire. The modest rise of 2% plus $2.50 made it clear to the unions that it would be necessary to rely upon their own efforts to achieve wage increases.

Escalation and the Commission's response

Of the awards and settlements that followed the metal industry increase, one of the more significant was in the vehicle building industry. In the early 1970s, the Vehicle Industry Award had been negotiated between a group of unions led by the Vehicle Builders' Union and the AMWU, and the vehicle manufacturers. Under union pressure, GMH broke ranks and offered a separate agreement. Tradesmen received increases of over $22, and some classifications up to $30. The other companies made similar agreements (Hughes, 1980, 81; AMWU Monthly Journal, June 1974, 3). This was significant not only for the increases themselves, which surpassed the metal industry, but also for the fragmentation of the Vehicle Industry Award. Portus (1979, 55) argues that fragmentation created further wage pressures. Settlements could be reached more quickly, and by concentrating on one

employer at a time, concessions could be obtained more easily. Where uniform award increases once flowed through an industry, unions could now "leap-frog" one award over another.

The next major increase took place in the transport industry.[24] It showed the cleavages that were developing in the Commission at the time over how to deal with the wage explosion. Commissioner Gough gave a consent award on 1 July increasing pay rates in the Transport Workers' Award by $25.40. The Transport Workers' Union then applied for the higher rates to be extended to two more awards, the Transport Workers (General) Award and the Transport Workers (Mixed Industries) Award. In her decision of 27 July (29 IIB 1531), Justice Gaudron accepted that the unionists had a reasonable expectation that the increase would flow on, but that this in itself was insufficient grounds for granting the claim. She awarded $15.50, with an additional $2.50 from October 1974. Her judgment concludes,

> The Commission cannot automatically flow on a consent variation of whatever magnitude unless it is satisfied that such a flow-on is fair, just and equitable in all the circumstances of the dispute or disputes before it. There is, so far as I know, no principle of law or of justice which would warrant the conclusion that an agreement reached between parties ought to be enforced upon or applied to persons not parties to the agreement.
>
> (29 IIB 1533)

This legalistic decision by a new member of the Commission was appealed by the unions. On 11 September 1974

the full $25.40 was granted by a full bench of Moore J. and Deputy Presidents Isaac and Williams (29 IIB 2014). While agreeing on the outcome, their reasons for decision are based on quite different grounds. Moore J. argued that the three awards in question had only been separated in late 1970, had moved at the same rate since then, and that Justice Gaudron's decision was too radical and abrupt a rupture, though such a break was not wrong in principle. He suggested that allowing the appeal might help to stabilize the wage structure. This was a major preoccupation of the President at the time. He strenuously sought to bring wage relativities back into an alignment acceptable to the unions in the hope of slowing the "wage-wage" spiral.

Deputy President Isaac agreed with Justice Gaudron's decision, but argued that while no direct nexus should be drawn between the transport and metal industries, a new increase in the latter award made it appropriate to increase the transport awards in order to keep pace with industry movements in general. Deputy President Williams based his decision on comparative wage justice within the transport industry and stated that Justice Gaudron had not given sufficient weight to this principle.

In his decision, Deputy President Williams made a number of comments on the topic of "public interest", and included a lengthy extract from his report to the Commission

of 19 August 1974 on the recent oil industry disputes.[25] This passage summarizes a conception of "public interest" sharply opposed to that of the employers, and merits full quotation here.

> (I)n my view public interest means concern for people, including the 4 and a half million who have to work for a living and who are entitled in return for that work to receive wherewithal to live according to proper standards measured according to the concepts of 1974, it means giving due consideration so that decisions made will promote satisfactory industrial relations and will assist to keep the wheels of industry and everyday activity turning. In my view any decision on the wages issue investigated by me which is designed solely to deter inflation would be useless if in the process following that decision and as a result of that decision the production of goods and services was seriously interfered with. Anyone who cares to suggest that that is succumbing to industrial blackmail by the unions and their members is, in my view, misjudging the situation. Surely it must be clear that the main reason why unions and workers are forced to seek substantial salary increases is to enable them to maintain their living standards. There appears to be abroad an idea that the prices of goods and services can be increased with little or no criticism of the purveyors of those goods and services who charge those increased prices whilst the workers who sell their labour and seek an increase in its price to maintain and improve their living standards are entitled to be blamed for the alleged ills in the economy. If prices are permitted to rise because governments possessing the constitutional power do little or nothing to restrain the increases and in addition refuse to genuinely co-operate with the National government in such an exercise to restrain prices then the unions and their members, in my view, can be exempted from blame if they seek wage and salary increases.
>
> (29 IIB 2027)

Clearly "public interest" could be used to signify a variety of value-laden perspectives.

The developments in the transport industry show the strength of the working class at the time and the reflection of this within the Commission. The passage quoted above by Deputy President Williams recognized that the wage explosion resulted from systemic pressures. Employers were seeking to defend their share of the national product through price increases, but the Commission's actions recognized that this was leading to a level of industrial conflict that was detrimental to the interests of capital as a whole. In other words, the Commission sought to stabilize the wage structure, an action which at this time worked against the interests of sections of capital. The Commission's actions were not those of a crude "Bosses' Court", as it has been termed by some unionists, but of an agency that sought the maintenance of existing production relations. If this meant "giving in" to working class pressure, this was not a passive action, but one with a long term objective of a return to economic stability.[26]

Many awards had now surpassed the metal industry and relativities had been seriously disturbed.[27] The metal industry unions argued that a "significant circumstance" as envisaged in the April settlement had arisen, but their claim for an additional $15 (the remainder of the original $30 claim) was rejected by employers (MTIA News Bulletin, 1 August 1974, 1). The dispute went to arbitration and was heard by the

President, Justice Moore. In his decision of 11 September (1974 AILR 565) Justice Moore granted a further $9, giving the metal tradesmen an increase in line with those in the transport and vehicle building industries. The employers had opposed any increase, citing unfavourable economic conditions. Moore J. said that he had taken account of this argument, but was swayed by two factors. One was the likelihood of serious industrial unrest if wages were not increased, with repercussions throughout the economy due to the centrality of the metal industry. Secondly, it was desirable to revise and stabilize the wage fixation system, for which conferences were being held at the time. If wage indexation were introduced, a stable wage structure would need to be established before such a system could work. Obtaining stability in the Metal Industry Award was therefore essential. While some flow-on would result from the $9 increase, Moore J. considered that the longer term effect would be to reduce inflationary pressures.

By the early months of 1975, the Australian Bulletin of Labour (March 1975, 31) was able to report that "Since the metals decision and its flow-on there has been very little movement in award wages". Justice Moore's desire for wage stability was fulfilled, although it is unclear whether this was the result of the Metal Industry Award increase or rapidly deteriorating economic conditions. The Australian Economic Review (1st Quarter 1975, 11) suggested four possible

reasons for the reduced rate of wage increases: a reaction to the sheer size of increases obtained earlier in the year; the restoration of relativities to generally acceptable levels; the delay of claims and settlements until a decision was reached in the ongoing wage indexation case; and a large increase in unemployment. These factors, combined with the political divisions which arose within the labour movement, were sufficient to weaken the strength of the unions.

Sources and consequences of the wage explosion

The wage explosion must be seen in the context of the boom conditions of 1973 to mid-1974 and labour shortages in selected sectors of the economy. While unemployment was not particularly low by post-war standards up to that time (1.7% in March 1974), there were a large number of unfilled vacancies. Hughes (1980) suggests that this was largely a result of lower migration to Australia in the early years of the decade. "The result was severe labour shortages among firms and industries that had traditionally recruited their workforces from recent migrants" (Hughes, 1980, 75). The automobile, building and steel industries, all among the pacesetters in the wage explosion, were mentioned by Hughes as heavy employers of migrant labour. Skilled workers in the metal and electrical trades were in short supply, but unlike other recent periods of high demand for labour, there were also shortfalls in semi-skilled and unskilled labour.[28] The

activities of BHP and GMH in bidding up the price of labour become explicable in the context of this selective labour shortage. Documentary evidence of the shortage can be found in employers' journals. Some employers had begun "poaching" labour through paying higher wages. A strong warning was given in the MTIA News Bulletin of 1 November 1974 to firms advertising the payment of high wages, as this practice could lead to invidious comparisons and industrial unrest. However, when the largest manufacturing firms in the country attempted to secure a stable or increased labour force through competitive bidding, there was little that could be done to halt the wage pressures. Hughes (1980, 83) concludes,

> The wage explosion proceeded largely by consent...BHP settled amicably...GMH broke ranks from the other producers to offer the VBU a better deal than the metals had come up with. None of this, of course, was foisted unwillingly on the unions...The point is that there were two sides to the wages explosion. Both BHP and GMH were happy to take part in the deals; indeed the latter took the leading role. This is not to blame either company for the country's subsequent troubles. They were merely pursuing their interests as they saw fit, and indeed as the ethic of capitalism insisted they should.

The wage explosion occurred during boom conditions, but the ensuing events took place during a gathering recession. A variety of factors interacted to produce this downturn. The wage explosion and material shortages added to costs, while a credit squeeze and high taxation created a liquidity crisis for many firms. There was also a fall in domestic demand, coupled with a large increase in imports (Australian Economic Review,

3rd Quarter, 1974, 6). The result was a decline in investment, and unemployment grew rapidly from 1.7% of the labour force in March 1974 to 4.3% by March 1975 (Australian Bulletin of Labour, June 1975, 16). Productivity and output fell and capital suffered a decline in its share of national product (Australian Bulletin of Labour, June 1975, 12; Plowman, 1981, 162).

The government's response

The political and industrial consequences of these developments were dramatic. Both the ALP and ACTU reversed their commitment to collective bargaining. The ALP was more forthright in this, but the ACTU was in a more difficult position. The employers took the view that wage rates were rising too rapidly and that the "responsible elements" within the unions should be urged to exercise restraint.

The federal government's direct response to inflation led to a split within Cabinet. Senior Treasury officials had been advocating a traditional program of reducing demand, which was accepted by Prime Minister Whitlam (Hughes, 1980, 86). This was rejected by many other ALP politicians, as it implied shelving Labor's ambitious expenditure programs and the possibility of rising unemployment. A restrictive economic package favoured by Whitlam was defeated in Cabinet (Hughes, 1980, 86-89; Hawker et al., 1979, 255).[29]

An alternative position began to develop within the government, with which Deputy Prime Minister J. Cairns and Minister for Labour C. Cameron were associated. Their argument was that inflation was no longer being caused by excess demand, but by rising costs, especially the price of labour. What emerged was a prices and incomes policy. The former was to be implemented by a strengthened Prices Justification Tribunal, the latter through a "social contract" with the unions.

The push for a social contract began with an attack on union militancy from the Right wing of the labour movement. Senior ALP official and President of the Queensland Trades and Labor Council J. Egerton said

> I know the socialist left in Victoria and the Communist Party, or whatever names they might masquerade under, are committed to policies of disruption and anarchy. Surely after 23 years out of office, the ALP Federal Government is entitled to a fair go to implement its policies. It is entitled to a period of industrial peace.
> (Bentley, 1974, 382)

Clyde Cameron declared that Egerton "...did the Labor movement and the trade union movement a great service in having the courage to speak as he did", and warned that "...a small section of the trade union movement...is pricing thousands of Australian workers out of employment" (Canberra Times, 17 August 1974, 1). Egerton's statement was also applauded by the conservative political parties.

This was followed by calls for restraint from Prime Minister Whitlam and the Deputy Prime Minister, Dr Cairns (Canberra Times, 26 August 1974; SMH, 27 August 1974). Whitlam said that the actions of unions were having a detrimental effect on the federal government. He and Cairns argued that wage increases were rapidly lost as these were passed on through higher prices. They forsaw the possibility of higher unemployment if the wage-price spiral did not stop, particularly in the import competing industries.

The ACTU Executive announced that it was "...economically absurd and quite inequitable to seek to blame ordinary workers and their organisations for the world-wide ills of the capitalist system" (SMH, 28 August 1974, 1). However, the ACTU expressed a wish to co-operate with the government and set out a series of proposals which included reduced taxes and interest rates, a significant rise in the minimum wage, wage indexation and strengthening the powers of the PJT.[30]

The attack on "excessive" wage increases was continued by Whitlam and Cairns at the September 1974 ALP Federal Executive meeting (AFR, 3 September 1974, 9). The federal Budget that was brought down on 17 September has been termed a "social contract" budget. In it, the government pledged not to combat inflation by creating unemployment and called for

restraint in the area of wages and prices. Particular note was taken of discussions taking place on wage fixation chaired by Justice Moore (Budget Speech 1974-75, 2). Some relief was given in the area of personal income tax, as wage rises were partly wiped out by the progressive tax structure.[31]

By the time of the Budget, it was clear that wage restraint was already occurring (National Times, 23 September 1974, 10), but it was feared that the lull might be temporary. A Federal Unions Conference was held on 23-24 September to consider the unions' response to the Budget. Bob Hawke called for compromise, arguing that there was a need for consultation and concessions on the part of the government, but expressed fears that failure to co-operate with the government could lead to its replacement by "...the most Tory, reactionary Government..." since World War II (AFR, 24 September 1974, 1).

Wage restraint was officially rejected by the conference, but it was agreed to reduce wage claims if policies such as tax indexation were introduced (AFR, 25 September 1974, 1). The conference called for import restrictions, cuts in interest rates, indirect taxes and government charges, and the establishment of automatic quarterly wage indexation. Under pressure from the Left, the conference issued a statement declaring that they were not agreeing to a social contract for wage restraint (AFR, 25

September 1974, 9). Left wing unions remained sceptical (AMWU Monthly Journal, October 1974, 1; Tribune, 1 October 1974, 3), but the result of the conference was compromise, largely due to the activities of moderate leaders such as Hawke.[32]

The concessions sought by the unions were only partly obtained. The government cut income taxes, but did not grant tax indexation. Furthermore, the government argued that these cuts should stand in place of a wage rise based on price movements. This was accepted by Hawke for the ACTU (Australian Economic Review, 3rd Quarter 1974, 7).

Conclusion

By the close of 1974, not only had the wage explosion come to an end, but also the boom conditions which had made it possible. The recession greatly weakened the power of the unions. This was accentuated by the political and ideological divisions which emerged within the labour movement by late 1974. While not as serious as the rift of the 1950s, it was sufficient to disorganize the labour movement, and this was quickly exploited by capital. The wage explosion was clearly not directly responsible for the sacking of the Whitlam government a year later, but it contributed to the successful propaganda campaign by the Coalition that the ALP could not

"manage the economy". It also formed the basis for the ideological campaign against the unions by employer groups and the Coalition parties, who sought, often successfully, to depict the unions as the "cause" of the recession. This assisted the conservatives to install economic policies which sought to redistribute wealth to capital and the introduction of repressive anti-union legislation.

It has often been said that the Arbitration Commission relies on the co-operation of the parties to function. This is another way of saying that either a bureaucratic or purposive strategy will work only if the clients of the state apparatus do not seek to circumvent it or cannot do so. In the political and economic conditions of the early 1970s, the Commission was unable to impose decisions on the parties, and adopted a consensus strategy; accepting settlements reached by unions and employers, but seeking in the long run to stabilize the wage structure and in the short run to maintain industrial disruption within "tolerable" levels.

It is incorrect to suggest that the Commission had no policy during this time. Rather, the Commission has never been able to carry out a purposive wage strategy when unions are strong and employers are unwilling to resist them. The conditions of existence for a consensus stategy include the requirement that the clients do not threaten the overall stability of existing relations. The wage explosion eroded

these conditions, and unions, employers and the Commonealth became convinced that alternative wage fixing arrangements were necessary. When the recession began to bite, the Commission was able to stabilize the wage structure and mediate the development of an alternative approach in which it played a leading role.

Significantly, the Commission did not bring the wage explosion to an end, though it played a part. The recession, a "normal" development in the face of successful working class struggles and world-wide inflation, created resistance to further working class advances by large sections of capital and placed the social democratic federal government in a position where it had to retreat from its reformist policies or face serious economic disruption. The federal government, with its political and ideological attack on the unions, did more to halt the wage explosion than the Commission.

The approach of the Commission was to seek to maintain restraint in national cases while ratifying large increases at industry level. Above all, the parties did not abandon the Commission, which sought to keep the economic offensive of the unions within "acceptable" political and ideological bounds. When the working class offensive faltered, the Commission remained at the centre of industrial conflict and was able to re-establish a significant degree of control once again.

Footnotes

1. See Metal and Engineering (July 1971, 3; November 1971, 3); MTIA News Bulletin (11 October 1971, esp. p. 4).

2. The MTIA asserted "When the unions whose members are employed in the Metal Industry come to the MTIA with a reasonable claim we will meet them on an industry basis and attempt to resolve the issue on a reasonable basis...Relationships between MTIA and the Metal Trades Unions were severely strained following the disastrous 1967-68 Work Value Inquiry Decision of the Conciliation and Arbitration Commission. We are only now beginning to restore the relationship which existed prior to that episode and we would be ill-advised to again destroy it by taking up unrealistic attitudes over issues which have already been accepted as facts of life either in the Metal Industry or other industries" (MTIA News Bulletin, 11 Oct 1971).

3. See e.g. Hancock (1975A, 423).

4. The AMWU Monthly Journal, a consistent critic of the Commission and the employers, had a short news item in the October 1972 issue (p. 5), and no editorial or analytical article on the settlement.

5. See Justice Williams' remarks in Metal and Engineering, October 1972.

6. The unions' application for a NWC in 1971 came later than might have been expected. This point was not lost on commentators, who suggested that given the large award increases obtained during the year, an earlier application might not have received a favourable hearing. See e.g. Hancock (1975A, 424).

7. This was based on a 9.0% rise in the CPI and productivity increases variously calculated as between 1.0 and 2.5%, less award wage increases of 5.3%.

8. Moore, Williams and Aird JJ., Senior Commissioner Taylor and Public Service Arbitrator Chambers.

9. The VCM stated "The Chamber's Application is therefore the result of a specific and positive decision of members of the Chamber who expressed concern regarding the inflationary trends in the economy. The Application was viewed by those members as the best means whereby the

principles of the Commission relating to wages may be invoked to help curb inflation. Any action in relation to prices must be taken elsewhere" (VCM Weekly Service Bulletin, May 12, 1972, 1).

10. The VCM's application was mentioned in the MTIA News Bulletin (May 11, 1972, i; May 25, 1972, 1), but without comment. Unfavourable union responses were given considerable space in the MTIA publication, also without comment.

11. Several industrial relations practitioners have suggested that the VCM and MTIA were competing for members at the time, which helps to explain their lack of co-operation. This does not refute the argument that the lack of co-operation between the associations indicated the existence of a conflict within the capitalist class.

12. See 27 IIB 831 for a synopsis of the changes. The full amendments may be found in The Acts of the Parliament of the Commonwealth of Australia 1972, p 146.

13. The DLP, long antagonistic to radical-led unions such as the AEU, had threatened to block the Bill in the Senate if amendments it favoured were not included.

14. The unions stated that the claim should be been in terms of general social trends. The ACTU submitted that "Women are increasingly dissatisfied with their traditional role in life which is characterized by their dependency on men and results in inferior treatment of them, not only in the labour market but in life in general...Although achievement by women of equality involves much more than work force participation, this development is probably the single most important change which has accompanied the fight for equality. Within the framework of the work place there are for women other barriers to overcome. Apart from unequal pay there is also the very important factor of unequal job opportunity. The range of jobs available to women is still more restricted than it is for men. Nevertheless the granting of equal pay to all females would, in our submission, be a major contribution to equality for females in the work place" (AMWU Monthly Journal, Dec 1972, 19).

15. The Commonwealth is prohibited from passing legislation which directly affects industrial relations except with regard to its own employees.

16. In the second reading debate, the Leader of the Opposition, Mr Snedden, stated, "In future the unions will be able to do exactly as they wish. It will not please the Government when it has a rash of strikes but it will be disastrous to the Australian people...", and added

"...because there is no penalty provision there is no way in which the arbitration authorities can intervene in a strike so that the public interest can be safeguarded" (Hansard, H of R, 8 May 1973, 1801).

17. For an account of the activities of one of these conservative groups, see Puplick (1974).

18. Employers' organizations countered that most arbitration awards set minimum wage levels and that the unions were seldom hesitant to improve upon these if they could.

19. ACTU President R. Hawke stated "We fear that if you give the government power over incomes it could be used to freeze wage levels, which we see as inequitable. It would not be the present federal government, but if ever a non-Labor government came to office again it could use the power. My advice to the government is that if it acquires and exercises power over prices it will have a very significant effect on wage demands" (Hurst, 1979, 147).

20. In the Mayne Nickless decision in August 1974 the Tribunal rejected a full price increase because it did not consider a wage increase by consent to be "unavoidable". It declared that part of the cost "...should properly be borne by those who agreed to the increases in wages rather than by requiring the community at large to carry the entire amount" (Nieuwenhuysen and Daly, 1977, 127).

21. Moore, Robinson and Ludeke JJ., Deputy President Isaac, Public Service Arbitrator Taylor and Commissioner Portus.

22. Justice Moore became President of the Commission on 1 July 1973 (Dabscheck and Niland, 1981, 265).

23. See the National Times, (19 August 1974, 10) and the Australian Economic Review (2nd Quarter 1974, 12). For a more exhaustive list, see the submission of R. Scott for the AMWU in the Metal Industry Case in September 1974 (Transcript, 2 September 1974, 83-92).

24. The best account of developments in this area during 1974 is contained in the Reasons for Decision of an appeal in September. See 1974 AILR 599; 29 IIB 2014).

25. The Commission awarded increases of $30 to oil industry workers, one of the higher rises granted during this period (VEF Report, 23 August 1974, 3).

26. The "activist approach" of the Commission is drawn out in a recent article by Dabscheck (1981).

27. Relativities between fitters and six other major classifications in other awards fell sharply to the detriment of fitters in mid-1974 (Australian Economic Review, 3rd Quarter 1974, 16).

28. See the Australian Bulletin of Labour, December 1974, for an analysis of these employment trends. The shortage of semi-skilled and unskilled labour is reflected in the wage increases obtained. There was a narrowing of relativities between the skilled and unskilled in most awards. For example, the increase in award wages from May 1973 to October 1974 in the Metal Industry Award was 42.0% for skilled tradesmen, 48.4% for the Machinist 2nd Class, and 53.9% for Process Workers. In the Vehicle Industry Award, the highly skilled Toolmakers obtained 41.0%, Storemen received 48.8% and Process Workers were granted 54.0%.

29. See the events surrounding the mini-budget speech by Treasurer F. Crean on 23 July 1974, entitled "The Inflationary Situation". Hughes suggests that the strong demand-dampening rhetoric was written before the mini-budget was emasculated in Cabinet. Both Hughes (1980) and Hawker et al. (1979) detail the strong opposition that emerged in Cabinet to the Treasury line which was for a time accepted by Whitlam. Criticism was especially strong from the unions. FIA Secretary Laurie Short declared "I do not believe that the program outlined by the Prime Minister is the answer to inflation. The Labor Movement has declared time and time again that it will not tolerate the deliberate creation of unemployment by any government, least of all a Labor Administration (Bentley, 1974, 383). Bob Hawke was more caustic. He said "I find it totally repugnant that these boffins can sit in their ivory towers on $25,000 a year and talk casually about two percent unemployment as an economic measure. They say it in a context where their own little bottoms will never be off a desk" (Hurst, 1979, 174). As it turned out, two percent unemployment was an understatement given the depth of the recession that was getting underway.

30. A breach between the government and the unions developed in late August 1974 when Clyde Cameron announced his intention to intervene before the Flight Crew Officers' Tribunal to oppose a large increase for Qantas pilots. While the ACTU Executive had little sympathy for these highly paid employees, the idea of an ALP government appearing before an industrial tribunal to argue against a union's case was anathema to them (see AFR, 29 August 1974; 2 September 1974). The incident was quickly smoothed over, but was another indication of the cleavages that were developing between the political and industrial wings of the labour movement.

31. See Budget Speech 1974-75, 29.

32. ACTU President Hawke was also national President of the ALP.

Chapter 6: The Return to Centralized Wage Fixation: 1975-1977

Prelude to Wage Indexation

The conditions for a consensus wage fixation strategy had been undermined by the middle of 1974. In carrying a consensus strategy to an extreme, the particular interests served in each case cumulatively undermined the universalistic criteria necessary for the maintenance of capitalist relations as a whole. The Conciliation and Arbitration Commission did not "cause" the wage explosion, nor was the wage explosion the only factor which precipitated the severe recession. However, the Commission was closely associated with wage developments, and wage increases were commonly alleged to be the prime cause of the decline in business profitability and private investment. There were frequent references in the news media to a "decline in authority" of the Commission.

There was considerable dissatisfaction with existing wage fixation procedures. With the recession deepening and

sections of the labour movement in retreat politically, circumstances favoured the introduction of a centralized system. Most parties and the Commission sought to reduce the rate of wage increases. The method used was termed wage indexation.

A system of automatic basic wage adjustment had operated from 1921 to 1953. The ACTU repeatedly requested the reintroduction of automatic quarterly adjustments. After 1961, the Commission accepted the importance of maintaining real wages, but refused to relinquish its discretion over the level of adjustments.

Wage indexation was discussed at the 1974 NWC. The Commission viewed the idea favourably, but was not prepared to introduce new procedures. Conferences were held, chaired by the President, between August and October 1974, but no agreement on new wage fixation arrangements was reached. The unions then submitted a claim to the Commission for wage increases and the introduction of wage indexation.

The Commonwealth played a major role in the debate on wage indexation, through publication of the Department of Labor's discussion paper Wage Indexation for Australia? in January 1974, submissions to the 1974 and 1975 national wage hearings and numerous addresses by the Minister for Labor, Clyde Cameron. Cameron was an enthusiastic supporter of wage

indexation. His objectives appear to have been fourfold. Firstly, indexation would maintain the value of real wages, which was particularly important to low-income earners. Cameron stated "The aim of indexation is one of basic protection...It is to protect the value of the basic needs component of the wage..." ("Australian Wages Policy", 13). Secondly, it would reduce inequality among wage earners (Cameron, "Can There Be Greater Equality of Wages", 3). He favoured a system wherein wages would be increased by a flat amount obtained by applying the CPI to the minimum wage, which would reduce relativities.

Cameron also favoured indexation on industrial relations grounds. He suggested that protection of real wages would reduce the level of disputation ("Australian Wages Policy", 11). Finally, he rejected claims that indexation would be inflationary. He argued that if unionists did not have to worry about the possible erosion of the value of their wages through inflation, they would reduce the level of their claims, helping to reduce inflation still further.

The ACTU agreed to support indexation based on the minimum wage, but they shifted to a scheme for setting a plateau at the level of average weekly earnings. The government accepted this, but the ACTU then decided to seek indexation of the total wage. This was unacceptable to Cameron, who claimed that the ACTU was deferring to the

white collar union peak councils, with whom the ACTU had plans for amalgamation (Hughes, 1980, 109; Cameron, 1981, 18-25). Many white collar unions opposed any system other than full percentage indexation. They claimed that altering existing relativities would increase the likelihood of industrial unrest, and argued that "Indexation should not be used as a means of income redistribution" (Professional Engineer, Sept 1974, 2-3).

Wage indexation was opposed by most employers. They argued that automatic increases were undesirable and that adjusting wages for price movements would be inflationary (Metal and Engineering, Sept 1974, 5). The National President of the MTIA, A.N. Edwards, stated

> Unless the Trade Union Movement is prepared to forego the improvement of wages by other means, then indexation will only add another tier to an already existing three-tier wage structure... [T]he unions clearly expressed their view that they would continue to press for wage increases by award reviews, by national wage cases and by in the field bargaining ... [W]e believe that without agreement from all the trade unions, indexation will only add to inflation.
> (Metal and Engineering, Dec 1974, 3)

With no agreement between the parties, the matter went to arbitration.

The 1974-75 National Wage and Wage Indexation Case

The hearing began on 3 December 1974 before a full

bench of Moore, Robinson and Ludeke JJ., Deputy President Isaac[1], Public Service Arbitrator Taylor and Commissioner Portus. The ACTU's request for an increase to the minimum wage was heard prior to its applications for wage indexation and increases to the total wage.

In its decision of 18 December, the Commission granted an increase of $8 to the minimum wage. The Commission rejected the employers' argument that the minimum wage was no longer useful, stating "We see the minimum wage as a desirable floor below which the wage actually paid to any employee for ordinary time shall not fall"(167 CAR 21). The tribunal did not accept the unions' attempt to restore the minimum wage to its 1966 real value. They stated "The amount of the minimum wage must always be the result of a value judgment made by those who assess it ..."(167 CAR 21). The Commission reasoned that as the coverage of the minimum wage was probably not large, the increase should have little economic effect.

The Submissions

The case resumed on 21 January 1975. The ACTU sought wage increases of 5.1% for price rises plus $3.50 for productivity, as well as automatic quarterly full percentage indexation. As the hearing progressed the claims were increased to 9% for prices and $4 for productivity.

The Commission questioned ACTU advocate R. Jolly on the possibility of the unions' pursuing wage claims in addition to indexation. The bench made it clear that indexation would not be granted if the ACTU did not promise to observe wage restraint (Dabscheck, 1975, 301). The ACTU responded on 11 February that it would continue to deal with national cases concerning prices and productivity, but that individual unions would have responsibility for particular awards. If a union made additional claims "...it would be a matter to be pursued by the union itself without involvement of the ACTU". Jolly stated that the ACTU was not

> ...some dictatorial organisation instructing each affiliate as to what it shall do. However, it is clear that we expect wage and salary claims to reflect the economic realities of the environment within which they are made, and our affiliates are aware of that expectation.
> (Transcript, 11 Feb 1975, 814)

While this appeared to satisfy the government[2], the Commission was less easily persuaded, and sought guarantees that affiliated unions would be restrained (Dabscheck, 1975, 302).

The Commission sought to oblige the ACTU to exercise control over wage campaigns. This would integrate the unions under a central authority to an unprecedented extent, in such a way that the power of the militant unions would be curtailed in the interests of ends desired by the state. The ACTU's ambivalent statement suggests that there was internal conflict over the desirability of this concession, as well as scepticism

concerning its own ability to maintain such a high degree of voluntary discipline among trade unionists. Control by the ACTU over its affiliates in the interests of co-operation with the state would be a powerful mechanism to disorganize struggles based on the militant unions.

The ACTU issued a further statement on the final day of the hearing.

> The introduction of wage indexation as envisaged by the ACTU would bring back immediately under the Commission's umbrella control over the majority of wage increases - price increases would be automatic for all and would not be sought on an industry basis - productivity hearings would be held annually and succinctly and would replace the larger national wage cases which now exist. Work value cases as traditionally defined would be arbitrated by individual members of the Commission. Other increases - which would be "unusual" or "rare and isolated" would be under the control of the Commission.
>
> (167 CAR 31)

Apparently the ACTU was prepared to give the necessary undertakings, despite the problems that might arise in attempting to control its affiliates.

The federal government argued in favour of full automatic quarterly increases up to a plateau of male average weekly earnings, above which a flat amount would be granted. No other claims based on price increases or on altered relativities would be allowed. Other increases would be permitted on the grounds of national productivity, work value or other special circumstances (Commonwealth Submissions, 12).[3]

The government would enforce indexation in the public sector and attempt to persuade the PJT to disallow price rises due to wage increases outside the guidelines (Commonwealth Submissions, 106). The list of supports for indexation was subsequently expanded (Yerbury, 1980A, 478).

The Commonwealth's economic submissions suggested that Australia was experiencing difficulties similar to those of overseas countries. This was referred to as "slumpflation", a combination of high inflation, unemployment and business recession (Commonwealth Submissions, 20). The government claimed it was seeking to overcome these difficulties, but that it was necessary to curtail the rapid rate of wage increases.[4] Government counsel R.E. McGarvie argued that the share of national product going to profits had fallen and that it was essential "...to restore business confidence through stimulating profitability" (Commonwealth Submissions, 65). Under the government's proposals, lower-income earners would bear less of the burden of wage restraint than more affluent groups. Other systems, or no change, were said to be either unjust or likely to increase inflation (Commonwealth Submissions, 76).

The employers opposed the claims. Counsel B. Maddern submitted that there had recently been large wage increases and that accepting the unions' claims would lead to even larger rises. He termed the proposals for wage indexation

"...nothing more than a blueprint for economic suicide for the nation" (VEF-WCR[5], 23). With inflation 16.3% and rising, unemployment 5.2% and also increasing and profitablity deteriorating, Maddern declared that employers were losing confidence in the future. He rejected the unions' argument that the economic difficulties were the result of overseas developments, and blamed the high rate of wage increases (VEF-WCR, 23). It was suggested that indexation would not stop individual unions from pursuing claims outside the guidelines.[6]

The decision

The decision was given on 30 April. The Commission proposed a form of wage indexation as well as granting increases to the total wage and the minimum wage. They stated "To strike the right balance between economic, social and industrial considerations is a difficult task", particularly in view of the troubled state of the economy and the conflicting solutions offered by the parties (167 CAR 25).

The Commission noted the large wage increases of 1974 and the arguments in favour of restoring company profits to higher levels in order to promote recovery. The full bench accepted that wage increases had played an important part in the "exceptional" fall in profitability and the recession.

The Commission stated that a definitive case had not been made for or against indexation. They viewed the proper course to be ultimately "a matter of judgment".

> There is undoubted merit on grounds of equity and industrial relations for ensuring that real wages are maintained unless evidence can be adduced of consequential adverse economic effects. But such a principle can be applied in national wage cases only if pay increases outside national wage adjustments and indexation are within reasonable limits. Otherwise it is difficult to escape the conclusion that, even if it removed inflationary expectations from wage claims, indexation carries a high risk of accelerating inflationary tendencies if it adjusts excessive wage increases automatically for price increases every quarter. This very point was significant in leading the Commission to adopt the course which it took last year. Has anything changed since then to warrant a more favourable view of indexation?
>
> (167 CAR 29)

The Commission accepted that important concessions had been made by the Commonwealth and the ACTU. The government had proposed a rigorous set of guidelines, and had undertaken to provide "supporting mechanisms" for indexation. The Commission accepted that the final submissions of the ACTU marked a new approach by the unions and deserved to be tested (167 CAR 31). The Commission warned, however, that the country could not afford increases outside the guidelines in any form (167 CAR 32).

The decision stressed the supporting role of the Commonwealth. In particular, "an important adjunct" to wage indexation would be tax indexation, as evidence indicated that an increased "tax bite" augmented wage pressures (167 CAR 33).

The Commission decided to increase total award wages. As relativities had already been compressed in recent years, plateau indexation was considered to have potentially disruptive industrial consequences. However, the Commission reserved the right to adopt a flexible approach in the future. While stating that wage moderation was important, a full rise for the March quarter CPI was awarded. The minimum wage was also increased by $4.

The guidelines

The Commission made it clear that it had not committed itself to indexation, stating that it was taking a "momentous step" and that caution was needed. While indexation could provide considerable benefits, failure to abide by the conditions it set out would be very harmful. "Violation even by a small section of industry whether in the award or non-award area would put at risk the future of indexation for all". Success would require the co-operation of the Commission, the unions, employers, all governments and the general public (167 CAR 39).

The guidelines consisted of eight points.[7] The Commission agreed to quarterly adjustment of award wages "...unless it is persuaded to the contrary by those seeking to

oppose the adjustment" (167 CAR 37). There would be an annual productivity hearing. The only other source of wage adjustments would be through work value[8] or catch-up to recent community wage movements. The parties were warned against seeking to circumvent the guidelines through contrived arrangements. If there was "substantial compliance" with the principles, they would be applied to the June quarter CPI increase. The Commission would hear debate on this increase as well as on the wage fixing principles. As the hearing might take some time, restraint and co-operation were requested from the unions. A productivity hearing was planned for later in the year.

Reactions to the decision were mixed. Clyde Cameron termed it a "vast step forward", but regretted that plateau indexation had not been introduced. Bob Hawke called the decision "a relatively good one" and indicated that lower wage claims would probably result. Other unionists viewed the judgment less favourably, and anticipated further large award increases (Age, 1 May 1975, 12). The AMWU (Monthly Journal, June 1975, 12) argued that there was no guarantee that full adjustments would be awarded and likened the guidelines to a new set of penal powers, requiring trade unions to act "..like a police force, preventing workers from getting wage increases". Most employers' representatives were critical of the decision, stressing its inflationary potential (Age, 1 May 1975). While sharing the caution of most other employers'

organizations, the MTIA was less critical, stressing the restrictive nature of the guidelines. They announced "...now that the Commission has moved towards this method of wage fixing, every endeavour must be made for the decision to succeed. MTIA will work towards this end" (Metal and Engineering, June 1975, 1).

The introduction of wage indexation cannot be viewed simply as an attempt by the Commission to re-establish its authority, though this may have motivated some members of the tribunal. Rather, the Commission was placed in a dominant position by the parties, particularly by the trade unions through the ACTU. The employers had sought state intervention to manage the crisis of the wage explosion. The Commonwealth sought to restrain the unions, but much of the delicate political task of attempting to control labour was taken up by the Commission. The form of control sought to incorporate the unions within a framework which seemed to promise economic rewards to labour but reduced their political autonomy. The power of most unions had been reduced by the recession and the ideological offensive, and they generally accepted the restrictions imposed by the guidelines. These conditions enabled the Commission to introduce and operate successfully a purposive wage policy for the first time since the introduction of the total wage.

June Quarter 1975 National Wage Case

In the NWC the unions sought a 3.5% wage increase based on the rise in the June quarter CPI; that this should apply to the full wage, including overawards; and that indexation should be accepted and applied automatically each quarter. They also sought less restrictive guidelines covering increases outside indexation and national productivity. The unions claimed that there had been substantial compliance with the guidelines (VCM File, 8 Aug 1975).

The Commonwealth supported the unions' application. With Clyde Cameron no longer its Minister for Labor, the government recommended that the full wage, including overawards, be increased (VCM File, 15 Aug 1975). Counsel R.E. McGarvie said there was considerable community support for the new system and argued that the package should be fully introduced. He contrasted the system favourably with the previous wage fixation arrangements (MTIA News Bulletin, 4 Sept 1975, 3). Indexation was also supported by all the states and Public Service Boards. Most state industrial tribunals appeared to accept the new system as well (Print C2700, 3). Support from the conservative states was a significant development.

A shift was also apparent among the employers. The National Employers' Policy Committee continued to oppose

indexation, but the MTIA, the Master Builders' Federation, the private trading banks and CSR Ltd expressed their support for the system (Print C2700, 3; McGarvie, 1976, 160). This was important in view of industrial disputes occurring in the metal and building industries at the time.

The full bench granted the full 3.5% CPI increase. Although there had been considerable industrial action, the Commission decided that there had been substantial compliance with the guidelines. In view of the benefits which the full bench believed would result from the acceptance of orderly wage fixation "...it would be unrealistic to allow real wages to fall now" (Print C2700, 9). The minimum wage was increased by $2.80. The Commission ruled that it would not contravene the guidelines if individual arbitrators recommended that overaward payments should be indexed at the same time as award rates.

Principle 7(a), on work value, was clarified in the decision. The words "change in the nature of the work, skill and responsibility required, or the conditions under which the work is performed" were intended as an exhaustive definition rather than serving illustrative purposes. The Commission warned that work value cases would be more restrictive than in the past, and that the principle of comparative wage justice would no longer be used. They said

> With a multiplicity of systems, organizations and arbitrators, the pressure of historical

> relationships and the use of the comparative wage justice concept it is extremely difficult for wage adjustment to be confined to a particular case. We do not intend that the doctrine of comparative wage justice - that universal test which means all things to all men - should be available to justify every wage increase whenever sought.
> (Print C2700, 5)

Changes to work value prior to 1 January 1970 would not be entertained.

The Commission argued that indexation required a firm basis from which to start, and it was anticipated that all catch-up claims under Principle 7(b) would be dealt with by the end of 1975. However, it was accepted that anomalies and inequities would arise from time to time, and a method was needed for dealing with these without running the risk of precipitating a multitude of flow-on claims.

The Commission commented that everyone should "...realize how fragile the package really was and how easily it could be destroyed", and declared "This country cannot afford both indexation and unconstrained wage increases. Any suggestion to the contrary is both wrong and mischievous" (Print C2700, 10). They anticipated that the indexation system would need time to reach its full potential. The alternative to indexation would be a "...return to the wage fixation wilderness of 1974".

Viewing its actions in a more general context the full bench declared

> The successful implementation of indexation would be an achievement of significance far beyond industrial relations. It would demonstrate the capacity of the community to rationalise the divergent aims and ambitions of its constituent groups in the national interest.
> (Print C2700, 11)

This statement brings out the important political role played by the Commission in managing industrial relations. The full bench recognized that the incorporation of the parties into a wage fixing arrangement under the Commission's control would be a significant development. It would make economic management considerably easier for the state apparatuses by reducing the independence of the unions and overriding cleavages between capitalists. The Commission remained cautious, however, in recognition of the opposition to the guidelines by militant unions and many employers. The package therefore remained a proposal rather than an established framework.

The Metal Industry Disputes

Wage indexation was soon placed under pressure by an ongoing dispute in the metal industry. The Metal Trades Federation of unions was seeking wage increases of $18-20 to restore the September 1974 wage level plus the $6 which remained from their original $30 claim (they had obtained $15 plus $9) (AMWU Monthly Journal, April 1975, 1).

The employers opposed the claims. They cited the depressed state of the metal industry, including high unemployment, low overtime, falling orders, a high level of import competition, reduced profits and investments, and a lag in the time it would take for the government's remedial measures to work. They concluded,

> To keep costs down many firms have no alternative but to reduce labour costs by reducing the number of employees. Large sections of the labour force have already priced themselves out of the market by forcing up wages beyond the employers' capacity to pay them.
> (MTIA News Bulletin, 17 April 1975, v)

A conference before Moore J. on 7 April 1975 did not resolve the dispute and the unions began industrial action (VCM File, 11 April; 18 April; 2 May 1975).

The Commonwealth had undertaken to intervene in major hearings, and this was clearly such a case. The Cabinet split over the issue, and the government's submission in the case was neutral (Transcript, 14 May 1975, 164). Clyde Cameron's view was that the unions had "an unanswerable claim" for an increase and he argued against intervention in the hearing (Yerbury, 1980A, 473). Cameron was opposed by the Minister for Manufacturing Industry, J. McClelland, who feared that any increases in the metal industry would flow on and boost inflation. The submission was a compromise between the two positions. However, McClelland's arguments impressed the Prime Minister, who continued to be concerned about wage

restraint. Whitlam apparently believed that Cameron's position would jeopardize wage indexation. Cameron was moved to a lesser ministry in June and replaced by McClelland (Oakes, 1976, 121-123). McClelland made public attacks against union wage campaigns[9], which antagonized even moderate union leaders (Hurst, 1979, 192).

Moore J. gave his decision on 22 May 1975 (167 CAR 451). The President stated that he was bound by the wage indexation principles. The only relevant principle in this case was 7(b), concerning catch-up to community movements. He did not consider this to be applicable, particularly as the metal unions' $15 plus $9 increase in 1974 had helped set the standard on which indexation was based.

The unions reacted by calling for industrial action (MTIA News Bulletin, 29 May 1975, 1). The employers claimed that this campaign had little support among unionists (VCM File, Supplement, 13 June 1975). The AMWU responded by accusing the employers of intimidation against workers who did not oppose the industrial action (AMWU Monthly Journal, July 1975, 11). The unions changed their strategy from a campaign to improve their award to one aimed at individual employers to increase overaward payments (MTIA News Bulletin, 11 July 1975; 7 August 1975, 1). The ACTU argued in the September NWC that this showed the necessity to index overaward payments, which as mentioned above, the Commission permitted in its decision.

The employers reacted to the shop floor campaign by applying to the Commission for authority to stand down employees engaged in industrial action (MTIA News Bulletin, 2 Oct 1975, 1). The unions held stopwork meetings in response (AMWU Monthly Journal, Nov 1975, 8). Moore J. attempted to defuse the issue by calling for an examination of overaward payments in the metal industry (MTIA News Bulletin, 13 Oct 1975, 1) and deferring the stand down claim. In combination with the depressed state of the industry, this approach was successful and no further action resulted. The inability of the metal industry unions to mount a successful wage campaign and the President's refusal to grant any increase greatly enhanced the credibility of the guidelines and the Commission's purposive wage policy.

The ALP and the Unions

As outlined in Chapter 5, the Whitlam government and the unions had come into conflict on a number of occasions. While both favoured wage indexation, the unions viewed it as a means of obtaining automatic wage increases, while the government hoped it would encourage restraint. The government had promised to support indexation through various mechanisms, but its efforts satisfied neither the unions nor the Commission.

The Commonwealth and the Public Service Board promised strict adherence to the guidelines in the public sector. Indeed, CAGEO complained in the September 1975 NWC that the PSB "...had applied the principles in a 'remarkably vigorous and narrow manner'" (Yerbury, 1980A, 483). The number of consent determinations ratified by the Public Service Arbitrator fell sharply, which the PSB attributed to its support for the guidelines (Yerbury, 1980A, 483-484). The government established an industrial relations co-ordination committee which reduced the autonomy of the public authorities. The unions rejected this interference in public sector negotiations and threatened industrial action in retaliation (Yerbury, 1980A, 384-385).

The government urged the Prices Justification Tribunal to reject applications for increases resulting from wage rises outside the guidelines and to place greater emphasis on enhancing business profitability. However, the PJT had only limited powers, and a great deal of discretion was involved in its decision-making (Yerbury, 1980A, 492-497; Nieuwenhuysen and Daly, 1977).

One supporting mechanism which the Commission believed was important but the Labor government never provided was tax indexation. The government was sympathetic towards the

idea and altered the taxation scales to avoid some of the increased "tax bite" engendered by inflation, but tax indexation remained something to be brought in "when the time was right". The political pressures affecting the government were manifest in the 1975 Budget.[10] Under pressure from the L-NCP opposition to bring down a "responsible" budget, tax indexation was not introduced[11], and there were increases in indirect taxes and government charges which added 2.4% to the December quarter CPI (Hughes, 1980, 118).

A number of key union officials were now expressing dissatisfaction with the federal government. AMWU Federal President Dick Scott said that while the unions needed an ALP government in Canberra, this did not take precedence over wage justice. Several union leaders denied that large wage claims were to blame for the government's troubles, and ETU Federal Secretary Cliff Dolan noted that high inflation and unemployment had continued despite lower wage increases (SMH, 17 July 1975, 6). All expressed support for wage indexation, but the need for tax indexation was also mentioned in most cases.

The economy and the political dilemmas[12] of the federal government were given high priority at the 1975 ACTU Congress, held in mid-September. ACTU President Bob Hawke termed the current situation a "crisis" and argued that further large wage rises would lead to "...significant

increases in unemployment or inflation or both" (Donn, 1975, 397). Nevertheless, he stated that the ACTU must "...adopt a position which retains as a principle the right to free collective bargaining" (Martin, 1975, 386). The wage resolution passed by the Congress was ambiguous. It satisfied those who called for restraint, such as Hawke, and was also acceptable to J. Devereux of the militant AMWU, who concluded that the "...resolution before you does not inhibit the trade unions at all" (Martin, 1975, 386).

Although union leaders did not wish to undermine the Labor government, they often found themselves at odds with Whitlam or his ministers, especially when wage restraint became a major objective of the government. The unions were solidly behind the ALP after the government's dismissal in November 1975, but this could not erase the disarray which had developed within the labour movement in the two years prior to that.

The government's wish to restrain the ALP-affiliated unions while retaining their support, promote "business confidence" and ward off the political crisis threatened by the L-NCP federal opposition was a major reason for its failure to provide the assistance promised for wage indexation. At times the state apparatuses were working at cross-purposes, a result of the contradictions confronted by the ALP government in carrying out its reformist programs.

The political troubles of the government diminished the likelihood of a coherent economic or industrial relations policy being implemented, and undermined the management strategies of other state apparatuses, including the Commission.

September and December Quarter 1975 National Wage Cases

In the NWC for the September 1975 quarter the unions requested that the Commission contravene its own guidelines. Under Principle 5, no increase could be granted for a quarterly CPI rise of under 1%, but the unions submitted that the 0.8% increase for the September quarter should be passed on to the workforce.

The ACTU stated that the decision for the June quarter had been delayed and it was likely that the December increase would also be late. The underlying rate of inflation was said to be greater than 0.8% as the CPI figure had been depressed by the introduction of Medibank (Print C4736, 4). The Commonwealth supported Principle 5, but would not oppose waiving it due to special circumstances on this occasion.

The full bench[13] rejected the application, noting that the delays had been forecast in advance, as had the effect of Medibank on the CPI. The Commission added that Principle 5

had been proposed by the ACTU and had recently been endorsed by the unions. The full bench suggested that departing from one principle would set a precedent which could jeopardize the "fragile package" (Print C4736, 3).

The conferences on anomalies foreshadowed in the previous NWC began in September. Little was resolved, as the employers were evidently unwilling to grant any increases. The ACTU then proposed that anomalies should be considered instead of productivity in December. Eventually a procedure was established for dealing with anomalies[14] and a number were successfully resolved (Dabscheck, 1977, 68). The procedures were later incorporated into the indexation guidelines.

The next national wage case took place in early February. As the hearings began there was a demonstration outside the Commission in Melbourne by trade unionists protesting against the new Commonwealth government's decision not to support full wage indexation. Liberal Prime Minister Malcolm Fraser said that his government was determined to "place jobs first", and Treasurer Phillip Lynch warned that the promised introduction of tax reforms, including tax indexation, depended upon the successful control of inflation. Meetings of unionists condemned the government's policy, but ACTU President Bob Hawke urged members to exercise restraint during the "wage crisis" (Age, 3 Feb 1975).

In its submission, the Commonwealth described the economic situation as "grim", and claimed that an increase in inflation or inflationary expectations would undermine any prospect of recovery. The government asserted that the problem with the economy was not depressed demand, but that consumers were saving more in order to protect themselves, largely due to their fear of unemployment (Australian, 4 Feb 1976, 6). It was argued that curtailed spending combined with a profits squeeze and uncertainty on the part of businessmen had seriously depressed private investment. Commonwealth counsel K.D. Marks declared

> Sustained economic recovery will not occur until inflation and inflationary expectations are substantially reduced, and until this happens there is no real prospect of significantly reducing unemployment or raising real wages without generating more unemployment.
> (Australian, 4 Feb 1976, 6)

He concluded that only wage restraint could prevent higher inflation and unemployment. This argument was to become familiar over the next few years. The government submitted that there was a strong case on economic grounds for no wage rise at all, but as a compromise suggested that only half the combined September and December quarter CPI increases be granted (Australian, 4 Feb 1976, 1).

The Commonwealth had hoped to engineer a consensus among the four non-Labor states.[15] However, less than a day after the Prime Minister announced that a united stand would

be taken, the conservative governments presented markedly different submissions (Age, 6 Feb 1976, 1). Their approaches ranged from the NSW proposal to discount for indirect taxes, leaving a 4.8% increase, to Victoria's decision not to oppose full indexation (Print C4405, 3). The Western Australian submission opposing full indexation was attacked by the full bench, as the state's Industrial Commission had already elected to pass on CPI increases automatically. Workers under state awards would shortly receive the full 6.4% CPI increase, creating tensions with other employees (Age, 5 Feb 1976, 11).

The employers accepted that there should be some increase, discounted for indirect taxes and government charges. Counsel Barry Maddern submitted that "The fact that we are prepared to accept that an increase should flow does not imply acceptance of either the philosophy or the practice of wage indexation. It is simply a realistic decision made in a given situation (Age, 5 Feb 1976, 11). The employers based their argument on the low level of profits and investment. They also pointed to wage increases since September, which they claimed fell outside the guidelines. These increases, mostly around $5, were given by state tribunals (Australian, 5 Feb 1976, 4).

The ACTU claimed that a full 6.4% increase was "urgent", otherwise unionists might consider it necessary to protect their wages through industrial action. Advocate R.

Jolly maintained that a fall in real wages was not necessary to bring about economic recovery. He argued that a consumer-led recovery was essential, as investment would not increase without a lift in consumer demand. Jolly submitted that the financial position of companies was improving, but that in the nine months to December 1975 average weekly earnings had increased by only 7.3%, compared with a CPI rise of 10.2%. He suggested that indexation had been "...a significant moderating force", as wage rises outside indexation had been negligible (Age, 11 Feb 1976, 17).

In their decision of 13 February the full bench granted the full two quarter CPI increase of 6.4%. The Commission was of the view that economic recovery was slowly taking place. The full bench took note of the Commonwealth's argument that a large wage increase would have a detrimental effect on inflation, unemployment and investment, but was not persuaded by these submissions. There had been no general wage increase since that for the previous June quarter and it was considered unlikely that a resurgence of inflation would result from the present decision. Furthermore, the course of the economy was said to depend upon a number of factors, which in combination were more significant than one wage increase. The Commission stated

> We have said repeatedly that from the point of view of ensuring a slowing down of inflation and rapid economic recovery, the safest course would be not to add to wage costs at all. But in our view, the contribution of wage adjustments to the abatement of inflation and the promotion of

> economic recovery is necessarily a gradual process, and this is the approach we have taken in the application of our indexation principles. (Print C4405, 5)

The full bench added that there was an expectation in the community that the full increase would be awarded. Proposed hearings on productivity and the future of the indexation principles were postponed (Age, 4 Feb 1976, 13).

The submissions to the December quarter NWC contained themes that would be repeated frequently. The Commonwealth and private employers argued in favour of low wage increases to encourage an investment-led recovery, while the unions maintained that the recession would worsen if real consumer spending power was cut. On this occasion the Commission agreed with the logic of the former argument, but granted a full increase on industrial relations grounds. For the package to "work", the co-operation of the unions was essential, and a full flow-on, particularly after no increase was given in the September case, was apparently considered necessary.

The purposive strategy of the Commission is evident here. After the failure of the metal unions' wage campaign in 1975, it was unlikely that the full increase could be obtained for all workers through industrial action. Yet it is probable that at least some direct action would have occurred if a partial increase had been awarded. In the context of the Commission's frequent pronouncements on the relationship

between the economic and industrial relations consequences of their decisions, it is possible that the full bench viewed the prospect of a wage campaign as potentially more damaging than granting the full increase. More importantly, the full bench was eager to encourage union participation in the indexation scheme. A full increase at this point would signal the Commission's recognition of the importance of real wage maintenance. The decision was therefore imposed against the immediate interests of capital with the objective of incorporating the unions into a framework which would limit their autonomy in the future.

The Industrial Relations Policies of the Fraser Government

The dismissal of the Whitlam government and the election in December 1975 brought about the return of a conservative Liberal-National Country Party (L-NCP) government. There was considerable sentiment among radical union officials for industrial action to oppose the conservative political offensive, but restraint was urged by moderate unionists, who prevailed (Hurst, 1979, 198).

L-NCP policies

The industrial relations policies of the L-NCP coalition were foreshadowed in a number of papers and addresses during

1975. They stressed the need to provide greater incentives for private enterprise and to restrict "excessive" wage demands. In return for wage restraint, concessions on taxes and government charges would be discussed. Restoration of the "authority" of the Commission was also given considerable importance.

> The commission has been eroded by the growth of bargaining either completely outside the commission or by merely using the commission as a rubber stamp on consent awards. While this trend continues the whole environment of industrial relations is changing to one of advantage to the powerful and neglect of the public interest.
> (in Metal and Engineering, Mar 1975, 3)

However, support for the Commission did not also include full support for wage indexation. The Leader of the National Country Party, J.D. Anthony, argued that indexation would institutionalize inflation and was not "...a permanent substitute for the real restraint that is the only answer to inflation". Underlying his sceptical attitude was the assumption that the more powerful unions would not adhere to the guidelines (Metal and Engineering, Nov 1975, 3). The L-NCP suggested that lower national wage adjustments should be granted to those groups which had already received increases beyond a certain level through other avenues (Metal and Engineering, Mar 1975, 3).

Further proposals were outlined in the L-NCP's "Employment and Industrial Relations Policy" released in July 1975. These included voluntary union membership, secret

ballots in trade union elections, penalties under the Concilation and Arbitration Act and the establishment of an Industrial Relations Bureau to oversee compliance with the Act. The overall thrust of the policies implied an attempt to weaken unions' ability to strike. The L-NCP also promised to restrict the growth of the public service and limit wage increases in the public sector (Metal and Engineering, Mar 1975, 7).

After gaining office, the Fraser government attempted to revive the National Labour Advisory Council, a tripartite national industrial relations forum comprising representatives of business, labour and government, which had lapsed while the ALP was in power. A meeting between senior representatives of the ACTU, CAGEO, ACSPA, the NEPC and the Department of Employment and Industrial Relations was held on 16 January 1976, and permanent consultative machinery was proposed (MTIA News Bulletin, 29 Jan 1976, 6).

This conciliatory climate quickly evaporated. The government introduced stricter criteria for the payment of unemployment benefits (Hurst, 1979, 203) and announced that industrial legislation opposed by the unions would soon be introduced, contrary to agreement (Age, 11 Feb 1976, 3). Combined with the government's submission to the February NWC, the unions withdrew from the proposed consultations.[16]

A permanent mechanism for discussions was eventually established with the passage of the National Labour Consultative Council Act 1977. This provided for quarterly meetings, but had an erratic career as the unions either withdrew or threatened to withdraw from the Council on a number of occasions. However, Rawson (1978, 87) argues that

> Such committees are usually established by non-Labor governments in order to suggest that they give equal treatment to employer and employee interests - something which none of the participants really believes.

Rawson suggests that more effective consultations between unions and non-Labor governments occur informally. This is supported by Hurst's (1979, 204) description of the working relationship established between Hawke and Fraser in 1976, to the annoyance of the more militant unions.

The L-NCP government's industrial relations policy was erratic, though the overall thrust was anti-labour. While arguing against the unions before the Commission and threatening them with harsh legislation, the government gave in to the unions by reneging on a campaign promise to abolish the Prices Justification Tribunal. However, Nieuwenhuysen and Daly (1977, 119-121) suggest that the PJT was considered to have little economic effect by the government and its maintenance was largely symbolic. Its limited powers were slowly eroded.

Legislation

Several amendments to the Conciliation and Arbitration Act were passed in 1976. The Commission's obligation under s.39(2) to consider the public interest with regard to the national economy was further specified to include the "..likely effects on the level of employment and inflation". This was included on the assumption that wage increases were the primary cause of inflation and unemployment. Another amendment required secret postal ballots for all federal and branch union elections. Unions had been required to run secret ballots since 1951, and many provided pre-paid postal ballots for absentee members. This legislation was opposed by some unions, particularly those on the Left, who saw this as an unwarranted intrusion into union affairs and feared that this would lead to adverse electoral results (AMWU Monthly Journal, May 1976, 8).

More significant amendments were enacted in 1977. These introduced some of the changes concerning enforcement and the rights of individuals foreshadowed in the L-NCP's 1975 policy statement.

The amendments were again predicated on the view that trade unions were acting "irresponsibly". In his second reading speech, the Minister for Employment and Industrial Relations, A. Street, declared "Australia's deplorable record

of time lost through industrial disputes in recent years has been a significant factor contributing to our current economic problems" (Hansard, H of R, 31 Mar 1977, 836). He blamed this on ideologically motivated or self-interested trade union officials. Street was particularly critical of political strikes and of action taken by unions against members allegedly opposed to strikes.

The original provisions of the Bill were strongly opposed by the unions. On 4 May the ACTU threatened major industrial action and possible withdrawal from the arbitration system if the legislation proceeded (Mitchell, 1979, 438). A compromise Bill more acceptable to the unions was passed in June.

These amendments established the Industrial Relations Bureau as an independent agency. The IRB was empowered to secure compliance with the existing legislation in the same manner as the Arbitration Inspectorate. However, the government never agreed to abandon entirely those measures opposed by the unions (Mitchell, 1979). With the IRB established, the government reintroduced most of these provisions, which were passed in October 1977 with little reaction from the unions. Mitchell attributes the lack of union response to unfavourable conditions in the labour market. High unemployment weakened the ability of many unions to engage in industrial activity in opposition to the

legislation and reduced the level of industrial disputation in general.

The IRB was empowered to initiate proceedings in order to obtain compliance with the Act and could seek penalties if breaches occurred. Among the areas with which the IRB was specifically concerned were bans clauses, safety regulations, restraining orders, union rules, elections and deregistration. The IRB was empowered to investigate matters brought before it or on its own initiative (Mitchell, 1979, 441-442).

Much of the remainder of the legislation concerned industrial organizations and the rights of individuals. It became easier for individuals to be exempted from union membership under closed shop arrangements. The new provisions also guaranteed individuals the right not to take industrial action. This was based on the assumption that most unionists are opposed to strikes. Unions were prohibited from disciplining such individuals or encouraging an employer to do so. Another provision prohibited pressure being placed on an independent contractor or employer to join a union where they are eligible for membership. Mitchell (1979, 444) concludes

> Notwithstanding the Government's rhetoric about individual rights, it is obvious that in allowing many more employees to avoid union membership with full protection of the law, and the prohibition of certain categories of persons from becoming members of federally registered unions, the policy goes to the heart of union numerical and financial strength. Furthermore some parts of these provisions will have the effect of undermining the internal order of trade unions by

exempting members from the legitimate authority of the rules where industrial action is involved.

Additional powers were enacted concerning deregistration. Specific individuals or groups within unions could now be deregistered. In addition to partial deregistration, orders could be obtained to control a union's funds or property (McCallum, 1978, 260). Thus, "troublemakers" could be eliminated from unions and administrative control effectively handed over to the state. Mitchell (1979, 456) argues that the grounds for deregistration were made so wide that there were few disputes in which the Minister for Labour or the IRB could not begin such proceedings. He argues that the October 1977 amendments provided "...a general weapon which can be used in virtually any conflict situation" (1979, 458).

Two other controversial pieces of legislation were passed in 1977. One was Section 45D of the Trade Practices Act, prohibiting secondary boycotts. This covers union action which deters an employer from dealing with some third party. The Act provided for penalties of a fine of up to $250,000 or action for damages (McCallum, 1978, 266). Significantly, this legislation gave jurisdiction over industrial disputes to an agency other than the Conciliation and Arbitration Commission (in this case the Trade Practices Commission).

The other legislation was the Commonwealth Employees' (Employment Provisions) Act (commonly referred to as the CE(EP) Act). This Act allowed the Commonwealth to suspend without pay any government employee who engaged in industrial action. The definition of "industrial action" was very wide, covering any bans or restrictions on the "normal" performance of work. Employees could be stood down without pay if industrial action of any sort seriously disrupted work or if the employees could not be usefully employed (McCallum, 1978, 262). Suspended employees could be dismissed without right of appeal. Unlike employers in the private sector, the government would not need to apply to the Commission for such orders. This legislation was not proclaimed at the time, however, amidst considerable speculation about the unions' likely response were it to do so.

Economic policies

The basis of the Fraser government's industrial relations policies can be found in its more general economic strategies.[17] Shortly after their taking office, a business journal declared that "Australia has never had a government more wholeheartedly committed to the welfare of the corporate sector than the present Fraser administration" (Rydge's, January 1976, 20). The government's rhetoric gave priority to controlling inflation and increasing profitability, after which, it was assumed, an investment led recovery would develop. The

"Treasury line" on which this approach was based assumes that other avenues to recovery, chiefly those involving expansionary fiscal or monetary policies, are inflationary or unworkable. The only viable policy was seen to involve high unemployment, restricted demand and reduced public sector activity. These assumptions were reflected in the mini-budget address given by Treasurer Phillip Lynch on 20 May 1976.

> The real threat to a sustainable, long-term recovery is inflation. If inflation continues unchecked, or seems likely to do so, at its present crippling rate, businessmen will continue to place first emphasis upon survival and the avoidance of any risk...
>
> As we have been arguing before the Arbitration Commission, sustained recovery can hardly come about so long as real wages are maintained at the inflated level, which over the past three years they have attained.
>
> Without progress, and the expectation of progress, on the wages front we are locked in to a rate of inflation which will simply not permit a large increase in investment and the provision of job opportunities at a rate which would significantly reduce the present level of employment.
>
> (in Hughes, 1980, 132)

The implications are clear. As inflation was said to result from real wage increases, these had to be prevented. High unemployment would weaken workers' ability to bargain up the price of labour. Where union strength remained intact, repressive measures would be implemented to counter industrial action taken to press their demands. The only "acceptable" solution to an industrial dispute was therefore a retreat on the part of the unions.

Both the Commonwealth and the Commission sought to reduce the rate of wage increases and control the actions of unions, but the government adopted a particularly heavy-handed approach. This produced, at times, a contradictory industrial policy between the branches of the state. The result, as will be seen, was a hostile industrial relations climate and increasing difficulties for the Commission.

The First Partial Indexation Decisions

The Commission had scheduled a hearing for the March quarter CPI increase to begin on 27 April 1976, followed by a review of the indexation principles starting on 4 May. However, this was altered due to industrial action in the airline and wool industries. Both disputes involved wage claims outside the guidelines. In moving the hearing on the guidelines forward to 12 April, Moore J. stated that the disputes seemingly could not be dealt with in terms of the present principles. He said that the review might involve consideration of the survival of certain indexation principles or the whole package (MTIA News Bulletin, 1 April 1976, 1). This change worried the unions. ACTU President Bob Hawke appeared before the Commission himself, to argue against bringing down a decision on the future of wage indexation before ruling on the March quarter CPI increase. The Commission declined to give an assurance on this (Australian, 13 April 1976, 1).

In the hearings on the guidelines, all submissions supported the continuation of an indexation system in some form. The ACTU called for automatic quarterly adjustments and suggested that this be tried for a year. Advocate R. Jolly argued that the guidelines were "too rigid", and that wage increases should be allowed within the guidelines when "special circumstances" arose (Australian, 15 April 1976, 3). The unions claimed that the criteria for disallowing full flow-on of the CPI should be tightened. They submitted that full flow-on should result unless "exceptional and compelling" circumstances could be shown to exist. The work value principle was considered too restrictive, and the unions also requested that some overaward increases should fall within the guidelines (Australian, 22 April 1976, 4).

The employers maintained that the amount of flow-on should be argued on its merits in each case. The Commission should be prepared to grant a reduced increase or no increase at all "...if it has been demonstrated that it would be harmful to the national economy to do otherwise" (MTIA News Bulletin, 13 May 1976, 1). Indirect taxes, government charges, factors which do not affect the capacity to pay and offsets from reductions in income taxes should all be taken into account by the Commission. The employers sought half-yearly hearings. They urged the Commission to rule that work value should be

the only other ground for wage increases, that strict compliance was necessary and that collective bargaining was rejected. With reference to the March quarter CPI, the employers argued that no increase could be justified on economic grounds and any increase should have a minimal economic impact.

The Commonwealth submitted that the CPI should be only a starting point in wage fixation. Allowance should be made for factors such as indirect taxes and changes in import prices. Failing to discount for indirect tax increases would reduce the government's policy options and potentially prove counter-productive by fueling inflation (Commonwealth Submissions, 62). The Commonwealth emphasized the importance of maintaining discretion in the amount and form of wage increases, quoting submissions by the previous federal ALP government to this effect (Commonwealth Submissions, 122-126). The government, like the employers, also argued for six-monthly hearings.

The Commonwealth called for a flat increase in the present case by applying the CPI to the minimum wage, which would achieve approximately a 50% flow-on of the CPI. The government claimed that full wage indexation would lock the economy into a high rate of inflation, which inflationary expectations would take even higher. It was considered necessary to reduce the level of real wages (Commonwealth

Submissions, 44). Curbing inflation was seen to be necessary for economic recovery, and it was argued that inflation would not come down without wage moderation.

The full bench of Moore, Robinson and Ludeke JJ., Deputy President Isaac, Public Service Arbitrator Taylor and Commissioner Portus gave their decision on 28 May. They noted the support of all the parties and interveners for indexation, despite differences in structure and content. The Commission pointed out that since the introduction of wage indexation, wage increases had slowed considerably and there had been some moderation in the rate of inflation. However, economic recovery remained slow.

The Commission made a number of points with regard to its role in wage fixation. The full bench stressed its independence from the federal government and stated that its decisions were not obliged to fit in with government economic policy.[18] As the economic and industrial consequences of its decisions were viewed as inseparable, it was not possible to accede to the government's request that more attention be paid to economic effects. The Commission added that its decisions should be seen in terms of a "system", wherein short term results would have to be weighed against the long term benefits. Finally, the Commission argued that the economic policies of governments had significant industrial relations consequences. The success or failure of indexation did not

rest with the Commission alone. The decision quoted a Commonwealth submission to the effect that there were limits to the actions that could be taken by any industrial party "...without doing damage to the very foundations of the system" (Print C5500, 8), a clear reference by the Commission to the potential industrial relations consequences of the government's policies.

Few changes were made to the indexation guidelines. Principle 7(a), covering work value, was tightened further. The most significant point stipulated that a change in work did not necessarily imply a change in work value. "The change should constitute a significant net addition to work requirements to warrant a wage increase" (Print C5500, 12). The anomaly procedures were added to the guidelines as Principle 7(c). All claims arising from "anomaly or special and extraordinary circumstances" would be dealt with through the Anomalies Conference. Finally, an addition was made to Principle 8, to the effect that special payments such as allowances should not be used to frustrate the intentions of the indexation package.

In their decision on the March quarter CPI, the Commission did not grant full indexation for the first time since the introduction of the guidelines. The Commission accepted the Commonwealth's argument that real wages should be reduced in order to increase profits and stimulate

investment, reduce inflation and restore consumer confidence. The full bench stated

> The evidence before us on this occasion about the distinct possibility that full indexation would keep the inflation rate close to 13 per cent for some time to come, with the prospect of economic stagnation at a high level of unemployment, makes it necessary for us to consider the urgency of making a more positive contribution to moderating cost increases. We are aware that the accuracy of projections of price movements is open to question and that it is notoriously difficult to predict the future course of the economy. But these expectations do suggest that we should proceed cautiously in order to avoid, if possible, prolonging unduly by our decision the hardship to which a large section of the community including wage and salary earners have been exposed.
> (Print C5500, 16)

The Commission noted that the ACTU had conceded the validity of granting partial indexation in "exceptional and compelling circumstances". The full bench believed that the current and projected state of the economy fit these criteria. The Commission granted the full 3% CPI increase up to a plateau of $125 per week (approximately the average male award rate) and applied this figure to all higher rates.

Awarding partial indexation was a crucial step for the Commission. As inflation was already diminishing, the decision was not simply directed towards reducing inflation, but accepted that a redistribution of income from labour to capital was necessary. While stressing its independence from the Commonwealth and awarding a higher increase than that recommended by the government, the Commission nevertheless

agreed with their reasoning. Given the full bench's comments on the potential industrial consequences of anti-labour economic policies, they clearly assumed that the unions' reaction would not be too disruptive. Having argued strongly in favour of wage indexation, the unions were unwilling, or more likely unable, to undermine the Commission's initiative.

The June quarter NWC

The next national wage case dealt with claims for a flow-on of the 2.5% CPI increase in the June 1976 quarter. ACTU advocate R. Jolly contended that plateau indexation would lead to industrial unrest as workers sought to protect the real value of their wages. This was disputed by T. Morling for the Commonwealth. He argued that workers had already accepted plateau indexation, which he said reflected the "...widespread and growing recognition of the need for wage restraint in the context of exceptional and compelling economic circumstances that currently exist".[19] The government said that reduced real wages would assist local manufacturers to compete with imports, which would help to reduce unemployment. Full indexation would lead to a short term increase in consumption, but it would bring about higher inflation and prevent a sustained recovery in investment and employment (AFR, 29 July 1976, 1). The government submitted that a complete wage freeze was its preferred option, but suggested a 30% increase in order to protect the standard of

living of lower-paid workers (AFR, 30 July 1976, 1).[20]

The employers argued that no increase was justified on economic grounds, and any increase should be minimal. Their counsel, Barry Maddern, submitted that there had been a continuing high level of industrial disputation, which had not been reduced by the introduction of wage indexation. He claimed that inflation and unemployment would not diminish unless there was a reduction in wage increases and a rise in profits. The employers sought six-monthly hearings and an undertaking by the Commission to discount the CPI for indirect taxes and government charges (AFR, 4 August 1976, 10).

The full bench gave their decision on 12 August. A partial increase was again granted. Hoping to avoid the compression of relativities resulting from the previous NWC decision, the full 2.5% increase was applied to the lowest wage in the Metal Industry Award, $98 per week, the resulting $2.50 added to all wages up to $166, and 1.5% granted to all wages above that. The full bench declared, "...any amount less than we have awarded would put at risk the indexation package and any more would be economically unwise" (179 CAR 64).

The issue of substantial compliance had been raised by the employers. The Commission considered the industrial relations situation to be "dismal", noting a considerable

increase in working days lost for the March 1976 quarter over that of the previous year.[21] The full bench warned that continued industrial action would endanger wage indexation and worsen inflation and unemployment (179 CAR 62). However, the increase in earnings was in line with the rise in the CPI, in contrast to previous rapid wage increases. The Commission concluded, with reservations, that there had been substantial compliance.

The Commission considered the extended recession to be very serious. While inflation was moderating, it was decreasing at a slower pace than in most of Australia's major trading partners. Disposable income would increase regardless of the Commission's decision, as the Commonwealth had introduced tax indexation and increased family allowances. While full indexation remained the objective, it was concluded that caution was still necessary, so partial indexation was granted.

The second partial indexation decision signalled that the Commission was determined to assist the government's efforts to reduce inflation and promote an investment led recovery based on improved profitability at the expense of labour. However, the high March quarter figures for industrial disputation no doubt discouraged the Commission from making deeper cuts. Industrial action was nowhere near the levels of 1974, but it is unlikely that the Commission was

prepared to jeopardize its policy at this early stage. With capital and the federal government seemingly in agreement with the overall direction of their policy and no direct challenge emerging from the unions, the Commission pursued a firm but cautious policy of reducing real wages.

September Quarter 1976 National Wage Case

The President convened two "consensus conferences" prior to the September quarter NWC. Both were short and unsuccessful. With the employers remaining in the background, the unions and the federal government took inflexible, incompatible positions. No serious negotiations took place. While the employers seemed to be in agreement with the government's stance, they did not actively seek to oppose the unions to the same extent as the Commonwealth. As the Commission was attempting to obtain consensus between the parties, contradictory policies were emerging within the state.

The positions of the parties were signalled beforehand. In July, the ACTU Executive resolved to seek a national wage rise higher than the likely CPI increase (AFR, 21 Sept 1976, 9). In August, a further resolution was passed by the ACTU warning that it might advise its affiliates to adopt direct bargaining with employers unless full indexation was restored. ACSPA had already taken a similar step. On the government's

side, the federal Budget of August 1976 assumed that a reduction in real wages would occur.

The first conference, held on 22 September, was attended by senior representatives of the unions, employers and Commonwealth. The government submitted a seven point package. A target inflation rate of 7% was set, and it was proposed that wage increases of approximately 60% of the CPI movement should be granted to achieve that figure. The government also called for strict adherence to the indexation guidelines, a moratorium on all industrial action for the next year and conferences aimed at ensuring an adequate supply of skilled labour and increasing productivity (AFR, 24 Sept 1976, 1). Apart from the conflict between these proposals and the unions' support for full indexation, there was no agreement on how to determine the relationship between wage increases and the rate of inflation. The government was requested to provide further information, and another conference was held before the start of the national wage case on 1 November. The parties were no closer to agreement, and the conference broke up after 25 minutes. Bob Hawke, calling the meeting "...a waste of bloody time", declared that "There is no way the unions can accept any proposal which means a five per cent cut in real wages" (Australian, 2 Nov 1976, 1).

The ACTU submitted claims for a full flow-on of the 2.2% CPI increase, plus full compensation for the balance of

the two partial indexation decisions. ACTU advocate Rob Jolly admitted that this went outside the expressed intent of Principle 1 of the guidelines, but argued that this should be treated the same as submissions for awarding less than the full CPI movement. However, Jolly suggested that the future of wage indexation would be assured by granting the full amount for the September quarter. This was a shift from the ACTU's earlier position that the system would be in jeopardy if both parts of the claim were not awarded (AFR, 4 Nov 1976, 10).

The Commonwealth, represented by T. Morling, attacked the unions' claims for catch-up. He repeated the government's previous position that no increase was justified on economic grounds, and that further wage moderation was needed. The Commonwealth maintained that the Commission should give greater weight to economic considerations than it had in the past. It was claimed that the decision should take into account the cost of lost production and capacity due to industrial disputation (AFR, 5 Nov 1976, 1). The employers presented similar arguments. They submitted that substantial compliance had not been fulfilled and that the economy was suffering from the cost of industrial disputes[22] (AFR, 10 Nov 1976, 7).

The Commission's decision was handed down on 22 November 1976 (182 CAR 225). The unions' claim for a

"catch-up" increase was rejected. The Commission stated that it intended to consider each quarter separately. To do otherwise, they said, would undermine the basis of the indexation system, as this would open the way for other parties to make similar claims, going back further than two quarters in some cases. "If this happened, one of the important ingredients in the package, namely consistent adherence to the principles, would be lost" (182 CAR 225).

The issue of substantial compliance had been raised, particularly in view of the Medibank strikes. Although these strikes were not directed towards the guidelines, the Commission stated that their adverse effect on production and the economy would need to be taken into account. However, as pay increases had remained within the guidelines, it was concluded "with hesitation" that there had been substantial compliance. The Commission added that it would take industrial disputation prior to the quarter for which claims had been submitted into consideration.

The Commission expressed "grave concern" over the levels of inflation and unemployment. The unsuccessful conferences were noted, and the full bench was displeased with the parties' inability to reach agreement on a national wage policy.

> As already indicated the President chaired consensus conferences but no agreement was reached. The Commission is therefore left to arbitrate between the claim for full indexation

> plus catch-up and the argument for no movement at all. Economic chaos is predicted if we grant the claim, industrial chaos is predicted if we do not.
>
> It remains the Commission's view that a greater degree of consensus should be possible. If it were possible to limit the range of options open to the Commission by actual or imputable consensus, it might assist in restoring consumer confidence.
>
> (182 CAR 229)

The Commission offered to convene further conferences if they were desired.

A number of factors were listed which informed the decision. These included: the desirability of full indexation; the need to exercise caution in altering relativities; the continued depressed state of the economy; impending increases to the CPI due to changes to the Medibank scheme; the rough equivalence of Australia's inflation rate to those of its major trading partners; the anticipated delay in the release of the next CPI figures; and fewer recent attempts to "beat" the guidelines (182 CAR 229-230). The combined weight of these factors led the Commission to grant a full 2.2% increase.

The decision concluded

> We believe that what the Commission has been doing over the past 18 months has restored some stability and regularity to wage fixation and has received general acceptance in the community.

Despite the problems outlined above, the Commission was evidently pleased with the progress of its purposive wage policy. After two successive partial indexation decisions,

"stability and regularity" were encouraged by a full flow-on. However, the Commission's displeasure with the failure of the conferences, for which the Commonwealth was at least partly responsible, indicated that contradictions between the state apparatuses were emerging. Subsequent actions of the Commonwealth added to these divisions.

Taxation and the December Quarter 1976 National Wage Case

Although there was considerable support for indexation, there continued to be strong disagreement over its form and content. With a large CPI increase impending for the December quarter 1976, avenues were sought to avoid a confrontation over the size of the flow-on.

As early as June 1976, the unions had proposed a trade- off between wage restraint and tax cuts (Hurst, 1979, 205). This was revived in December 1976. It was supported by the employers and some of the states, notably Victoria. The unions offered to accept partial indexation in exchange for indirect and/or direct tax reductions that would leave the level of real take-home pay intact. The proposal was rejected by federal Cabinet (AFR, 14 Feb 1977, 3). Apparently, the government was concerned about the effect tax cuts would have on the budget deficit (AFR, 13 Jan 1977, 1; 14 Jan 1977, 2).

With the wage-tax deal making no headway, ACTU President Bob Hawke said that continued partial indexation would place the unions' participation in wage indexation in doubt. However, he recognized the difficult position the unions were in, saying

> But indexation must always be a help in difficult economic times as the bargaining power of unions is historically and logically reduced in times of high unemployment. The fact that you will have high inflation in 1977 may increase the desire for wage movements but it certainly does not increase bargaining power.
> (AFR, 14 Jan 1977, 3)

The employers were also annoyed by the Commonwealth's position. George Polites, Executive Director of the Australian Council of Employers' Federations stated

> We said before Christmas there was a need to bring down the rate of increase in the CPI and that if the Government was contemplating any concessions then one way to do this was to reduce indirect taxes. This has the dual effect of stimulating demand and at the same time reducing the increase in the CPI, thereby reducing the expectation for wage increases. What we must be looking for is a way in which we can decide by how much we can raise incomes without adding to the inflation problem ... But if the Government has a singleminded purpose in saying to achieve the reduction in inflation and unemployment is simply to go down the road of containing Government expenditure and controlling the deficit then there is not much point talking to them.
> (AFR, 14 Jan 1977, 3)

Polites suggested that financing a larger deficit would be no problem, as the level of savings was unusually high. These comments by Polites, a senior employers' representative, suggest the emergence of divisions between some major employers (who sought increased demand and a minimization of

industrial unrest) and the government.

Hawke again put forward a wage-tax tradeoff proposal to Minister for Employment and Industrial Relations A. Street on 11 February. Despite some support for such an agreement from within the government, none was reached (AFR, 14 Feb 1977, 3, 7).

The December quarter CPI rose substantially, by 6%. Much of this was the result of Commonwealth policy. Changes to Medibank had added 3.2% to the CPI and the inflationary effects of the 17.5% currency devaluation on 28 November 1976 were beginning to be felt.[23]

The hearings began late, on 1 March (186 CAR 557). The ACTU and ACSPA sought a full 6% increase for the December 1976 quarter, plus 2% for the two quarters in which partial indexation was awarded. The unions requested an operative date of 15 February due to the late release of the CPI. None of the governments appearing at the hearings supported the claims in full. The Commonwealth suggested that $2.90 should be granted to compensate for the 3.2% increase due to changes to Medibank[24], and no increase for the remaining 2.8%. The submissions of the states varied, with the Labor states suggesting at least 6% up to a plateau, the non-Labor states considerably less. The Commission noted that approximately 95% of the increase to male award rates

came from indexation decisions in the previous year to November (Commonwealth Submissions, 7). The annual increase in male average weekly earnings was 11.6% to December, 2.8% less than the rise in the CPI (186 CAR 572).

Assessments of the economy differed, though all submissions were cautious. The Commission concurred with the private employers' analysis that there "...are signs of economic improvement but the signs are few and they are faint" (186 CAR 560). The full bench seemed particularly disturbed that output had fallen and unemployment worsened, despite an increase in the share of profits in national output, contrary to the premise on which its redistributive decisions were based.

Proposals for appropriate economic remedies were contradictory. The Commonwealth again insisted that real wages were too high, but did not provide a precise estimate of the discrepancy. The unions and Labor states argued in favour of fiscal and monetary stimulus to the economy and saw dangers in a further cut to real wages. The Commission stated

> On the material before us, it is not clear that a reduction in real wages without immediate compensatory action from other sources will provide a stimulus for recovery. A reduction in consumption spending with further deterioration in economic activity could ensue. A further point to consider is the increased risk in these circumstances of a breakdown in our indexation package, which could add to inflation and discourage spending even more. On the other

> hand, a slowing down of labour costs could help to reduce the rate of inflation and could assist recovery. It is impossible to say with any confidence how these forces would balance out. (186 CAR 561)

The Commonwealth continued to insist that the Commission should fall in line with government economic policies. Its submission stressed the potentially inflationary consequences of the November devaluation and argued that wage restraint was essential in order to avoid these. The Commonwealth declared "...it is imperative...that the Commission accept economic considerations as the prime determinant of the level of any adjustment awarded" (186 CAR 562). The Commission considered this too simplistic an approach. The full bench stated that the indexation package was introduced with economic goals in mind, but it was necessary on industrial relations grounds to proceed slowly. A halt to wage increases might have economic benefits, but the likely industrial disputation resulting from this would have serious economic costs.

The Commission then launched a counterattack on the Commonwealth's economic actions.[25] Stating that indexation was introduced with the hope that government policy would not conflict with the objectives of the package, the full bench indicated that Commonwealth policy had made their task more difficult. Particular mention was made of recent increases in excise tax and the changes to the Medibank health scheme.

The Commission argued that without these measures the CPI would have fallen below 10%. The Commission concluded that inflation was the result of a number of factors, of which wages were only one. They implied that the Commonwealth was not only making the Commission's task difficult, but being unrealistic as well.

The Commission stated that the decision in this case should be seen in terms of a "system" of decisions, which, they argued, had brought about a reduction in inflation and an increase in the share of profits. In the present case, the "dangerous consequences" of full indexation were "too apparent to need elaboration", due to the potential inflationary impact of a full 6% flow-on. The Commission declared that it was no longer persuaded by arguments that the level of real wages should continue to be reduced.

The effects of the Medibank levy had been debated at length. Due to the size of the increase and the varying rates the levy would cost different individuals, the Commission accepted the Commonwealth's proposal for a rise of $2.90. The full bench said that this should satisfy all outstanding claims related to health insurance, which had been the cause of considerable industrial disputation. For the remainder of the CPI increase, the Commission applied 2.8% to the minimum wage and awarded the resulting $2.80 to all. While this would alter relativities, it was viewed as necessary to minimize

costs, and this form of increase would best protect the lower income groups. The unions' claims for catch-up and retrospectivity were dismissed.

The Commission noted that there was disagreement over discounting the CPI, the form of increases and the frequency of hearings and suggested that an inquiry be held into these and related matters. As a debating point, the Commission outlined a possible new system of wage fixation, akin to the old basic wage plus margins format. One part would generally be increased automatically each quarter, while the remainder would be adjusted less frequently. The employers, the Commonwealth and most of the states favoured such an inquiry, which the Commission indicated would be held after debate on the March quarter 1977 CPI increase.

This case was significant in that it marked the end of the Commission's brief flirtation with an openly redistributivist policy. The effect of partial indexation was still to reduce real wages, but the Commission viewed its benefits in terms of reducing inflation rather than promoting an investment-led recovery. The full bench was clearly unimpressed by submissions that wages were "too high", as the shift which had occurred in favour of capital did not result in the anticipated reduction in unemployment. The decision stressed the Commission's obligation to prevent and resolve industrial disputes, of which inflation was viewed as a major

source. The fiscal policies of the Commonwealth contradicted the Commission's determination to reduce inflation (and indirectly, stabilize the industrial relations environment) and were a source of the divisions which were emerging between the branches of the state, as well as between the government and sections of capital impatient with the government's lack of "constructive" industrial relations policies.

The Wage-Price Freeze and March Quarter 1977 National Wage Case

An extraordinary series of events followed the December quarter 1976 NWC decision, which highlighted the complexity of Australian industrial relations, the conflict within the state and the difficult position of the Commission. In a surprise announcement, the seven heads of government called for a voluntary wage-price freeze.[26] The Commission was placed under pressure by the Commonwealth to put this initiative into effect by deferring the next NWC. The Commission was able to avoid acceding to the government's request without appearing to undermine the freeze proposal.

The idea for a wage-price freeze was introduced at a Premiers' Conference on 13 April 1977 by Victorian Premier R. Hamer, a Liberal. Prime Minister Fraser immediately gave strong support to the idea. Despite opposition, particularly from Treasury officials, the Prime Minister was persistent

(National Times, 18 April 1977, 14). Within hours, after considerable pressure was placed on the Labor Premiers of New South Wales, South Australia and Tasmania, a joint statement was issued to the effect that a freeze had begun. Hughes (1980, 143) argues that the support of the Labor politicians was essential, as Fraser's objective was "...to bring the three Labor states into line behind the Commonwealth in opposing a rise at the next wage indexation hearing", in order to encourage the unions and the Commission to defer any increase. However, such clear support was not forthcoming. The joint statement called for a three month halt to wage and price increases and foreshadowed that approaches would be made to employer and professional organizations and the peak union councils to obtain their voluntary agreement to the plan, after which the PJT and the Commission would be asked to implement the policy. The governments pledged to use what powers they had to assist the initiative.[27] The key point in the statement was that

> Governments would not expect either the business organisations or the union organisations to agree to such voluntary restraint arrangements without agreement by the others.
> (AFR, 14 April 1977, 1)

Employers' association officials generally favoured the plan, but doubted if it would work without complementary measures, including tax cuts (AFR, 14 April 1977, 1). ACTU Senior Vice-President Cliff Dolan indicated that his organization would probably be willing to participate in talks,

but that rank and file unionists would first wish to recover the pay lost in partial indexation decisions (AFR, 14 April 1977, 14). The Labor Council of NSW rejected the plan, despite its support by NSW Premier Neville Wran[28] (AFR, 15 April 1977, 1). Individual employers were also reluctant. While many retailers expressed support for the freeze, many wholesale prices had been or were about to be raised and these would have to be rescinded, absorbed or passed on. The different fractions of capital apparently desired the plan to work, but not at their own expense. However, representatives of major employers' organizations met with the federal government on 15 April and despite misgivings, agreed to co-operate.

The federal government added to the confusion, as there were no guidelines for the implementation of the freeze. The PJT was asked to defer its decisions until the situation became clearer. Minister for Business and Consumer Affairs John Howard warned that while there would be some exemptions to the freeze, businesses should not assume that they would be included. However, it quickly became obvious that many food products could not be made subject to the freeze, as they were sold at auction (AFR, 15 April 1977).

To this point, a bold attempt had been made by the federal government to impose a hastily drawn up policy. Other governments and state apparatuses went along for political

reasons, though many were reluctant to do so. There was considerable opposition among unionists and employers, whose interests would be most directly affected by the proposal. The plan sought to isolate the unions, but the conflicting interests of employers and the state made this objective difficult to accomplish.

The Commission intervenes

The announcement placed the Commission in an awkward position. The President quickly sought to prevent what could become considerable pressure from the Commonwealth to implement a wages freeze. On 14 April he announced that the NWC, due to reconvene on 3 May, would be brought forward to 19 April. Submissions were invited on how the freeze would affect the Commission (AFR, 15 April 1977, 1). Calling an early hearing would force the federal government "...to show its wages hand before it had even met the unions" (Hughes, 1980, 144). The Prime Minister proposed that the governments should make a joint submission that the NWC be deferred. This was rejected by the Labor Premiers, on the ground that as no voluntary agreement had been reached, this would freeze wages without any guidelines for prices.[29] Fraser retreated, and called for a postponement of the 19 April hearing to allow time for a voluntary agreement to be reached (Age, 19 April 1977, 4).

The hearing went ahead as scheduled. Commonwealth counsel T. Morling asked the Commission to defer any action until there was an agreement between the parties. He suggested that it would be "consistent" with this proposal "...for further consideration of part heard cases and new applications to be deferred while the necessary agreement is being sought" (Transcript, 19 April 1977, 563). When questioned, it transpired that the Commonwealth was seeking deferment of most decisions[30] that would add to labour costs. In effect, the Commission was being asked to implement the government's proposal as if it were its own initiative. The Commission's acquiescence was evidently of great importance to the Commonwealth. The quasi-judicial status of the Commission would increase the legitimacy of the plan, especially if the Commission could be manoeuvered into imposing a pre-emptive wage freeze. This was not lost on the full bench, who were not prepared to plunge into the scheme.

The Labor states argued that the next NWC should not be deferred (Transcript, 19 April 1977, 568-586). The employers, represented by Barry Maddern, submitted that price rises had been halted through voluntary action and the temporary suspension of PJT proceedings. He suggested that the Commission should defer any decisions on wage claims for two weeks while a voluntary agreement was worked out, and proposed that the NWC be delayed. He implied that the impending inquiry into the wage indexation principles should

take place before the next NWC decision (Transcript, 19 April 1977, 592-596).

ACTU President Bob Hawke appeared for the unions. He attacked the original freeze proposal and hinted that the ALP Premiers had only agreed to it under pressure from the Prime Minister (Transcript, 19 April 1977, 597). He argued that only wage incomes were likely to be controlled and that a substantial portion of the items which comprised the CPI would be able to rise (Transcript, 19 April 1977, 601-602). After castigating the government for its inflationary measures and emasculation of the PJT, he put forward a counter-proposal: if the Commonwealth was prepared to cut direct taxes to the extent that would compensate for the March quarter CPI increase, the unions would consider withdrawing their application for that quarter (Transcript, 19 April 1977, 611). He said that a conference should be held for this purpose.

In a compromise judgment later that day the Commission decided to continue hearing cases and to award flow-on increases from the last NWC, but to defer, where possible, money increases until after 3 May. The NWC would resume on that day. The Commission supported the ACTU's proposal for a broadly based conference, but did not specifically mention Hawke's wage-tax deal (Transcript, 19 April 1977, 634). By requiring the parties to reach agreement before it would impose a freeze, the Commission avoided either taking

responsibility for an unworkable policy or defying the Commonwealth and being accused of undermining the freeze.

The parties fail to agree

Hawke's proposal would be put at a conference planned by the Commonwealth for the next day. This turned the tables on the Prime Minister, who had been denouncing the unions for not agreeing to the freeze. Hawke's plan was similar to one he had proposed several months previously. As there had been considerable support then, including from employers, the unions now had a popular plan which was likely to make the Commonwealth appear intransigent in turn. After meeting with senior union officials on 20 April, the Prime Minister declined to attend a broader conference. He complained that the unions would not even agree in principle to a wage-price freeze.[31]

An impasse had been reached. The unions would not accept a freeze unless a national conference determined what the scheme would look like, while the Prime Minister refused to attend a conference unless the unions made a prior commitment to participate in a freeze. Union acceptance of the Prime Minister's proposal would have required them to back out of the freeze if an acceptable plan could not be worked out, whereas the government sought to avoid attending a conference where proposals for popular tax cuts would be made.

Meanwhile, employers were becoming restive. A week had gone by, but no guidelines had been prepared by the government. Leyland Motors Corporation of Australia Ltd announced that it would raise its prices in defiance of the freeze, but retreated after the Commonwealth threatened to initiate a PJT inquiry (Age, 22 April 1977, 1). Other employers expressed similar sentiments (AFR, 22 April 1977). The states were also concerned over the lack of progress. Premier Hamer of Victoria called for a national conference and cuts in indirect taxes, but was criticized by federal ministers (Age, 22 April 1977, 1).

The March quarter NWC hearings

On 2 May, the day before the national wage hearing, both the ACTU and ACSPA resolved that there should be no delay in the NWC and to seek the full 2.3% rise in the CPI for the March quarter (AFR, 3 May 1977, 7).

The Commission was requested to introduce a wage freeze by the private employers and the Commonwealth, supported by Queensland and Western Australia. Employers' counsel Barry Maddern submitted that consideration of the March quarter CPI should not take place before 30 July 1977 (Transcript, 3 May 1977, 16). The Commission expressed concern over the possible effects of a non-voluntary wage

pause[32] and queried whether a price freeze was in place, as the employers and Commonwealth were insisting.

ACTU advocate R. Jolly argued that approximately 40% of the CPI was not subject to the freeze and alleged that many employers had denied that a freeze existed (Transcript, 3 May 1977, 22). Commonwealth counsel T. Morling sought to refute this assertion, but admitted "...there is now no prospect of a restraint in prices and incomes being achieved on a voluntary basis..." (Transcript, 3 May 1977, 28). The Commission was clearly being asked to impose a non-voluntary freeze on wages for a period of three months.

The Commission indicated later that day that it was not prepared to do this. Sir John Moore announced that the hearings for the March quarter would not be postponed, though no guarantee of a wage increase was made. Where possible, the Commission would defer increases to awards until after a decision had been given in the NWC (Transcript, 3 May 1977, 68).

Following the hearing the Executive Director of the Australian Council of Employers' Federations, George Polites, announced that companies should lodge applications for price increases with the PJT. Decisions could be deferred until the result of the NWC was announced (AFR, 4 May 1977, 10). The employers warned that if the Commission "broke" the wage

freeze, prices would begin to rise. The Commonwealth also implied that the Commission would be blamed if the freeze did not succeed, but ultimate fault was said to lie with the unions (Hansard, H of R, 5 May 1977, 1634).

The freeze ends

Any pretense of a freeze ended when South Australian Premier Dunstan announced its abandonment in his state on 19 May. He declared "...the fact is the pause is a political illusion. The pause was conceived in confusion, delivered in confusion, and its short life has been confused" (AFR 20 May 1977, 4). To this was added the Commission's decision in the NWC on 24 May to increase wages and cease deferring decisions in other matters. The majority of Sir John Moore, Deputy President Isaac and Commissioner Neil were persuaded that while many prices had been frozen,

> ...from all that has been put to us on the price freeze, we have concluded that the concept and its future ramifications have not been adequately defined, that many prices are not frozen and others may not remain frozen whatever we decide, that the surveillance of their continued application is limited and that the overall contribution of a three-month wage-price pause under these conditions is indeterminate. In other words, we are being asked to impose a compulsory wage pause against several uncertainies of a voluntary price pause.
> (188 CAR 595)

In a dissenting judgment Public Service Arbitrator Taylor argued that despite the many difficulties inherent in the wage-price pause, sufficient action had been taken on prices

to justify restraining wages (188 CAR 600).

The Commission ruled against a full flow-on of the 2.3% CPI increase. The economy was seen to be weak, the inflation rate was still considered to be too high, and the Commission ruled that the effects of the devaluation should not be passed on into higher wages (188 CAR 596). Using the Commonwealth Statistician's estimate that the price of imported goods had added 0.39% to the CPI for the quarter, 1.9% was awarded to all rates up to $200 a week (approximately the level of Average Weekly Earnings) and a flat $3.80 above that. The minimum wage was also increased by 1.9%.

The Commission announced that a conference would be held the following day to determine a date on which an inquiry into wage indexation would begin. It was this, as much as anything, that seemed to influence the Commission's decision to award an increase. The majority declared "In view of our decision to conduct a review of wage fixing principles, we do not believe that we should have the distraction of an uncertain wage-price pause hanging over those proceedings" (188 CAR 595).

Throughout the hearings, those opposing an increase had been asked whether their proposal would be consistent with the Commission's statutory obligation to prevent and settle industrial disputes. ACTU advocate R. Jolly said that while

the unions supported wage indexation, they expected full compensation for inflation unless exceptional circumstances existed. He submitted that a further reduction in real wages could result in the breakdown of the indexation system (Transcript, 4 May 1977, 74). The Commission seemed willing to continue with partial indexation, but no increase at all could have led to serious industrial unrest and the possible withdrawal of the unions from wage indexation. As wage restraint had effectively been imposed by the indexation system (real wages had been reduced) it seems unlikely that the Commission would jeopardize a functioning package under its own control in favour of an as yet non-existant scheme, subject to the manoeuverings of politicians and other public figures, in which the Commission might seem to be carrying out the Commonwealth's policy of cutting real wages.[33]

Had the Commission agreed to participate in the freeze, and had the freeze subsequently failed, it is possible that the influence it had re-established after the introduction of wage indexation would have been undermined. The Commission was able to let the freeze fall apart without appearing to contribute to the process.

Following the Commission's decision, the Prime Minister declared that the freeze had ended. He stated that "prices had held overwhelmingly" during the pause, and called for continued restraint from employers and the unions. He

expressed his disappointment with the failure of the Labor Premiers to support the Commonwealth's position, making particular mention of Premier Dunstan's decision to withdraw South Australia from the freeze (Hansard, H of R, 24 May 1977, 1689). Bob Hawke, on the other hand, said that the Commission's decision only demonstrated that the freeze had not been viable from the outset (Age, 25 May 1977, 1).

This complex episode shows the contradictions that arise within the state, and the inability of all branches of the state to follow a consistent policy when class interests are sharply opposed. The Commission's purposive wage strategy was imposed with at least the tacit consent of the parties. Its success was the result of cautious action. The wage freeze, on the other hand, was essentially a gesture to the federal Liberal Party's anti-union constituency. As the price freeze component was never a serious possibility, the plan was little more than an attempt to dominate the unions. As real wages were falling due to the partial indexation decisions in any case, the wage freeze had little economic basis to recommend it, but was attractive to a Prime Minister contemplating an early election.

The Commission's constituency is rather different. Unlike political party leaders, arbitrators must strive to maintain the appearance of neutrality. Except in extraordinary circumstances, the Commission must avoid

seriously antagonizing either capital or labour. In addition, the Commission seeks to maintain a high degree of independence from the federal government without attracting excessive pressure to "conform". It was this dilemma which led the Commission to resist the Commonwealth's attempts to force a decision imposing a freeze. As it was clear that a freeze would not work[34], the Commission was able to avert the threat to its own policy by obliging the parties to present a "voluntary agreement" for ratification. Of course, this never eventuated.

The "wage-price freeze" demonstrates the necessity to view the state as fragmented apparatuses rather than a monolithic, unified structure. The state apparatuses and governments respond to diverse pressures and produce varying, often contradictory policies. In early 1977, agreement with the freeze proposal by the Commission would have undermined its own "fragile package" and its renewed dominance in wage fixation.

The June and September Quarters 1977 National Wage Cases

The final cases to be considered in this chapter show the difficulty into which the indexation package was headed. Having chastised the Commonwealth in previous decisions, the Commission now warned the unions against taking industrial

action to recover losses to real wages. In the June quarter NWC the unions applied for a full 2.4% flow-on of the CPI increase, supported by South Australia and Tasmania. NSW suggested that this be awarded to a plateau of Average Weekly Earnings, then a flat amount. The non-Labor states argued for little or no increase, and the Commonwealth and the private employers submitted that the unions' claims should be rejected entirely (IAS-CR, August 1977).

The employers said that high wages had led to labour "shedding" in an effort to reduce costs. The unions, however, blamed the poor employment situation on Commonwealth policy and structural imbalances in the the economy. The unions argued that despite an improvement in profitability since late 197535, unemployment had worsened, which they said refuted the main argument of the Commonwealth and the employers. The Commission seemed impressed by this point, as they stated "...we are unable to conclude that it is lack of profitability which is preventing a recovery from taking place".

The Commission noted the continuing effects of devaluation and took this into account in their decision, given on 22 August. The Commonwealth Statistician's estimate of 0.4% was used to discount the CPI. The Commission stated that although there had been compliance with the guidelines, certain unions had expressed their opposition to indexation, and were seeking to destroy it. The increase was given as a

uniform 2%, which would avoid any further compression of relativities.

The Commission pointed out that real wages had declined over the past year. The CPI had increased by 13.4%, but average weekly male earnings had gone up by only 10.8%. Minimum wage levels had increased at a slightly higher rate. The Commission said that it was unclear whether employment would have recovered more quickly if smaller wage increases had been awarded. In any event, the Commission suggested that they had less control over wage movements than was often supposed. However, their actions over the past two years had been designed "...to bring order and restraint to wage fixing as an essential ingredient for economic recovery". The Commission thus denied that it could be blamed for the economic crisis, but strongly implied that recovery was at least in part dependent on their decisions.

In the September quarter NWC, the unions and intervening Labor states requested full flow-on of the 2% CPI increase, while the private employers, the Commonwealth, Victoria and Western Australia called for no increase to be granted.

The ACTU contended that the outlook for economic recovery was "dismal" due to depressed demand. This was attributed to the restrictive fiscal and monetary policies of

the Commonwealth and the reduction in real wages which had occurred. In view of the Commission's finding of substantial compliance with the guidelines in all ten indexation hearings to date, the ACTU submitted that a strong case for full indexation existed on equity grounds (ACTU Executive Report, Sept 1979, 33).

The Commonwealth considered the economy to be emerging from a period of "relatively severe recession", for which high labour costs were blamed. Both the Commonwealth and the employers submitted that substantial compliance had not been met. The Commonwealth accepted that wage increases had remained largely within the guidelines, but implied that this was despite attempts to obtain increases outside the system. The government declared that despite the ACTU's disclaimers, it had to accept responsibility for the actions of its affiliates (Commonwealth Submissions).

The Commonwealth put forward the proposition that a "real wage overhang"[36] existed, which would have to be eliminated in order to promote economic recovery. Using different procedures, the Australian Bulletin of Labour (Sept 1977, 11) suggested that the "overhang" would soon be eliminated without the drastic wage measures recommended by the government.[37] The Commission declined to take a firm position on this subject and reiterated the view that it was unclear whether smaller wage increases would hasten recovery.

They reasoned "...the mere identification of possible symptoms of the continuing economic malaise does not of itself provide the remedy" (Print D5501, 8).

However, the Commission's decision of 12 December 1977 accepted many of the Commonwealth's arguments. A major section of the judgment was devoted to the issue of substantial compliance. The Commission admitted that the concept "lacks definition", but suggested that this might be clarified at the review of wage fixing principles. Previously, three factors had been considered in assessing the extent of compliance; pay increases outside indexation, an assessment of official strike statistics and particular disputes, and the economic effects of major disputes (Print D5501, 3). The Commission stated that it had never taken the first factor to be conclusive, and there was sharp disagreement over the latter two factors. After expressing its anxiety over the issue and remarking on the inadequacies of strike statistics[38], the Commission accepted that substantial compliance had not occurred. The full bench decided to "...take the economic effects of recent industrial disputation into account in the conglomerate of factors which determine our decision in this case" (Print 5501, 4).

Taking into account the Statistician's estimate that price rises for imported goods had contributed 0.23% to the CPI figure of 2%, an increase of 1.5% was awarded to all

wage and salary earners. The Commission's action warned that the level of compliance on the part of the unions was unsatisfactory. The full bench implied that wage restraint was essential and that continued high levels of industrial disputation would not be tolerated, both for their economic effects and their contravention of the guidelines. It would appear that the Commission sought to warn the unions that continued industrial "misconduct" would be punished. The "penalty", while small in this case, could be increased in the future.

Conclusion

The September quarter 1977 decision, taken in conjunction with the actions of the federal government, suggests that the conditions necessary for the existence of a purposive wage policy were beginning to diminish. It must be remembered that wage indexation was introduced at the request of the unions and the Whitlam government. Employers at first expressed opposition to the policy, but this was reduced when it became clear that the Commission would not simply add a "fourth tier" to wage fixation.

The Commission sought to develop wage indexation cautiously. The passivity of the parties was accurately perceived as very tenuous by successive national wage benches.

There was never consensus between the parties, only a willingness to accept the Commission's decisions in the short run. The unions, in disarray after 1974 and 1975 and facing mounting unemployment, were unable to organize sustained wage campaigns. As real award wages began to fall, the Commission's policy was unobjectionable to capital.

The major early threat to wage indexation came from within the state itself, most directly from the federal government. The inability of the ALP government to provide the "supporting mechanisms" necessary for wage indexation to succeed was indicative of the contradictory pressures generated by an economic recession and reformist political policies. The wage increases obtained through full indexation were eroded by direct taxes, but Labor was unable to reduce these substantially without accepting budget deficits widely viewed as dangerously inflationary and likely to drive up interest rates. The Fraser government was opposed to the basis of Principle 1 of the guidelines and actively opposed full indexation. Committed to redistributive policies, the Commonwealth sought to reduce demand while attacking the unions politically through legislation and mounting a strong ideological assault, blaming nearly all the country's economic problems on the unions.

The Commonwealth's policies generated contradictions within the state. Fraser's redistributive program augmented

the cautious reductions in real wages being pursued by the Commission. Significantly, the government's policies were also inflationary. It was this, as much as anything else, that produced divisions within the state, as inflation would increase the level of industrial unrest, other things being equal. A regressive wage policy in combination with a regressive, inflationary tax policy, would require an extraordinarily quiescent working class. While many unions were not in a strong position, some were far from dormant, and the reductions in real wages began to come under attack from militant workers. The Commission perceived the danger to indexation from this quarter and abandoned the redistributivist rhetoric of the early partial indexation decisions and denounced the government's inflationary measures. At the same time, the Commission sought to punish strike activity in response to the reductions in real wages by reducing real wages still further. This was a risk, as it assumed the unions would back down. However, the strength and militancy of the unions varied greatly, and not all were willing to accept cuts in living standards.

Footnotes

1. Deputy President Isaac had been Professor of Economics at Monash University prior to his appointment to the Commission. He was an active and authoritative participant in the debates on incomes policy in the early 1970s and had expressed views in favour of some form of wage indexation (Hughes, 1980, 108).

2. See the statement by R.E. McGarvie, QC, on behalf of the federal government on 5 March 1975 (Submissions by the Australian Government on Wage Indexation, National Wage and Wage Indexation Cases, 1974/75, 162-167). The government's submissions will be cited as Commonwealth Submissions in the text.

3. "Other special circumstances" referred to "rare and isolated circumstances" (Commonwealth Submissions, 98).

4. The Prime Minister stated on 12 November 1974, "Employees can price themselves out of the market as effectively as business can. There are signs that this is happening. As the Treasurer said recently, in current circumstances: "One man's larger paypacket may mean another man's job". Employers are economising on labor, scaling down their operations and their investment and hence the employment opportunities they provide" (Commonwealth Submissions, 42).

5. The Victorian Employers' Federation issued a series of special wage case reports for the duration of this hearing. These will be cited as VEF-WCR, followed by the number of the report. They should be distinguished from the regular VEF newsletter.

6. As evidence, Maddern cited the intention of the AMWU to seek large increases even if indexation was granted (VEF-WCR, 26). Maddern referred to a 20% increase if indexation was granted and 40% if it was not. This had been proposed by a metal unions' shop stewards' meeting held in Victoria on 26 November 1974. See AMWU Monthly Journal (January 1975, 12). The 40% claim does not appear to have been pursued, as no further reference is made to it in either the AMWU or MTIA journals.

7. See Appendix 1 for the full guidelines.

8. Defined as "...changes in the nature of the work, skill, and responsiblity required, or the conditions under which

the work is performed" (167 CAR 37).

9. He also fulfilled the government's promise to oppose claims outside the principles in industry cases. On 25 September the government intervened against the unions in an oil industry dispute, arguing that these workers "...were 'already industrially advantaged'" and that the claim "acts against the best interests of the work force" (Yerbury, 1980A, 483).

10. See Hughes (1980) and Oakes (1976) for accounts of the 1975 Budget.

11. Treasurer Bill Hayden announced, "Wage and salary earners' purchasing power is already being maintained through wage indexation and the indexation guidelines provide for increases to be sought on other specified grounds, including increases in productivity. To call as well for tax indexation, and at the same time expect the Government to provide better education, free medical services and so on - which it can only do by increasing its claims upon our national resources - is to ask for the impossible" (Budget Speech, 1975-76, 5).

12. The ALP had suffered a major erosion of support at the recent Bass by-election.

13. The members of the benches for both cases were the same as the previous two NWC benches.

14. The procedure was for each matter to be brought before the Conference by one of the peak union councils, if the council considered the case had merit. The Conference consisted of the peak union councils, the NEPC, the Commonwealth and Public Service Board, and the states. They were chaired by the President, Moore J. Not all parties were present at each hearing. The proceedings took the form of conciliation, with informal discussions between the parties and the President. If it was agreed that an anomaly existed, the President varied the award. If no consensus emerged, the President would determine whether the matter should be referred to a full bench. If the President decided no arguable case existed, the matter was dropped. By 13 August 1976 the President reported that 84 matters had come before the Conference, of which fifteen were dismissed (Twentieth Report of the President, 7-8).

15. New South Wales, Victoria, Queensland and Western Australia.

16. The ACTU was further angered when the government announced the appointment of two union officials (J. Egerton and J. Thompson) to an economic consultation

committee without first consulting the unions (Age, 12 Feb 1976, 17).

17. This is not to argue that there was a coherent economic strategy that can be pointed to. The L-NCP coalition contained antagonistic elements and their economic initiatives at times were contradictory and inconsistent. (For examples see Hughes (1980), especially chapter 11). Nevertheless, a general orientation can be discerned.

18. The Commonwealth had argued that the Commission's decisions should not contradict government economic policy.

19. Continued support for full indexation had recently been expressed by a special federal unions' conference. ACTU President Bob Hawke indicated that if plateau indexation continued, unions should seek to protect real wages through collective bargaining outside indexation (AFR, 29 July 1976, 1).

20. The assumption underlying the government's confidence that partial indexation would be accepted was that the high level of unemployment had weakened the unions' ability to oppose it. One correspondent wrote at the time, "...the tone of the Government submission on the high level of unemployment and the poor prospects of any immediate recovery in the labour market would suggest that the implicit reason the unions would accept a cut in the real wage was because they would not be in a position to oppose it because of the high unemployment. Indeed the Government's fiscal policies would suggest that it did not seek the speedy improvement of the labour market but rather aimed at reducing inflation first" (AFR, 30 July 1976, 1).

21. Although the total number of strikes and working days lost was lower for 1976 than 1975 (Plowman et al., 1981, 60).

22. Much of the disputation at the time ws over payment of the recently announced Medibank levy. Sir John Moore told the unions during the hearings to halt all industrial action over this issue, stating that it would be dealt with in due course by a full bench.

23. The inflationary initiatives of the staunchly anti-inflation Fraser government "...had the Government effectively arguing that if it were not for its own policies inflation would have fallen..." (Australian Bulletin of Labour, April 1977, 9).

24. This figure was the maximum compulsory contribution payable by a singe person for basic care. The Commonwealth claimed that 73.3% of the workforce would

need to pay no more than this amount (186 CAR 564).

25. The full bench said, "We do not intend these observations as a criticism of government economic measures. Governments must design their economic policies in accordance with their understanding of what is best for the economy. But we believe we should record that as a result of these measures we are placed in a difficult position to meet the economic requirements suggested by the Commonwealth as well as our industrial obligations under the Act" (186 CAR 563).

26. The account of the freeze is drawn mainly from reports in the Australian Financial Review during this period. An insight into the original proposal is given by Hughes (1980, 141-145), who was apparently present at the Premiers' Conference as an adviser to the South Australian government. A detailed, if somewhat flippant account of the political manoeuvering is provided in the National Times (25 April 1977, 4-5).

27. The states, without the Constitutional prohibitions placed on the federal government in the area of wage and price control, could have taken the lead by passing appropriate legislation. This did not eventuate. Two days after the freeze was announced, one commentator wrote "Only if price control legislation is reactivated can the State or Commonwealth act against freeze thaws. But no one wants to. Powers are immediately available, or could be legislated for. And as much as Canberra wants to see the States use their powers, none will" (AFR, 15 April 1977, 3). The prediction proved to be correct. The situation was similar for wages. The Commonwealth threatened to take action under its corporation powers, but did not do so.

28. One of the three ALP signatories to the agreement.

29. NSW Premier Wran was particularly firm in this regard. He warned that an attempt to force the unions into accepting a wage freeze while taking no action on prices would jeopardize the longer term benefits of wage indexation. He stated "The NSW Government could not support any proposal which under the cloak of a price and wage pause in fact aimed at destroying the principle of wage indexation. To attempt to use the Arbitration Commission to achieve by compulsion what was supposed to be voluntary would be a repudiation of last week's agreement" (AFR, 19 April 1977, 12). South Australian Premier Don Dunstan was also busily backtracking at the time, though he had not supported the freeze as firmly as Wran to begin with. Both Premiers continued to support the idea of a freeze as a worthwhile device to fight inflation, but were clearly not interested in antagonizing

their union supporters by accepting the Prime Minister's proposals.

30. An exception was flow-on decisions from the December quarter NWC.

31. Union opposition to the freeze is not difficult to understand. The level of real wages had been lagging behind price increases since the first partial indexation hearing. The latest NWC decision had awarded $5.70 for the December 1976 quarter, but no substantial increases had been granted for 1977 price rises. Acceptance of a freeze would mean that wages had remained static for six months. In addition, of course, the unions were sceptical that all prices and non-wage incomes would be frozen as well.

32. The Commission feared considerable industrial unrest would result if it imposed a non-voluntary freeze and stressed the voluntary nature of the original proposal. See the exchange between Deputy President Isaac and employers' counsel Maddern (Transcript, 3 May 1977, 18-20).

33. Clearly the Commission was cutting real award wages, but was strenuously attempting to distance itself from the Commonwealth while doing so.

34. Both the unions and ALP Premiers were in a far better position to resist a wage freeze than at the end of 1982 when a freeze was successfully established.

35. The most readily available measure (company share of GDP) shows that profits had in fact begun to fall again. See the table of wage and profit shares in Appendix 3. However, these figures show fluctuations over time due to the method of compilation of the national accounts. Contemporary figures showed a higher rate of profitability than later, more accurate data.

36. This controversial concept has been described in the following manner: "Let us suppose that we can identify a period of time in which real wages bear a relation to productivity which is associated with a satisfactory level of profitability in the sense that investment and employment growth are moving along at a clip which is consistent with low unemployment and only mild price inflation. Then an increase in real wages compared with productivity will create pressures for unemployment to rise and/or prices to rise at a faster rate than before, as businesses try to restore their profit margins and profitability. An excess of real wages over productivity (compared with the relationship of these two things in "normal" periods) is what is meant by the real wage overhang" (Australian Bulletin of Labour, Sept 1977, 9).

37. Calculating the "overhang" as 8%, Treasury declared "The remaining real wage/productivity distortion, relative to both actual and trend productivity, is clearly large" (Budget Statement No 2, 1977-78, 21). The Australian Bulletin of Labour calculated the figure to be 5%, which it claimed would disappear, given existing indexation and productivity trends, during the year.

38. The Commission considered these shortcomings to include the absence of the following factors: stand down of employees due to disputes; stoppages of less than ten man-days; bans or limitations; and the economic effects of industrial "misconduct" (Print 5501, 4).

Chapter 7: The "Fragile Package" Breaks: 1978-1981

The wage indexation package introduced by the Commission worked — albeit briefly. Real earnings and award wages barely kept pace with inflation in 1976 and 1977. The Commission granted few significant wage increases outside national wage cases during this time. Despite a number of highly visible stoppages, the unions seemed unwilling to mount a serious challenge to wage indexation. However, while the share of national product shifted away from labour, the investment-led recovery promised by the Fraser government failed to materialize. Although labour's share of the national product declined, there was not a commensurate increase in company profits, as income shifted towards sectors such as unincorporated businesses. Unemployment remained high and the capital inflows associated with the "resources boom" were not directed towards labour intensive industries.

It is difficult to generalize about the period 1978-1981. There were high levels of unemployment, but also labour shortages, particularly for skilled workers. Employers

in advantageous competitive positions were prepared to pay higher wages or concede shorter hours, while other employers insisted on a hard line against union demands and threatened to impose layoffs due to poor market conditions. The ACTU voiced strong support for wage indexation, but was equally determined that its affiliates could pursue negotiated settlements with employers. The Fraser government, with a large majority in the House of Representatives, continued its strident opposition to wage increases and its assault on the level of real wages and the living standards of many employees.

The conditions for the maintenance of a purposive wage policy began to disintegrate. Warnings to the unions did not deter their campaigns for higher wages or improved conditions. Divisions within capital developed, with a number of major employers prepared to bypass the Commission. The necessity for the "clients" of the Commission to have no alternative avenues to pursue their interests was no longer met. The federal government pursued contradictory policies, taking both stimulatory and contractionary economic measures. The Commission sought to maintain its indexation policy in a turbulent environment, and did so only by circumventing its own guidelines. The Commission's contradictory practices soon appeared as divisions between its members. The inconsistencies were attacked by the employers and conservative governments, and the Commission responded by

tightening the guidelines, reducing its flexibility.

The Commission warned that its wage policies could not operate without continued support and obedience. By late 1978 the indexation package had clearly started to unravel. In early 1981 the Commission announced that the existing guidelines were unworkable. After several months of manoeuvering, the indexation system was abandoned.

December 1977 and March 1978 National Wage Cases and the Metal Industry

In the hearings for the December 1977 quarter NWC, the unions called for a full 2.3% increase and the indexation of overaward payments. They were opposed by the private employers and non-Labor governments.

The ACTU submitted that there were no signs of economic recovery, due to restrictive government policies, poor international conditions and high unemployment. Higher wages to compensate for price increases were said to be necessary to improve the level of demand (ACTU Executive Report, Sept 1979, 34). The Commonwealth and employers were more optimistic, but insisted that recovery would only result from "...a significant reduction in real labour cost involving an adjustment in factor shares from wages to profits"

(Commonwealth Submissions, 35). The Commonwealth suggested that recent tax cuts would boost disposable income and provided additional reason not to increase wages (Commonwealth Submissions, 18), but the ACTU pointed out that this represented less than 50% tax indexation. Those opposing an increase urged the Commission to discount the CPI for changes in government policy, notably devaluation and higher prices for petroleum products. The Commonwealth warned against frustrating its measures designed to conserve energy resources (Commonwealth Submissions, 9).

In its decision of 28 February 1978 the full bench awarded another partial increase. Discounting for devaluation, petroleum pricing and taking account of the tax cuts (which favoured higher income earners), the Commission granted 1.5% to a plateau of $170 per week and a flat $2.60 above that figure. The arbitrators said that they had been influenced by the ongoing recession, savings in taxation, and the government's petroleum conservation policies (Print D6070, 7). The Commission pointed out that average weekly earnings had increased by only 9.3% in 1977, less than the CPI rise of 9.7%. Inflation was decreasing, and to refuse a wage increase could jeopardize economic recovery (Print D6070, 4). The Commission refused to index overaward payments, but observed that this issue was causing industrial unrest, particularly in the metal industry.

The metal industry

The metal unions had been subdued during the early years of wage indexation, but they submitted a log of claims and by early 1978 were pressing for these to be granted. An additional development in the metal industry was an application by the Association of Architects, Engineers, Surveyors and Draughtsmen of Australia (AAESDA) for award coverage to be extended to foremen and supervisory personnel.

The latter case gives some support to proponents of the proletarianization thesis. The application was opposed by the employers on the grounds that an award would create problems in a previously unregulated area, that supervisors would experience divided loyalties, and that a gulf would be opened between lower and higher levels of management[1] (1978 AILR 6(10)). The employers contended that these employees were exercising managerial functions and that granting the union's claims would undermine the "management ethic" necessary for their work.

Commissioner Clarkson upheld the union's claim. He ruled that it was desirable for supervisors to belong to a different organization than those they supervised (MTIA News Bulletin, 27 Oct 1977, 2). This recognized that the class location of lower managers had been changing. Accepting that they needed award coverage implied that their interests

diverged from those of more senior management. Requiring membership in a different union to those they supervised pointed to the conflicts created by the exercise of control in the production process. The decision sought to bring conflicts between lower and upper management under the control of the Commission, while maintaining their separation from other industrial conflicts.

The claims lodged by non-supervisory employees included a $25 wage increase for tradesmen, a 35 hour week and the inclusion of overaward payments in the wage rates used for indexation purposes.[2] Some claims were settled in conference, but the unions complained "It is clear that problems arise from guidelines of National Wage decisions which inhibit normal negotiations" (AMWSU Monthly Journal, Dec 1977, 12).

The MTIA proposed a plan which would incorporate some overaward payments into the award as a "supplementary payment". The VCM opposed this, claiming that it was contrary to the guidelines, but a full bench ruled against this interpretation (AMWSU Monthly Journal, Mar 1978, 17). Little further progress was made, and the unions held a 24 hour stoppage on 19 May 1978.

The dispute went to a full bench of Sir John Moore, Williams J. and Commissioner Heagney, who refused to grant a pay increase on 1 September 1978 (Print D8263). They stated

that the case for the rises was insufficient and would be outside the guidelines. The proposal to include some overaward payments as a supplementary amount in the award was accepted.

The decision was another compromise by the Commission, which sought to provide some benefit to the metal unions without adding significantly to the costs of the manufacturing sector. However, by the end of the year the unions were again pursuing wage claims and seeking to negotiate with employers on the level of overaward payments (AMWSU Monthly Journal, Dec 1978, 10).

March quarter NWC

The metal industry wage campaign and the attitude of the trade unions generally were discussed during the March quarter 1978 NWC. An ACTU Executive resolution in March 1978 condemned the previous NWC decision and called for affiliated unions

> ...to organize on-the-job campaigns designed to demand restoration of amounts lost through partial wage indexation and the achievement of full wage indexation in future national wage cases.

The Commission considered this "...to raise doubts about the ACTU support for a centralized orderly system of wage determination" (Print D7262, 4). ACTU advocate R. Jolly affirmed his organization's support for wage indexation, and

the Commission did not pursue the matter.

Despite the continuing economic difficulties, the Commission was encouraged by the declining rate of inflation, which in the year to March 1978 was 8.2%. A full 1.3% rise for the March quarter was granted. The Commission stated that with the conference on wage fixing principles still in progress, this decision, like the previous one, was a "holding decision". The Commission decided that the new principles would come into effect for the next case, even if this meant a delay.

The Commission appeared to be seeking to avoid antagonizing any of the parties during this period, placing great importance on the conference taking place at the time. This is evidenced by their failure to take action against the unions despite a sharp rise in working days lost over wage disputes (see Plowman, 1981, 152). The decisions are therefore inconsistent with the Commission's approach in the immediately preceding cases, unless one assumes that the Commission viewed the preservation of their overall strategy to be of greater importance than short-term punitive measures against the unions.

1977/78 Wage Fixing Principles Case

There was general agreement that wage indexation was good in principle and should be continued, but there was no consensus concerning the system's fundamental assumptions or procedures. The Commission made constant attempts to promote agreement between the parties. Conferences were either in progress or in the offing throughout much of this period. It could be suggested that participation in debate over indexation's future was seen to engender some commitment by the parties to participate in whatever arrangements were decided upon.

Conferences commenced on 25 May 1977 and continued intermittently for eleven months. They were chaired by the President and attended by representatives of peak union councils, employers' organizations and governments. Formal hearings began on 20 June 1978 before a full bench of Sir John Moore, Williams, Robinson and Ludeke JJ., Deputy President Isaac, Acting Public Service Arbitrator Watson and Commissioner Griffin. Their decision was announced on 14 September 1978.[3]

The private employers and the Commonwealth called for more detailed and restrictive guidelines. The unions sought a relaxation of those guidelines which inhibited wage increases, but seemed mainly concerned with avoiding an erosion of their position under the status quo.

The Commission found a consensus on the desirability of keeping national wage cases at the centre of "a methodical system of wage fixation" and that a set of principles was necessary for the operation of that system. However, "...when that consensus is viewed in the light of the various submissions as to the details of the system, it comes close to not being a consensus at all" (Decision, 4). The opposing parties questioned one another's commitment to indexation.[4] In view of the consensus that some form of centralized system was desirable, the benefits that resulted from its operation and the negative consequences that might result from its abandonment,[5] the Commission decided to persevere with wage indexation.

Fundamental to the indexation system was the concept of "substantial compliance". The Commission viewed it as essential, but conceded that it was difficult to define (Decision, 7). The ACTU submitted that if the concept remained, it should require clear evidence that disputes had been "...caused by trade unions seeking wage increases outside the wage fixation principles" (ACTU Executive Report, Sept 1979, 37). The Commonwealth and private employers put forward criteria for assessing substantial compliance which included: increases in wages or earnings or significant changes in conditions outside the system; dispute statistics and analysis of specific disputes; the "broader economic effects" of industrial action (Commonwealth Submissions, 120; Report

(II), 29), but they accepted that the extent to which substantial compliance had been fulfilled would be a matter of judgment for the Commission. The full bench declined to give a clear definition of substantial compliance, but warned that wage increases would be withheld from particular sections of the workforce "given appropriate circumstances" (Decision, 8).

A clear definition of this fundamental issue would greatly reduce the Commission's flexibility. It would be difficult to keep the parties within the system if the Commission's actions were rigidly dictated by its guidelines. It is important to recall Offe's discussion on the need to maintain flexibility when considering the Commission's disinclination to restrict itself.

A great deal of debate centred on Principle 1 of the guidelines. As it stood, an increase in the CPI gave grounds for claiming a national wage adjustment. The employers and the Commonwealth submitted that this link should be broken. The employers argued that economic considerations should be paramount (Report (II), 3). They stated that the main criterion for wage increases should be capacity to pay, by which they meant "...the capacity of the economy to sustain a wage increase without a requirement to raise prices across the board to permit industry to remain viable". The employers and Commonwealth argued that wage increases should only come about through productivity improvements. Quarterly hearings

were viewed as unsatisfactory, and less frequent reviews were suggested.

The unions opposed the employers' submission, arguing that these proposals were inconsistent with the constitutional and statutory role of the Commission and incompatible with the primary objective of wage indexation (Report (II), 40). The unions said that the Commission should adopt full, automatic quarterly indexation, and failing this, the prima facie case for full indexation should be strengthened (ACTU Executive Report, Sept 1979, 38).

The Commission did not accept the unions' proposals, but explicitly rejected the capacity to pay argument of the employers and Commonwealth, saying that the indexation system could not withstand the likely industrial relations consequences. The full bench stated

> It is our carefully considered judgment that the restrictions on wage adjustments outside national wage inherent in the principles, which are key elements in wage restraint, would not survive in practice under the proposals of the private employers and the Commonwealth. These proposals leave the question of the security of real wages entirely open from one year to the next and in that sense, constitute the abandonment of the wage indexation concept. In our view, they would mark a return to the national wage procedures of the 1960's but under conditions of a much higher rate of inflation and with restraints on sectional wage increases which did not apply in those years. We believe that for the restraints of an orderly system to hold, that part of the system which relates to national wages must be seen as being different from and offering greater real security than that which prevailed before April 1975.
>
> (Decision, 10)

However, the Commission ruled that with a declining rate of inflation, employees would not be adversely affected by holding national cases at six-monthly intervals (Decision, 12).

Most of the other principles were also altered. Principle 4 now specified that adjustments would usually take the form of a percentage. This recognized that the compression of relativities had resulted in industrial unrest (Decision, 22). Principle 6 was changed to encompass improvements in conditions as well as wage increases for changes in productivity.

The unions submitted that the work value provisions (Principle 7(a)) had worked well and that if anything they should be relaxed (Decision, 26; ACTU Executive Report, Sept 1979, 39). The employers, the Commonwealth and Victoria argued that Principle 7(a) was too general, and warned that the provision might allow claims based on grounds of comparative wage justice to succeed. The Commission ruled that comparative wage justice had a minor role to play (Decision, 27). This was a retreat from earlier statements that comparative wage justice claims would not be entertained.

Following a submission by New South Wales a new principle, 7(d), was added to cover "Inequities". These were defined as situations where "...employees performing similar

work are paid dissimilar rates of pay without good reason" (Decision, 31). A series of rules were added under which these cases would be processed through the Anomalies Conference.

Several other significant matters were dealt with in this decision. The full bench announced that paid rates awards would only be granted with the consent of all parties, and then only if little or no wage increase resulted. Given the wide variation in overaward payments which would need to be incorporated into a paid rates award, this would be difficult. In the area of overaward payments, it was recognized that these would steadily lose their value under indexation, so individual members of the Commission were authorized to recommend that overaward payments be indexed (Decision, 35-37).

The Commission reiterated its strong opposition to catch-up claims. The unions had not vigorously pursued this in national hearings, but the ACTU Executive had encouraged affiliates to seek increases in the field. The full bench stated that these claims "...fly in the face of an orderly centralized system of wage fixation" (Decision, 39), and predicted a rash of comparative wage justice claims if they were successful. The parties were warned that "...any action designed to re-open past decisions for alleged deficiencies" would constitute non-compliance with the guidelines.

The Commission strongly defended its record under wage indexation. The Commonwealth's submission that the Commission should work within a "fixed framework" provided by "overall government policy" was flatly rejected.

> If the wage assumption of the Commonwealth's economic policy were unworkable on industrial relations considerations, the Commission would be confronted with two choices. It could either abandon its industrial responsibilities and, by fitting its wage decisions within the "parameters" of this policy, become de facto an arm of the Commonwealth's economic policy or, alternatively, discharge its industrial obligations by prescribing wages outside these parameters. (Decision, 17)

The full bench declared that the Commonwealth's submissions for no wage increases would lead to the breakdown of wage indexation, with serious economic consequences. The Commission alluded to the failure of the government's economic predictions and implied that the government was not the best judge of the policies necessary to achieve its own economic goals.[6] The reduction in inflation and the rate of wage and earnings increases were put forward by the Commission as testimony to the success of wage indexation.

The revised principles would operate until the end of 1979. Keeping the principles in place for over a year rather than on a case to case basis suggests that the Commission believed the expressions of support for the continuation of wage indexation were genuine. The fear that indexation would exacerbate inflation had been proven wrong, although it was

still alleged by some that inflation would be reduced faster if the system was abandoned.

Following the recent warnings that indexation might be abolished, the Commission's apparent confidence may seem misguided. It is significant that the Commission refused to codify its policies on a number of key points, relying instead on "observations" and warnings. The effect of the changes announced in the crucial "safety valve" Principle 7 was to increase the Commission's flexibility, particularly with regard to comparative wage justice claims. Whether this flexibility was added due to confidence or pressure for increases under Principle 7 is unclear. Certainly, this flexibility soon became necessary.

This decision was the first major revision of the guidelines since their introduction. The extent to which the Commission sought agreement or compromise between the parties is indicative of the difficulties in pursuing a purposive strategy where the clients are able to bypass the state. The parties were not internally cohesive, however, and the Commission used this to encourage their compliance. Many unions were reliant on the Commission for wage increases and the ACTU was obliged to act in their interests. Members of the Commission would have been aware of the conflicts within the ACTU and the necessity to keep pressure on the militant unions to forgo industrial action by threatening to withhold

increases to other ACTU affiliates as well. This tactic was often used by the Commission. The employers, too, were not unified, as shown by the willingness of some to negotiate with militant unions over claims while others sought to adhere rigidly to the guidelines.

Despite the uneven level of compliance, the Commission retained significant support for its policies. The divisions within the parties, the apparent success of indexation in reducing wage levels and the continuing recession provided grounds for optimism that the guidelines would prove adequate for at least the coming year.

June/September 1978 National Wage Case

The first NWC under the revised principles began on 31 October 1978 before a full bench of Sir John Moore, Williams J., Acting Public Service Arbitrator Watson and Commissioner Paine. The combined CPI increase for the June and September quarters was 4.0%. The employers called for no increase, while the Commonwealth submitted that little or no increase should be granted.[7]

The submissions on the economy were gloomy. Unemployment was seen as a serious problem, which the major parties blamed on each other. The employers claimed that

substantial compliance had not been fulfilled, but received no support from other submissions.

The Commission disagreed with the employers' assessment of substantial compliance, but implied that industrial disputation was endangering the future of wage indexation.[8] The full bench hinted at "...a groundswell of opposition to the package itself which goes deeper than non-compliance" (Print D8920, 4). However, the Commission did not discount the CPI for this factor.

The full bench saw the declining rate of inflation as one of the few favourable aspects of the economy. Unemployment had reached 6.5% by August 1978 and the employers continued to argue that profitability was low by historical standards. While consumption expenditure had increased, the unions argued that the income tax surcharge imposed by the Commonwealth on 1 November would soon dampen this (Print D8920, 10). In awarding a full 4.0%, the Commission pointed out that the cumulative national wage increase to April 1979 would be below the CPI increase forecast in the federal Budget for 1978/79 (Print D8920, 18), a signal to the Commonwealth government that the Commission's decisions should not be blamed for the country's economic troubles.

A full flow-on in this case is understandable in terms

of the Commission's wish to reduce industrial disputation and encourage the unions' commitment to the revised guidelines. As will be seen below, the Commission's response to the "groundswell of opposition" extended beyond the national wage decision, resulting in a partial retreat from the purposive policy it had been pursuing.

Redundancy and Technological Change

Redundancy can result from a variety of factors. These include restructuring at the level of the firm, sector or economy, deliberate policy to reduce the size of the workforce and technological change. Technological change will be emphasised here, as it has received a great deal of attention recently and has become of increasing concern to the Commission.

The tribunal has tended to avoid involvement with disputes over technological change, which have generally been considered to fall within "managerial prerogative". The monopoly of managerial control over changes to the labour process has increasingly come under attack, and struggles over technological change have resulted in the intervention of the Commission in a number of cases. A major dispute between Telecom Australia and the Australian Telecommunications Employees' Association (ATEA) will be outlined to provide an

example of recent developments in this area.

The impact of technological change is not always clear cut, though it can be substantial. New technology can increase productivity, with consequent effects on employment. There is no inherent relationship between the introduction of new technology in a particular firm and the level of employment and unemployment (Yerbury, 1973, 37), but the overall thrust of technological change is to replace labour (Windschuttle, 1980, 34).

The introduction of new technology can "deskill" the operations involved in production. Not only does this tend to throw "skilled" employees into competition with other workers, but also to remove control over production to small groups of "elite" workers or to management. Opportunities for rising through a career structure can be curtailed, as can the availability of satisfying work.

Yerbury (1973, 36) views technological change as a potential source of industrial conflict. New arrangements will generally have to be developed in the workplace, with conflict likely to arise over a variety of wage, control and social issues. Technological change can also enhance the strategic location of sections of the working class. The possibility of redundancy, however, has led to the strongest and most consistent reaction on the part of the unions. A Deputy

President of the Conciliation and Arbitration Commission, Justice Gaudron, noted that where retrenchments are impending, "...the trade union response has generally and understandably been one of non-constructive total oppostion" (1979, 3).

Many Australian trade unions adopt a technological determinist ideology and cautiously accept the "need" for new technology. They often reject the right of management to introduce new technology in an unrestrained manner, but most unions appear to accept that new technology is necessary for Australian industry to remain competitive, or simply an inevitable development.[9] Union response has mainly been defensive. ACTU policy stresses the need for severance pay, ample notice of impending retrenchments, training and re-training schemes and various other financial compensations (Consolidation of ACTU Policy Decisions 1951-1980, 75-79).

Employers have generally sought to preserve their right to introduce new technology freely. They usually emphasize the benefits to the workforce or the community, while playing down or denying any negative aspects.[10] Employers argue that control over production is their responsibility. Innovations are said to be made at the behest of "the market". There is the further implication that what is good for the employer is good for the employee, and opposition to technological innovation is often considered irrational.

Redundancy protection is available to some employees through negotiated agreements between employers and trade unions. In most cases, the parties do not enter into serious discussions until changes are imminent (Yerbury, 1973, 39). These arrangements are usually more generous than those granted through arbitration. Most agreements provide for relatively lengthy notice, redundancy payments, compensation for accrued leave entitlements and assistance in finding alternative employment. Employers often undertake to avoid retrenchments if possible (Boulton, 1980, 21-22).

Redundancy and the Commission

The Commission has become increasingly involved in redundancy cases, but this has been gradual and seemingly reluctant. Boulton (1980, 30) suggests that "reasonable" solutions are becoming more difficult to obtain by negotiation. It is only in the past few years that the Commission has treated redundancy on other than a case by case basis (ALLR, 30-810).

The Commission's jurisdiction is restricted by the statutory provision requiring disputes to be concerned with "industrial matters", which excludes conflict over "managerial prerogatives", and members of the Commission have sought to avoid these areas. In the view of Wright J. in 1969

> ...the right of an employer to manage and regulate his own business, subject to the protection of his employees from unjust or unreasonable demands [is] fundamental to the jurisprudence of [the] Commission.
> (in Boulton, 1980, 38)

The borderline between "managerial prerogatives" and "industrial matters" is vague, however, and there has been an increasing willingness on the part of both the High Court and the Commission to intervene in areas which were formerly the unquestioned prerogative of management. In 1973 Robinson J. announced

> It must be said that the right of management to 'run its own business' is not as untrammelled or clear cut as it was twenty, or even ten years ago. I do not comment on the undesirability of this evolutionary process, it simply is a fact of current industrial relations.
> (in Boulton, 1980, 39)

In 1970 a full bench of Moore J. and Commissioners Gough and Holmes said

> The exercise of jurisdiction might be thought to be an intrusion into the field of management but the social and industrial implications of present technological change are likely to create industrial problems different in kind from those of the past. It is our view that the Commission should do what it can to alleviate both for employers and employees any problem which may arise...
> (in Boulton, 1980, 39)

The Commission has sought to balance the employer's "prerogative" with what has come to be seen as the employee's "right to work". The Commission has generally restricted this "right to work" to employees who would have been able to pursue a "career" in the occupation or industry. However,

"...tribunals have refrained from prescribing how and under what circumstances an employer should man his machinery or staff his establishment" (ALLR, 30-810). Their decisions have been restricted to compensatory payments and other provisions to alleviate the difficulties resulting from retrenchment (Boulton, 1980).

The Commission's first significant attempt to draw up general redundancy guidelines occurred in the Municipal Officers' Case in 1978 (1978 AILR 262; ALLR 30-878; Boulton, 1980, 49-53). A full bench put forward a draft clause which could be inserted in an award regardless of whether redundancies were imminent. The clause stipulated that persons in employment for at least one year would be given additional notice or payment in lieu thereof, if retrenched for reasons which included technological change.

The decision did not significantly restrict the rights of management. The Commission indicated that unless redundancies were a result of managerial policy, no general redundancy provisions would be imposed (ALLR, 30-885). Furthermore, no restrictions were placed on the employer's right to operate his or her establishment (apart from existing provisions). Nor is the employer required to consult with unions beforehand. This approach was challenged in a dispute involving the ATEA and Telecom Australia in 1978.

The 1978 Telecom dispute

This dispute, over staffing arrangements and the introduction of new technology, came to a head in August 1978. The ATEA imposed bans which seriously disrupted the telecommunications network and large numbers of employees were stood down by Telecom at the insistence of the federal government. A compromise agreement was reached after the involvement of government ministers, senior ACTU officials and members of the Commission. The agreement was not a clear victory for the union, but inroads were made into the employer's "prerogatives".

Telecom Australia had adopted a market oriented, cost conscious, highly centralized approach to its activities. The chief method for improving performance and service increasingly became technological change (Muller, 1980, 105). Telecom planned to introduce new technology which would handle an increased workload and reduce the size of the workforce needed to operate the system. These innovations would facilitate the introduction of advanced computer technology in other enterprises, threatening more widespread redundancies (Trans National Co-operative, 1978, 2-5).

Telecom's industrial relations policy has been characterized as "...a managerial ideology that emphasises the unilateral authority of management in all but a few areas of

management-worker relations" (Muller, 1980, 112). This was accentuated by stringent financial goals and the strong anti-union stance of the Fraser government. The approach adopted by Telecom officials "...amounts to a refusal to acknowledge that the interests of workers and management may diverge substantially". When employees fail to accept official goals, "...management resort to the use of overt power" (Muller, 1980, 114).

This policy was rejected by the ATEA, and conflict arose in the form of union bans to prevent the introduction of new technology that would have jeopardized jobs, reduced the need for the skills of many employees and eliminated most prospects of career advancement. The new technology would convert many existing exchanges to computer control, with the prospect of fully electronic exchanges. This would greatly reduce the need for maintenance work, performed by ATEA's skilled members. Maintenance would be carried out by small numbers of highly skilled technicians operating from centralized Exchange Maintenance Centres (EMCs) (Musumeci, 1979B, 5-6).

The union sought to resolve the matter by negotiation, being aware of the Commission's inclination to uphold "managerial prerogative" (Musumeci, 1979A, 4-5). At the same time, members of the Commission were not anxious to arbitrate in such complex matters and saw a negotiated settlement as

desirable.[11] Selective bans were applied which began to disrupt the telecommunications network and as members refused to perform repairs, they were stood down. The stand downs affected some 4000 unionists, while Telecom suffered heavy financial losses (AFR, 29 August 1978, 1).

The federal government played an important part in the dispute, ordering Telecom to commence deregistration proceedings against the ATEA (AFR, 25 August 1978, 1). Prime Minister Fraser expressed his determination that Telecom would not agree to the union's demands (AFR, 29 August 1978, 1). Despite the government's opposition, a settlement was reached before Gaudron J. on 27 August 1978 which provided some concessions to the union. The compromise provided for a trial of several EMCs and alternative maintenance centres favoured by the union, to be assessed by independent experts. The investigators (one each appointed by the union and Telecom) would consider the social implications of the new technology in addition to technical and financial aspects (AFR, 29 August 1978, 4). This was a significant retreat by the employers. Telecom also accepted that the union had a right to participate in staff restructuring. The union would be provided with detailed information on proposed innovations from an early stage and a set of procedures and criteria for evaluation were set out which represented a major change in Telecom's approach to technological innovation.[12]

The Telecom dispute, in combination with the Municipal Officers' redundancy guidelines suggests that the Commission will take an increasingly active role in managing technological innovation.[13] The agreement reached in the Telecom case specifies that the Commission will be involved in the final outcome of the dispute (Transcript, 27 August 1978, 117-119).

The Commission's approach to technological change and redundancy has provided strong support for the right of management to control the labour process. The Commission has sought to restrict the terrain of conflict to separation rights for workers, selecting out the alternatives of providing employees with a right to work and control over the labour process. By intervening, the Commission limits struggles to issues which pose least challenge to capital. The Telecom dispute was mediated rather than arbitrated by the Commission. The settlement was more favourable to the union than in many similar disputes, which was the result of militant action by strategically placed workers. The agreement only partly fulfilled the union's objectives, which highlights the very weak position of workers in other industries.

The selection process which restricts the range of issues acceptable to the Commission is limited by High Court rulings, an issue that is beyond the scope of this thesis. It is suggested, however, that the pressures placed on the

Commission by increased working class militancy over control issues will create conflict between the Commission and the judiciary over the limits of state intervention.

December 1978/March 1979 National Wage Case

The difficulties of the Commission in operating the wage indexation system continued. In the NWC decision given on 27 June 1979 the full bench[14] warned that the "fragile package" was on the brink of abandonment (1979 IAS-CR 352-353). The Commission asserted that the necessary commitment by the parties in a voluntary, centralized wage fixation system no longer seemed present. The unions and the Commonwealth were seen to be largely responsible for the situation, though the employers and the Commission itself came in for comment as well.

The unions were accused of taking industrial action aimed at "softening up" employers and tribunals in pursuit of wage claims. These campaigns, authorized by the ACTU and other peak councils, had contributed to a sharp increase in days lost due to strike activity in recent months. Significant wage increases had been awarded in a variety of industries, of a form which was contrary to the guidelines.[15] The employers were implicated in these developments, as many seemed unwilling to resist the claims, or were participating in

"contrived arrangements" for improvements in pay or conditions. The Commission warned that the guidelines covering work value and allowances "...are in danger of being transformed by the joint action of unions, employers and tribunals into a fresh source of general award wage increases" (1979 IAS-CR 353). It was noted that average weekly earnings had risen by 9.4% in 1978, while minimum award rates had climbed by only 6.9%. Furthermore, award increases outside NWC decisions were again becoming significant.

The Commonwealth's decisions to curtail the powers of the PJT and increase direct and indirect taxes were said to endanger wage indexation. The government had also introduced import parity pricing for petroleum in one step. Indeed, most of the December quarter CPI increase could be attributed to government policies. The Commonwealth submitted that current levels of inflation and unemployment were likely to continue, yet persisted in arguing for no wage increases. This was despite their abandonment of the "real wage overhang" argument.16

The Commission complained that their decisions were being used by the unions to justify strike activity, and by the employers and the Commonwealth to account for continued inflation and unemployment. The full bench said "It appears that one side wants indexation without restraints while the other wants restraints without indexation". They added

> If the system is at one and the same time the cause of industrial disruption, earnings drift, unemployment, inflation and continuing economic recession, it should be abandoned.
> (1979 IAS-CR 354)

The Commission denied it had any vested interest in the wage indexation system, but said that it would not be abandoned lightly.

The Commission noted that inflation was again rising[17], but denied that this had been caused by NWC decisions. Taking into account earnings drift, the effect of industrial disputes and increases in oil excise levies[18], the full bench decided to discount the CPI by 0.8%, giving an increase of 3.2%.

This judgment contrasts with the optimism of the Wage Fixing Principles decision handed down less than a year earlier. Despite high unemployment, militant unions continued to pursue claims through industrial action. Employers' associations urged the Commission to deny increases to the rest of the workforce as a result of the deals made by some of their affiliates. The value of real wages declined through the taxation policies of the Fraser government. The context necessary for commitment to a purposive policy was clearly eroding. However, the threat to abandon indexation seemed intended as no more than a warning.

A significant aspect of the decision was the implied

criticism of the Commission itself. The guidelines were open to interpretation, and industry level tribunals were taking advantage of this flexibility. Contradictions were emerging within the Commission, which appeared in the form of a covert retreat from its own purposive wage strategy.

The 1978-80 Work Value Round

The increased industrial unrest accompanied substantial industry wage claims. The partial indexation decisions, combined with regressive measures taken by the Commonwealth, resulted in reduced living standards for many unionists. Pressure to restore real wage levels built up and industrial campaigns were endorsed by peak union councils.

There were several "safety valves" in the wage indexation guidelines. Although the Commission stressed the need to restrict wage increases outside indexation, avenues were open under Principles 7 and 8 to circumvent these rulings. The retreat from a purposive strategy took place through flexibility in the application of these principles. Principle 7(a), covering work value, was used to provide a general wage increase of approximately $8.

The work value round started with a number of "genuine" cases, in which lengthy inspections and hearings led

to increases for some, but not all classifications.[19] Industrial unrest among workers who had "missed out" or were waiting for their cases to be heard resulted in rises from cases which many commentators alleged were not "genuine" work value hearings. Some classifications in which no change in work value had occurred were given increases, while those which had changed were "averaged down". This was criticized by NWC full benches - whose members, along with other arbitrators, nevertheless continued to engage in the practice.

The prototypical case in the work value round occurred in early 1978, involving the waterside workers. The WWF sought catch-up for partial wage indexation plus productivity increases, and the claim for $25 was rejected by the employers. Negotiations were broken off and the union initiated industrial action (Maritime Worker, 13 Dec 1977; 28 Mar, 18 April 1978).

Conferences took place before Robinson J. shortly afterwards. Without any explanation, the unions' claim was recast in the form of a work value case (Maritime Worker, 9 May 1978). The parties agreed on a list of work value changes and Robinson J. granted across-the-board wage increases of $4.50 plus additional allowances of approximately $3.80 without conducting inspections. Similar agreements were used as the basis for work value pay rises in a number of other industries (National Times, 8 April 1979, 9).

The averaging approach used in the waterside workers' case was further codified in Commissioner Neil's decision in the oil industry on 6 November 1978 (1978 AILR 517). The key passage in the decision accepted that

> ...all or a substantial number of employees of different classifications in a common category may legitimately receive a common wage increase if past history supports such an approach, and provided it is established that the majority have had a nett increase in their work value, not necessarily simultaneously or of uniform effect. It follows that in appropriate circumstances there can be an averaging down to embrace employees who have not themselves experienced a change in work value but who for historical reasons cannot realistically be separated from the whole without creating anomalies and inequities.

As a substantial number of workers were found to have fulfilled the criteria set out in Principle 7(a), an increase of $4.20 was awarded across the industry.[20]

Although precedents were set in the waterfront and oil industry cases, these industries have traditionally been isolated from the rest of the wage structure. The case which began a general flow-on of the work value increase occurred in the transport industry. The TWU sought a $20 increase for all classifications under the Transport Workers' Award. The case was heard by a full bench of Justice Williams, Deputy President Taylor and Commissioner Gough. The Commissioner conducted detailed inspections.

The unions submitted a long list of work value changes. While not agreeing completely, the employers' organization (the Australian Road Transport Federation (ARTF)) accepted that changes in work value had occurred. The National Employers' Industrial Council intervened to oppose the claims, warning of the likelihood of flow-on.

The Commission found that work value changes had occurred (1979 IAS-CR 339), and drivers were given an increase of $8, while other classifications were awarded $5.50. The full bench declared that this decision was only applicable to the award in question, with applications under other awards to be decided on their merits.

The increase quickly spread to other transport awards and then to other industries. The changes in relativities led to industrial unrest, as unions sought an $8 increase.[21] The employers and the Commission were confronted with the dilemma of whether to grant the increases readily or accept a high level of industrial action.[22] The Commonwealth opposed the increases, but could do little apart from attempting to persuade the Commission to hold the line, or threaten the employers with the toothless PJT.

The Metal Industry Award, while no longer the pacesetter for the blue collar wage structure, was nevertheless crucial for its wide coverage and role as a

benchmark. The metal unions' application for a large increase was referred to the Commission in June 1979, following a decision to hold a 48 hour stoppage in support of the claim (AMWSU Monthly Journal, July 1979, 5).

A work value inquiry was conducted by Williams J.[23] The employers submitted that there had been insufficient changes to justify general increases. The MTIA argued that in many classifications new technology had reduced the level of skill and responsibility. The VCM, MTIA, NEIC and the Commonwealth all stressed the importance of the Commission adhering to its own guidelines. The Commonwealth maintained that

> ...employees have come to expect significant wage increases from [work value] examinations, whether the claims are justifiable or not. Experience in recent times suggests that the increasing incidence and apparent success of such claims has given a number of work value examinations the appearance of a means of by-passing the guidelines as a whole.
> (Print E1277, 25)

Justice Williams reported that changes in work value were not uniform, tending to be more significant in larger establishments and for certain skilled classifications. Overall, he found that changes in work value had occurred, and wages should be adjusted accordingly. He stated

> Notwithstanding the wording of Principle 7(a) in my view the only practical approach which can be taken in this case is an "averaging" one so far as the assessment of change is concerned. To do otherwise would result in a grave disruption to the wage structure of the award and lead to

considerable disputation in the future.
(Print E1277, 40)

In their decision of 5 November 1979 the full bench[24] noted the objection that Justice Williams' recommendation was contrary to Principle 7(a). Nevertheless, it was decided to award a general increase of $9.30 to tradesmen and $7.30 to other classifications.[25] The possibility of flow-on was mentioned briefly, but the Commission stated that claims would be processed in terms of the guidelines.

The work value round spread slowly, affecting over 60% of the workforce by October 1980 (Australian Economic Review, 4th Quarter 1980, 21-22). It began in the more militant sectors of the blue collar workforce and took a year and a half to reach the metal industry. It took longer to work through the white collar sector, where industrial action in support of wage claims tends to be sporadic, and the largest single employer of white collar workers, the Commonwealth, was firmly opposed to the increases.

The work value round was a partial retreat from the Commission's purposive wage policy. Members of the Commission were certainly aware that the work value decisions were contrary to the spirit of the guidelines. Interview evidence indicates that opposition to a strict application of the guidelines was building within the Commission among members who believed that they were creating industrial

disputes rather than resolving them. The conflict within the Commission reflected the difficulty of seeking to reduce real wages when militant trade unions were able to obtain increases directly from employers. The shift to a consensus wage policy meant the contravention of its own guidelines, but paradoxically this allowed the Commission to avoid the abandonment of wage indexation entirely.

The June/September 1979 National Wage Case

Conferences foreshadowed in the June 1979 NWC decision began in early July and continued intermittently through mid-September. The Commission reported that the only agreement reached was that a centralized system of wage fixation should continue. As the conferences were lengthy, the Commission handed down its decision for the June and September quarters in two parts; the first on the amount for the CPI increase, the second on the guidelines.

Decision No. 1 was handed down on 4 January 1980.[26] The Commission was critical of an ACTU Congress resolution which supported collective bargaining as well as centralized wage fixation.[27] The Commission did not accept the ACTU's explanation that collective bargaining was synonymous with conciliation and declared "...the system cannot continue to function simultaneously with unrestricted collective bargaining

and...the basis of any settlement must be within the guidelines" (Print E1681, 3-4). However, the ACTU assured the Commission that there was "almost complete compatibility" between the guidelines and the unions' policy, and the full bench commented that events had "...shown the need to distinguish formal statements of [ACTU] policy from the actual experience". The Commission noted that the level of industrial disputation had abated since mid-1979, and as there had been no significant earnings drift, it was accepted that there had been substantial compliance.

The Commission considered that the economy had improved, though unemployment remained high and the rate of inflation was increasing. The Commonwealth continued to insist that there was an imbalance in the share of the national product going to capital and labour and resurrected the "real wage overhang" argument. The Commission was unconvinced by the Commonwealth's submissions, ruling that statistical problems made a definitive measurement of these concepts impossible.

The Commonwealth argued that the CPI should be discounted for the effect on capacity to pay of the work value round. The Commission noted that the proportion of increase to male award wages from NWC decisions had fallen from 97% in the year to December 1978 to 93% in June 1979 and was likely to fall further. The full bench accepted that

the work value increases were contrary to the assumptions underlying indexation when the system was first established in 1975, but explained that changes to work which had occurred since then had not been forseen. The Commission said that there was a danger that the economy might become "overloaded" by the spread of an $8 increase, but was not prepared to take any remedial action. The only basis for discounting on this occasion was for the effect of the Commonwealth's oil pricing policy. A reduction of 0.5% was made, giving an overall increase of 4.5%.

The same full bench handed down a second decision in this NWC on 28 March 1980. Submissions had been put forward concerning the nature of the system, the basis for discounting and possible alterations to the principles. Approaches ranged from the employers' suggestion that national cases should be held annually with the role of prices significantly played down, to the ACTU's continued insistence that the real value of wages should be maintained.[28]

Central to Decision No. 2 was a change to Principle 7(a). The employers had submitted that the current approach to work value "...threatens the effective operation of any system based on national wage cases" (Print E2370, 18) and proposed a strict set of guidelines for its future application. They were particularly opposed to averaging, as was the Commonwealth.

The Commission accepted that the application of Principle 7(a) had been inconsistent with the intent of the guidelines.[29] They placed strict limits on averaging or across-the-board increases in work value cases. It was not considered possible to refuse this in awards which had not yet been reviewed under Principle 7(a), but in the future such claims would be referred to the Anomalies Conference. No work value claim would be entertained if it appeared that it was being used as a vehicle for a general wage increase. The guidelines were also amended (Principle 7(a)(iii)) to specify that comparative wage justice was to play only a minor role in work value increases.

The Commission stated that the parties had responded well to the warning that wage indexation might be abandoned. The full bench insisted that the success of the system was ultimately up to the parties.

Decision No. 2 is of great interest in view of the theoretical approach being taken in this thesis. The Commission's admission that the use of Principle 7(a) had contravened the intent of the guidelines indicates that given the presence of powerful clients with conflicting interests, there are limits to the degree to which state apparatuses can be inconsistent or opportunist. The Commission's inconsistent policies had been attacked not only by the employers, but also

by the federal government. The Commonwealth had gone so far as to introduce legislation designed to reduce the internal autonomy of the Commission. While this was circumvented, it is likely that the Commonwealth's efforts to influence the tribunal's procedures were taken seriously. Having put forward guidelines, the Commission was compelled to specify their meaning and agree to abide by them more rigorously than it had been doing. This limitation would not only restrict the Commission's flexibility in a turbulent environment, but also increase the divisions within the Commission, as will be seen in the next section.

The Commission also recognized the limitations on the policy strategies of any state apparatus. For a purposive strategy to work, the clients must either agree to accept the domination of the state apparatuses or be unable to challenge it. By 1980 these conditions were only partly met.

The Case of Mr Justice Staples

The events surrounding the removal of Staples J. from his panel of industries provide evidence of the pressure upon the Commission at the time, particularly from the Commonwealth. The incident was indicative of Poulantzas' (1978, 154-155) argument that contradictions inscribed in the state apparatuses frequently appear as quarrels or friction

between members of a branch or branches of the state. Staples' enforced idleness illustrates the necessity for the Commission to interpret its own rules and procedures flexibly.

Justice Staples' own account of his difficulties recognizes the role played by his strict application of principles. In a speech given on 3 April 1981, subsequent to his removal, he stated

> I have been conscious that my submission to the discipline of common law rules and to the underlying values of the common law has been a source of disruption, if one may use so strong a word, in a jurisdiction where looseness, expedience, opportunism and eclecticism characterise the behaviour of litigants...

He argued that the main purpose of industrial tribunals, as with other branches of the judiciary, was "to keep peace" in the nation. To this end, it was necessary to dispense "equal justice under the law".

At the same time, Staples maintained that industrial conflicts are best settled by the disputants. He opposed what he considered to be the efforts of private employers and the Commonwealth to make the Commission the "national paymaster", relieving the parties of responsibility for setting wages and conditions. He objected particularly to the Commonwealth's refusal to permit its instrumentalities to negotiate freely with the unions.[30]

Justice Staples became the subject of controversy in October 1979 when a letter[31] he had written opposing amendments to the Act, circulated within the Commission, was leaked to the press. A furore erupted over his remark that the legislation could give rise to anti-union practices characteristic of "totalitarian and authoritarian regimes".[32] This led to claims from conservative politicians that Staples had accused the government of proposing "Hitlerian" or "Nazi" legislation.[33]

Staples' penchant for using colourful language, his resistance to perceived attempts to undermine his authority or place undue pressure on the Commission and his insistence on making decisions consistent with codified law or doctrine were at the centre of an uproar over a decision he handed down in a wool storemen's work value case on 21 December 1979 (Print E1682).

Staples found for the employers on several matters, but ruled that the level of wages should rise. Both the employers and union had asked for a "genuine" arbitration and Staples, mindful of the current work value round, warned them that he was not "...an eight dollar automaton". His decision aroused great controversy.

A passage outlining the difficulties of assessing work value was widely interpreted to mean that Staples had reached

his decision in a cavalier manner. After listing the criteria he was precluded from using, he lamented

> For the quantification, then what shall I do? I am already reeling under the advice of many prophets. There is no Polonius at hand to give me memorable precepts as he did Laertes when he fled the confusion. I shall simply select a figure as Tom Collins selected a day from his diary and we shall see what turns up. Such is life.
>
> (Print E1682, 5)

The literary allusions were apparently lost on his audience, who ignored later remarks in his judgment and concluded that he had selected wage rates flippantly. In fact, Staples said "...I have never approached this matter upon any basis other than that it must show a result that would stand scrutiny in the public arena at the hands not only of those most directly interested but of others" (Print E1682, 7). He increased wages by $12.50 - $15.90, well above the rises granted to comparable categories in the work value round.

The increases aroused fears that a new benchmark for work value cases had been set. The employers and the union[34] had agreed that an appeal would only be lodged if the decision was "extravagant and unfair". With the support of the Commonwealth and peak employers' councils, an appeal was lodged by the wool brokers on these grounds. The union promptly went on strike, claiming that the new rates were not unreasonable and that the employers had reneged on the agreement.

The June/September 1979 NWC decision, handed down after Staples' wool judgment, had stressed that work value increases should be restricted to the standard set in the metal industry case. The full bench for the appeal consisted of Williams J., Deputy President Isaac and Commissioner Stanton, all of whom had sat on the NWC bench. Their decision of 13 February 1980 reduced the increases to $8 across the board. The full bench declared that it was their duty to give consideration to the likely effects of a decision on the wage indexation guidelines. They ruled that the criteria used by Staples J. in reaching his decision were inappropriate, and concluded that "...there was nothing before his Honour to suggest that the increase in the work under consideration was greater than the increases found in other industries in recent work value cases..." (1980 AILR 156).

Justice Staples responded to his critics in a speech on 17 March 1980.[35] He claimed that the employers had been prepared to concede $8 and that the unions would have accepted it. He attributed their failure to simply strike a bargain to the wool brokers' fear of being seen to "break ranks" by granting an increase. He declared that "The employers of this country have been reduced to cowardice by the guidelines and the government, a state of ignobility which fortifies, however, their material interests".

Staples then turned his attention to the Commission.

He had already referred to Principle 7(a) as a "nonsense principle".[36] He now asserted that after the most recent NWC decision and subsequent wool industry appeal, the Metal Industry Award had been reestablished as a benchmark and that comparative wage justice had been reintroduced. He declared

> The Full Bench threw the guidelines out the window by making the same adjustments for all classifications in express and explicit defiance of the rules propounded in principle 7A ... The inconvenience of doing otherwise, the Full Bench emphasised, was plain and troublesome. They may have been right, but was it guideline-goodness. If such a trespass is virtue, what is my sin?

Prior to this speech, the Commonwealth government had approached Sir John Moore to suggest that Justice Staples should be induced to relinquish his position or find other duties.[37] He approached Sir John Moore for an unqualified expression of support, which he did not receive (AFR, 8 May 1980). Staples' 17 March speech prompted eight Deputy Presidents of the Commission to write a letter to Sir John Moore criticizing the address (Age, 6 May 1980, 1). This letter was used as a major justification by the President when he removed Staples from his panel of industries on 1 May 1980. One of the signatories to the letter, Justice Gaudron, then resigned from the Commission, claiming that it was not her intention that the letter be used for such purposes and that she had been misled by certain of her colleagues who had forseen the likely consequences (AFR, 2 May 1980; 6 May 1980). Justice Staples refused to resign or accept

alternative work, and remained largely inactive in his official capacity from the time of his removal from his panel.[38]

Justice Staples' difficulties arose from his refusal to make "pragmatic" decisions. His judgments and speeches pointed to the inconsistency between the Commission's practices and principles. By his own public admission, he antagonized unions, employers and the Commonwealth. His actions also created difficulties within the Commission. With relatively little support for Staples inside and outside the Commission, and under pressure from the Commonwealth, there was much to gain and little to lose for the President in moving against him. The problems arising from a member who acted in opposition to the dominant practices of the Commission were more than could be accommodated.

Government Initiatives and Interventions

The Fraser government continued to attack trade unions through legislation, economic policy and anti-union rhetoric. The strongest measures were taken against its own employees, and industrial relations in the public service steadily worsened. Private employers were urged to resist union demands. The results varied, but a tendency emerged for individual employers or groups of employers to enter into private deals, often secret, to avoid antagonizing the

government. The same development made it increasingly difficult for the Commission to exercise control over industrial relations or pursue its purposive wage fixing strategy.

Conciliation and Arbitration Act amendments

The government had been unable to persuade the Commission to accept a less independent role, but now sought to reduce the internal autonomy of the Commission through amendments to the Act in October 1979. The Bill aroused considerable opposition within the Commission. In addition to Justice Staples' well-publicized letter, some of the clauses were criticized by all of the Commissioners in representations to the Minister and Sir John Moore (AFR, 15 Oct 1979, 1). Objections also came from former President Sir Richard Kirby. The legislation nevertheless was rushed through Parliament unamended (see Hansard, H of R, 10 October 1979).

One provision required a Commissioner intending to alter wages and conditions to consult first with the Presidential member on his or her panel. The Minister (Mr Street) explained that the amendment was designed to ensure consistency among members of the Commission (Hansard, H of R, 20 Sept 1979, 1371). The Commissioners viewed this as an infringement of their autonomy, while the Deputy Presidents feared excessive workloads. However, administration of the

amendment was left to the Commission (AFR, 19 Oct 1979, 4), which effectively left matters unchanged.

New provisions gave parties or the Minister the right to apply to have the President refer matters to a full bench. They also allowed the President to remove a case from a member and determine the matter himself or refer it to a full bench. This was inspired by Justice Staples' refusal to find disputes in Telecom matters and was designed to enhance the President's ability to impose his authority on other members of the Commission.

A new method of deregistration authorized the Minister to apply to a full bench for a declaration that an organization or two or more members of an organization were engaged in industrial action which "...has had, is having, or is likely to have, a substantial adverse effect on the safety, health or welfare of the community or of a part of the community...". For six months thereafter, the Governor-General was empowered to deregister the organization or suspend the rights and privileges of the organization or its members under the Act, to direct the exercise of those privileges and control the use of the organization's funds or property. The Governor-General was authorized to specify conditions that must be fulfilled before the organization was re-registered (IAS-CR, Oct 1979, 619; Pittard, 1980, 245). The wording raised the possibility that a union could be penalized

for actions taken in opposition to or without the knowledge of union officials. Finally, the Commission was precluded from awarding pay to unionists for the time they were engaged in industrial action (IAS-CR, Oct 1979, 619; Pittard, 1980, 245).

Trade Practices Act and the Laidely dispute

The legislation covering secondary boycotts was amended in May 1980, following a dispute in the petroleum industry. The dispute involved the Transport Workers' Union, Leon Laidely (an independent petroleum supplier) and Amoco (a subsidiary of a major oil company). Under an agreement, Laidely's firm could not supply petrol to retailers in the Sydney metropolitan area. Laidely's drivers were covered by a NSW state award containing less generous conditions than the federal award applying to the industry. When Laidely's company began to deliver petrol to a station within the metropolitan region, the TWU called a strike against Amoco, Laidely's supplier. On 19 February 1980, Amoco informed Laidely that he would no longer be supplied with petrol. Laidely obtained an injunction under section 45D of the Trade Practices Act. The TWU petrol drivers went on strike in response, resulting in a severe petrol shortage. A settlement was reached at a conference convened by Sir John Moore[39], at which it was confirmed that Amoco would no longer supply Laidely. However, the federal government took up Laidely's cause. The government declared it was upholding the rights of

the "little man" to conduct business freely, without the interference of big unions and big business.[40] The "secret agreement" negotiated under the auspices of Sir John Moore was denounced.[41]

The President reconvened the conference, which now included Laidely, his employers' association[42], and the Commonwealth. In a new agreement, Laidely withdrew his court action. The retail outlet would be supplied by TWU drivers, Amoco would supply Laidely and the APADA would support a flow-on of federal award provisions to drivers such as those employed by Laidely (McCallum and Pittard, 1981; Yerbury, 1981; ALLR, 60-077).

The government decided to strengthen Section 45D. The legislation was passed on 15 May 1980, with the ALP making it clear that they would repeal it on their return to power. A new section, 45E, prohibited agreements or understandings between unions and corporations which prevented or hindered supply to a third party. Unions were precluded from using the defence that they were protecting the employment of their members.

The legislation also provided for the intervention of the Commission in such disputes. Section 45D had been criticised because it only allowed a judicial remedy for secondary boycotts. The matter could now be referred to the

Commission or the appropriate state body for conciliation. The dispute could not be settled by arbitration, presumably to preclude decisions such as the agreement that emerged from the first conference in the Laidely affair. The Bill required the participation of the "target" firm and its business association, as well as any Minister who wished to intervene, in addition to the union and the supplier (Yerbury, 1981; McCallum and Pittard, 1981; ALLR, 60-099).

The ALP made much of the fact that the corporations power of the Constitution was being used in the area of industrial relations. It was suggested that this opened the possibility that the Commission could be permitted to arbitrate in such matters, and more importantly, that Parliament might be able to legislate directly.[43] This could significantly alter the nature of industrial relations and the powers of the Commission.

The public service

The government took a number of measures with regard to the public service. The most significant piece of legislation, the Commonwealth Employees (Redeployment and Retirement) (CE(RR)) Act[44], will be examined here.

The CE(RR) Act aroused strong hostility within the public service, resulting in the first strikes ever by the

white collar public service unions (Carr, 1980, 102). The Act passed the House in late May 1979, but was not proclaimed in full until early 1981.

The CE(RR) Act was designed to facilitate the rationalization of the public service. A Permanent Head was authorized to identify and declare employees to be subject to redeployment due to a surplus of staff, physical or mental incapacity, or "any other prescribed reason". If an employee could not be redeployed, the employing agency was entitled to retire him or her (Yerbury, 1980B; ALLR 60-037).

The legislation was particularly repugnant to two of the major public service unions, the ACOA and APSA (FDO)[45], who feared a threat to the job security of their members. These unions had been concerned about the implications of technological change for employment, and were also worried by federal government promises to reduce the size of the public service. The Fraser government was interested in allegations of inefficiency within the public service, and also saw a reduction in the size of the public sector as desirable on economic grounds (Hughes, 1980, 132). The unions feared that the legislation would be used for political purposes. ACOA Federal Secretary Paul Munro stated that the legislation would allow the government to "...dismantle or discredit any element of the Public Service which offers objective and independent advice to a non-receptive Government" (ALLR, 60-307).

The unions commenced a campaign of bans and stoppages.[46] The government began to stand down employees and later stopped collecting union dues from members' salaries, threatening the unions' financial viability. The matter went to arbitration, where the unions sought a determination from the Commission on procedures to be followed under the CE(RR) Act. This was opposed by the PSB.[47] The decision (73 CPSAR 795) contained clauses which the government believed were contrary to the intentions of the CE(RR) Act. These included provisions for consultation with unions concerning redeployment, a three month waiting period following a declaration before redeployment could take place, and preference for unionists in redundancy situations (PSB Annual Report 1980-81, 34; Hansard, H of R, 10 Mar 1981, 574).

The government announced that it would disallow the Commission's ruling, which it was entitled to do under the Public Service Arbitration Act.[48] This action was condemned by the Shadow Minister for Industrial Relations, former ACTU President Bob Hawke. He pointed out that at the time of the disputes, the Prime Minister had urged the unions to take the dispute to the Commission (Hansard, H of R, 10 March 1981, 578). Hawke claimed that the government's decision to overturn the Commission's ruling was hypocritical, though its

authority to do so was not disputed. The government then amended the CE(RR) Act to exclude it from the jurisdiction of the Public Service Arbitrator. This too was strongly criticised by the unions (ACOA Journal, Mar 1981, 6) and the ALP. The government's action suggested that it would circumvent the Commission where possible in its efforts to curb industrial militancy.

The L-NCP government's industrial relations policies were consistently anti-labour, but there was little underlying coherence apart from this broad orientation. The Treasury's favoured strategy of relying on collective bargaining and the depressed state of the labour market to reduce the value of real wages was frequently counteracted by policies associated with the Department of Industrial Relations, which supported centralized wage fixation and a less inflammatory position on most industrial issues. Neither approach worked, however, as unions such as the TWU, AMWSU and ATEA retained the ability to take industrial action despite the state of the labour market and the guidelines of the Commission. The investment led economic recovery promised by the government failed to develop, as the share of company profits in GDP did not rise significantly, despite the gradual fall in the share going to wages. In any event, as Plowman (1981, 163) points out, funds available for investment depend on after-tax profits and investment and depreciation allowances; which are dependent on Commonwealth policy. It became increasingly difficult for the

government to sustain the argument that the ongoing recession could be blamed on excessively high wages, though this undoubtedly remained a popular belief among voters enjoying the fruits of the shift in national product away from wages.

The Commonwealth amassed a formidible array of repressive legislation, but made relatively little use of it. Some major employers considered the more bellicose actions of the government to be counterproductive, and at times joined with the unions in opposing measures such as the amendments to the Trade Practices Act (Hagan, 1981, 432). The IRB, widely seen as the spearhead of the government's anti-union campaign, proved largely ineffectual. The government's initiatives established the legislative conditions for harsh anti-union actions to be taken, but there was little support for this among major employers. However, the government was able to blame many of Australia's economic problems on the unions, and its more strident posturings were undoubtedly popular among sectors of the electorate. The unions did not seem to be greatly deterred, and one of the main results of the government's attempts to depress working class living standards was to increase the Commission's difficulty in managing industrial relations.

The Commission was clearly a "problem" for the Commonwealth, suggesting that the contradictions within the state were quite serious. The legislation that was passed

sought to restrict the autonomy of the Commission and where possible, to bypass it. Had the Commission bowed to this pressure, its wages policy would have become unworkable, as militant unions would have pursued their claims in the field. Many employers were aware of this and there was considerable opposition from within the capitalist class to those measures which were most likely to incite industrial unrest. However, neither the Commission's policy of moderation nor the government's confrontationist line achieved industrial stability.

December 1979/March 1980 National Wage Case

This case took place during high levels of industrial action, particularly the shorter working hours campaign, which will be examined in more detail below. The decision[49] (Print E3410) handed down on 14 July 1980 stressed the problem of compliance. The hearings were suspended several times due to the shorter hours campaign and it was only after the ACTU Executive called for a suspension of industrial action that the proceedings resumed.

The Commission saw "...some signs of small improvements in the economy", though unemployment remained high (6.3% in May 1980) and inflation was now at an annual rate of more than 10%. It had increased by 3.0% in the December 1979

quarter and 2.2% in the March 1980 quarter. The Commission again took the view that non-wage factors were the main cause of high inflation. The Commission remained unconvinced by the Commonwealth's argument that an increased profit share would result in an investment-led recovery and the unions' claim that higher wages would stimulate the economy through greater consumption.

The private employers and the Commonwealth submitted that there had not been substantial compliance. The Commission accepted that the level of disputation was a significant cost to the economy and expressed sharp disapproval of the 35 hour week campaign. However, the full bench noted the ACTU's attempts to resolve major disputes, and in spite of widespread industrial action, found that there had been substantial compliance. Wright (1981, 106) suggests that this recognized the continued expressions of support for wage indexation by the parties.

The Commission admitted that recent work value increases were contrary to the original intentions of the guidelines. The unions argued that the work value round had been consistent with the guidelines and warned of the industrial relations consequences if the Commission took away under one principal what they had given under another. The full bench ruled that they would not discount the CPI for work value increases, but that the increased costs would be a

background factor in considering the effects of industrial disputes. Apart from 1974, recent levels of disputation were the highest in almost 20 years. The full bench ruled that the impact on the economy was significant, and a 0.5% discount was allowed for this factor. Combined with 0.6% for oil prices, this reduced the CPI increase of 5.3% to 4.2%. The full bench said that the reduction due to industrial action was held to a minimum, as an impending conference on wage fixation should be given "one further opportunity" to produce a satisfactory system.

The combined effect of the delays and discounting on the NWC decisions in 1980 gave workers only slightly more than three-quarters of the full CPI increase. This followed the content if not the rhetoric of the Commonwealth's policy of wage restraint (Wright, 1981). The Commission did not rule that substantial compliance had not occurred, as this could have ended wage indexation. By discounting for the costs of industrial disputes, the Commission came as close to openly taking such a position as possible. As a strongly worded reproach was given to the unions for the 35 hour week campaign and the parties were seen to be as far apart as ever, it seemed that the wage indexation system was once again on the brink of abandonment.

The Shorter Working Hours Campaign

The metal industry

The campaign for reduced working hours was a major issue throughout 1980 and 1981. Reduced working hours had always been strongly resisted by employers, who invariably predicted the direst consequences for industry.[50] In 1980, the unions stressed not only the benefits of increased leisure, but also additional employment opportunities (AMWSU, 1980, 6). The private employers predicted that increased labour costs would lead to greater unemployment through lost production and the use of labour-saving technology, as well as higher inflation and a decline in Australia's trading position (NEIC, 1980, 39, 42-45).

The metal unions' approach at first was to take across-the-board action to obtain a 35 hour week. This included working a 35 hour week once each month, with bans on overtime. However, the rank and file response was often unenthusiastic. Opponents of the campaign, particularly the MTIA, waged a strong counterattack, arguing that reduced working hours would endanger jobs (Hearn, 1981, 64; MTIA Bulletin, 26 June 1980, 1).

Most employers resisted the campaign through mid-1980, and it became a major issue at the December 1979/March 1980 NWC. The Commission requested the ACTU to seek to have the

campaign called off. ACTU President Bob Hawke explained that the ACTU had urged the metal unions to call off the campaign in order for the NWC to proceed, but this had been rejected. The ACTU Executive then resolved that any further industrial action would be in defiance of the peak council. The Commission accepted that the ACTU had taken what steps it could and proceeded with the case. As the ACTU Executive's resolution was to "...call off industrial action...for the period necessary to allow the conclusion of the current national wage case..." (Print E3410, 38), it was clear that the campaign would be held in abeyance rather than abandoned.

By late June 1980 the campaign in the metal industry appeared to be waning, as fewer unionists participated in stop work meetings than previously (Print E3410, 38). There was growing support for giving control of the campaign to the ACTU (Inside Trade Unions, 11 July 1980, 18).

The campaign widens

Co-ordination of the campaign was passed to the ACTU. The ACTU's plan was to concentrate on capital intensive industries, or industries where breakthroughs had already been made. A more flexible approach was taken as well. In the metal industry, the unions now sought a 9 day, 70 hour fortnight rather than a 35 hour week (The Metal Worker, Oct 1980, 3). It was envisaged that shorter working hours could

be won through negotiations, in exchange for improvements in productivity. This would reduce the cost to employers (AFR, 19 Nov 1980, 1).

The reorganized campaign was met by new initiatives from the private employers. On 22 October 1980, a full bench of the Commission heard submissions that the June and September quarter NWC should be deferred due to the level of industrial disruption associated with the campaign. The NEIC argued that as the ACTU had now associated itself with the campaign, it could no longer claim that it was attempting to discourage affiliates from taking industrial action (Transcript, 22 Oct 1980, 15). The employers' concerns were endorsed by the Commonwealth and Western Australia, but strongly opposed by the unions.

The full bench turned down the employers' request (1981 AILR 381), but warned the unions that they were endangering the wage indexation system. The new ACTU President, Cliff Dolan, announced that deferring the next NWC would place the unions' further participation in wage indexation in doubt, while NEIC Director George Polites warned that "Unless the Commission takes some sort of stand...it's finished anyway" (AFR, 24 Oct 1980, 2).

On the day the Commission decided not to defer the national wage hearings, Victorian metal workers voted to

reject an ACTU recommendation that they cease their monthly stoppages, though the voting was close (Age, 24 Oct 1980, 1). The metal industry employers approached the Commission again in early 1981 with an application to fix standard hours of work in the metal industry at 40 per week for at least three years (MTIA Bulletin, 26 Feb 1981, 1). In response, the unions offered to set up a working party with employers to investigate the introduction of a shorter working week, taking into account costs and productivity. There would be a three month halt to industrial action while the examination was underway. This was rejected by meetings of employers, who decided to press ahead with their application (AFR, 9 Mar 1981, 17; 20 Mar 1981, 5). AMWSU Joint National Secretary J. Garland warned that further industrial action would result from the employers' decision.

The unions pressed for the matter to be resolved without arbitration. The ACTU requested an adjournment of the hearings in order to hold further conferences, but Williams J. refused (Transcript, 31 Mar 1981, 50-55). The union representatives then walked out (AFR, 1 April 1981, 3). The full bench declined an MTIA request to invite the unions to rejoin the hearings (Canberra Times, 4 April 1981, 1) and the case continued in their absence.

The decision was given on 15 April 1981 and was a victory for the employers (1981 AILR 190). The Commission

announced that a 40 hour week would be standard in the Metal Industry Award for two years. The full bench accepted that the industry was unable to sustain a reduction in hours. They said that as most establishments in the industry were small, increased costs would probably lead to lower employment. The existence of shorter hours in other industries was rejected as a reason for reducing the metal industry standard, and piecemeal reductions through productivity bargaining were rejected in favour of a national productivity review. The decision delighted the employers, but did not deter the shorter working week campaign (AFR, 16 April 1981, 14).

The Commonwealth was also active in opposing a shorter working week, though not always in harmony with employers. The government launched a campaign through the mass media and personal appearances by Ministers, with a reported budget of $3 million (AFR, 19 Mar 1981, 3). In Parliament, the Minister for Industrial Relations, Andrew Peacock, announced that the government would seek to alleviate hardships suffered by companies as a result of union pressure for shorter working hours. These measures would include relief from meeting contractual obligations and payment of bills and taxes (Hansard, H of R, 26 March 1981, 963). These incentives were complemented by the threat of penalties for firms that capitulated. Minister for Industry and Commerce Sir Phillip Lynch warned that export incentives, research grants, government purchasing, tariffs and bounties would be reviewed

in cases where firms granted a 35 hour week (AFR, 30 Mar 1981).[51]

Successes and qualified successes

Despite the opposition of the Commonwealth and employers and adverse arbitration decisions, the unions had an increasing number of successes, at times ratified by the Commission. Shorter hours were obtained in the glass, ship repair, mining equipment, brewing, power, metal and meat industries, often resulting from action by militant maintenance workers belonging to metal unions such as the AMWSU and ETU. By concentrating on a few employers at a time, unions could force concessions which were then claimed from other employers. Most agreements entailed a reduction to 38 or 37 and a half hours, often with a further fall to 35 after a year or two. Many of the deals involved productivity bargaining, even after the Commission banned these agreements in their wage fixing principles decision on 7 April 1981. There was a steady stream of news reports that secret deals had been struck, as employers did not wish the arrangements to come to the attention of the Commonwealth or the Commission.[52] The unions were assisted by NSW legislation which made shorter hours agreements legal and eased the criteria for their approval by the NSW Industrial Commission (ALLR, 60-208).

A significant breakthrough for the unions was an

agreement with employers at the Altona petrochemical complex in Victoria. The settlement was reached after prolonged industrial action, including a seven week sit-in at the Union Carbide factory. The settlement, which called for a nine-day, 70-hour fortnight, was ratified by a full bench of Williams and Coldham JJ. and Commissioner Neyland on 24 March 1981 (1981 AILR 243). The Commission announced that productivity improvements had been negotiated that made the cost of the agreement to the employers negligible, and that it was unlikely to lead to flow-on. The decision was strongly criticized by the Commonwealth and employers' associations (AFR, 25 Mar 1981, 1).

Despite ongoing attempts by the Commission to halt hours agreements, the Altona case was an important precedent. It provided a basis from which pressure could be applied to other large firms. Negotiations commenced with Alcoa, CSR and BHP, and the campaign was kept up in the metal industry. Negotiations on a new metal industry agreement began in the latter half of 1981, marked by continued strike action. A settlement was eventually reached in the metal industry and brought before the Commission in December 1981. The agreement consisted of a package of a 38 hour week and an immediate $25 pay rise with a further $14 in June 1982. In exchange, the metal unions took the unprecedented step of agreeing not to make any additional claims for a period of 12 months, a clause which had been rejected in the past as an

unacceptable restriction (Australian, 8 Dec 1981, 1).

There was considerable speculation that the Commonwealth would intervene to oppose the metal industry agreement, and metal industry unions and employers warned the government not to interfere. However, Minister for Industrial Relations Ian Viner indicated that there would be no opposition if it was understood that the deal was an isolated case with no flow-on (AFR, 14 Dec 1981, 14). The Commission ratified the agreement on 18 December 1981 and stated that it would be unrealistic not to expect a substantial flow-on to result (Australian, 19 Dec 1981, 3). The Commission warned that the costs of a new round of settlements would have to be taken into account in national wage hearings. A similar agreement was quickly struck in the building industry, and metal union officials let it be known that the settlement was but a step towards their ultimate goal of a 35 hour week.

The campaign for shorter hours occurred in an unusual conjuncture. Despite high unemployment, a number of key unions remained in a strong position. Unlike the 1974 wage drive, the shorter hours campaign was only successful after its co-ordination was taken over by the ACTU. This degree of central control over an industrial campaign in Australia was unprecedented. Capital had no effective strategy to resist the campaign. The unions successfully bargained with individual firms while peak employer associations were urging

their members not to give in. The federal government did little to assist employers apart from indulging in anti-union rhetoric. The Commonwealth did not carry out its threat to severely restrict the money supply, tariff barriers remained high and its new labour legislation was not used. When they intervened, as with ICI, they were forced to back down.

The Commission attempted to maintain control over the campaign for shorter hours, but the unions were unwilling to allow their gains to be rejected. Many agreements were not brought to the Commission on the assumption that they would be unsuccessful. The Commission was faced with a choice between making particularistic decisions based on the relative strength of the parties (a consensus policy) or insist that the parties work within the framework of the purposive indexation strategy. The conditions for the latter no longer were favourable; the Commission resisted shorter hours claims where possible and gave in where necessary. The Commission did not simply "rubber stamp" agreements, but many of their decisions in the latter stages of the shorter hours campaign could not be said to fit the requirements of their purposive strategy.

The June/September 1980 National Wage Case

By the end of 1980 the pressures on the wage indexation system had become overwhelming. The unions and

employers continued to express a need for and allegiance to a centralized system, but their actions made the maintenance of such a system impossible. The unions were happy to make use of the Commission's machinery so long as it did not inhibit collective bargaining. The employers seemed unwilling or unable to resist the unions, and in some industries collective bargaining outside the guidelines became commonplace. The result was a large number of shorter hours arrangements and an increase in wage drift.[53] The Commonwealth expressed a preference for a decentralized system that would allow market forces to reduce real wages (Wright, 1981, 111), but stated that if the Commission was determined to continue with a centralized system, this should adhere closely to the government's wage-reducing policies. These policies were contrary to the intentions of Principle 1 of the guidelines.

In its NWC decision of 9 January 1981 the full bench of Sir John Moore, Williams and Robinson JJ., Deputy President Isaac, Acting Public Service Arbitrator Watson and Commissioner Mansini announced that no more national wage hearings would be held under the existing guidelines (Print E5000). However, the decision made it clear that the future of wage fixation in Australia was open, with a revised set of wage indexation principles a possibility.

The Commission stated that the level of industrial action was unacceptably high. The full bench was particularly

concerned that the unions were engaging in industrial action over matters that should be dealt with through the Commission.

> There is no doubt that throughout 1980 action in connection with the shorter hours campaign has usually been initiated in a manner which calculatedly avoided any examination by the Commission of the costs involved in the grant of the claim. This has occurred despite repeated warnings by the Commission.
> (Print E5000, 5)

Even when cases were brought before the Commission, it was noted that in nearly every one industrial action had occurred.

The full bench also found that the parties continued to hold strongly opposed viewpoints on wage indexation. The unions saw partial indexation as the major cause of industrial unrest, while the employers and Commonwealth viewed the level of wage increases to be a prime contributor to inflation and unemployment. The Commission repeated its assertion of June 1979 that

> If the system is at one and the same time the cause of industrial disruption, earnings drift, unemployment, inflation and continuing economic recession, it should be abandoned.
> (Print E5000, 12)

The Commission listed four main reasons for the failure of the present system. Firstly, as full indexation had become the exception rather than the rule, Principle 1, the core of the system, was no longer viable. Secondly, non-compliance by even a small sector of the workforce was unacceptable,

especially given the likelihood of flow-on. Thirdly, the supporting mechanisms which the Commission considered necessary for wage indexation had been greatly weakened or abandoned. Finally, the consensus which had been present at the outset of the system no longer existed (Print E5000, 13).

The Commission announced that the conference which had been underway since July 1980 would debate whether a centralized or decentralized wage fixation system should be established. The Commission pointed out that no centralized system could please everyone and that rules had to be established which would be obeyed, with workable mechanisms to ensure compliance. Significantly, the Commission added

> The power of the Commission to compel compliance is limited. It relies on the effective support of all those who wish to see an orderly system survive. Tacit approval is not enough. Unless the level of industrial disputes is contained and the processes of conciliation and arbitration accepted as the means of resolving issues in dispute, there does not seem much point in searching for a centralized system.
> (Print E5000, 18)

The 4.7% CPI increase was almost an afterthought in the Commission's announcement. Despite the widespread industrial unrest the Commission said that it was reluctant to penalize once more those who had not taken part. It was also noted that the long term trend of earnings was very close to the rate of increase of the CPI when productivity was taken into account. Given the impending conference and an already

substantial discount of 1% for the direct and indirect effects of the government's oil pricing policy, the Commission was unwilling to reduce the amount granted any further. A 3.7% increase was awarded. The full bench ruled that although the indexation guidelines would no longer be used for NWCs, they would apply to other activities of the Commission until a new system was in place.

This decision reflected the limits of a purposive strategy. Yet it was not an outright abandonment of centralized wage fixation. The ACTU and the CAI continued to express support for a centralized system, even if many of their affiliates were busily undermining it. With the parties taking contradictory positions, it is not surprising that the Commission did as well. In effect, the Commission decided that it would abandon wage indexation, but that wage indexation would continue to operate, and that a new set of guidelines was likely to be introduced. The parties were left to determine the type of policy they would prefer.

Second Ending: The April 1981 Guidelines and July 1981 Decision

ACTU and CAI officials continued to favour a centralized wage fixation system despite the Commission's abandonment of the guidelines (AFR, 12 Jan 1981, 12).

Nevertheless, ACTU President Cliff Dolan encouraged affiliated unions in their efforts to receive compensation for CPI increases through direct negotiations with employers (Age, 10 Jan 1981, 7).

After a private conference on 19 January, Sir John Moore announced that a public inquiry into wage fixation would be held. The ACTU opposed public hearings[54], but agreed to participate (AFR, 20 Jan 1981, 1; 22 Jan 1981, 3). Cliff Dolan stated that catch-up claims would be pursued, but "strategy meetings" would be held prior to industrial action (AFR, 23 Jan 1981, 5). This would keep the industrial scene relatively quiet while the hearings proceeded.

The new guidelines

The participants at the hearings proposed various versions of centralized wage fixation. The lack of any innovative schemes was criticized by Deputy President Isaac. He noted that there had been considerable public discussion of the potential advantages of a decentralized system, and that the previous system had been considered self-serving in certain quarters[55] (AFR, 6 Feb 1981).

In their decision of 7 April 1981 (Print E6000) the full bench[56] announced a new set of wage indexation guidelines very similar to a scheme proposed by the Commonwealth.[57] The

scheme sought to institutionalize partial indexation while allowing for the possibility of full indexation.

In deciding to continue with centralized wage fixation, the Commission cited the private employers' submission that

> ...given the existence of industrial tribunals and the doctrine of comparative wage justice, to talk of allowing market forces to fix wage rates, conditions, and relativities in this country is to ignore the practical reality of the constitution or institution through which decisions are made. To change this would require concerted and joint political action at federal and state level the like of which has never been seen in this country.
>
> (Print E6000, 4)

In other words, barring an unprecedented political change, some form of centralized wage fixation was considered to be an integral part of Australian industrial relations. The Commission took the view that the parties, at present, did not desire a lessening of the degree of centralization. Indeed, the private employers' submissions would centralize wage fixation even further by giving control of all work value cases to a specially constituted full bench.

The Commonwealth's principal submission was that award wages should be increased automatically in line with the CPI at six-monthly intervals, discounted for the effects of Commonwealth policy. The Commonwealth offered a second scheme, also with two hearings each year. At the first, awards would be increased by 80% of the preceding two quarters' CPI. The second hearing would consider the

remaining 20%, the next two quarters' CPI increase, and productivity. The increase in the second hearing would be subject to discounting for the effects of Commonwealth policy on the CPI and for non-compliance over the previous year.

The Commonwealth's second proposal was adopted by the Commission, with the provision that discounting would be considered on its merits in each case. The Commission emphasized the importance of compliance with the guidelines and minimizing increases outside national wage decisions. The restrictive provisions on work value would remain, and productivity bargaining was forbidden, apart from cases already before the Commission. The full bench noted that productivity bargaining had changed from isolated agreements to a widespread tactic used in pursuit of shorter working hours, usually accompanied by industrial action. The Commission added that the principles could not withstand unrestricted collective bargaining.

The 7 April guidelines closed off the last remaining "safety valve" for general increases in wages and conditions outside of national cases, making the AMWSU's prediction that real wages would almost certainly fall seem reasonable (AMWSU Quarterly Journal, April-June 1981, 26). With a number of large, militant unions apparently ready to force concessions, making the guidelines even more restrictive might seem self-defeating. It is possible that the Commission believed

that as the guidelines had been abandoned once, the ACTU would force its more militant affiliates into line in order to avoid a repetition of the January decision. It is also possible that by accepting the Commonwealth's proposal, criticism from the government might be reduced. However, with widespread industrial action continuing on wages and hours, the likelihood of the new guidelines running their full two years seemed remote. The 7 April decision contained numerous warnings on the fragility of the new guidelines, such that one might conclude that this view was shared by the Commission.

In the first NWC under the new system, the full bench[58] stated that as no unusual circumstances had been established, an increase of 80% of the CPI would be granted. Their decision of 7 May 1981 awarded a 3.6% wage increase, with the remainder to be considered later in the year (1981 AILR 241).

Pressures on the guidelines

The institutionalization of partial indexation resulted in some unions lodging claims directly with employers and supporting them through industrial action. The very restrictive nature of the guidelines precluded their settlement through the Commission. Industrial action was widespread, and two disputes will be examined to illustrate the difficulties with the new guidelines.

The first dispute involved Telecom, the ATEA and the APTU. Wages at Telecom had fallen substantially behind those in comparable public enterprises. Telecom's management accepted that some adjustment would be necessary, and negotiations commenced between the parties. However, in March 1981 the federal government decided that certain items would have to go to arbitration. As the unions' claims were above the limits set by the new guidelines, they would have to take the dispute to the Anomalies Conference, at which their chances of success were slim[59] (SMH, 1 June 1981, 9). At a hearing on 25 May, Commissioner Clarkson ruled that the claims were outside the guidelines and suggested that if the unions were not prepared to take the matter to an Anomalies Conference, then they should abandon wage indexation altogether (AFR, 26 May 1981, 2). As the government would not let Telecom negotiate on matters outside the guidelines and the unions shunned the available mechanism within the system, an impasse was reached.

Bans were implemented on Telecom's main revenue earning facilities and Telecom responded with stand-downs. Australia's telecommunications system slowly began to break down as the dispute came before a full bench of the Commission on 1 June (AFR, 1 June 1981, 1; 2 June 1981, 1).

An agreement on pay rises went to the Anomalies Conference, but proceedings broke down when the offer of increases as supplementary payments outside the guidelines proved unacceptable to the federal and Victorian governments and the private employers. Bans were reimposed, and ATEA Federal Secretary Bill Mansfield warned

> By the middle of this week there could be thousands of workers stood down, some dismissed under the Commonwealth Employees (Employment Provisions) Act, and deregistration proceedings against the unions - all because an employer wants to pay us money that we're happy to receive.
> (Age, 8 June 1981, 1)

Federal Cabinet insisted that it would only agree to the increases if they were approved by a full bench, and threatened "severe and drastic action" if bans were not lifted promptly (Age, 10 June 1981, 1).

The Commission was not prepared to solve the government's problems. On 10 June, a full bench of Sir John Moore, Justice Maddern and Commissioner Heffernan refused to accept the agreement on the grounds that it would be inconsistent with the guidelines and likely to create disputes in other areas. The Commission said that

> Telecom has by its actions created an expectation that the payments will be made whether or not the commission agrees, and we believe that Telecom would be acting in bad faith if the agreement they entered into was not implemented by them. It would be industrially naive for an employer to make an agreement of this kind and expect not to have to honour it.
> (Age, 11 June 1981, 1)

The government eventually capitulated. The Minister for Communications (Mr Sinclair) announced on 11 July that the pay rises would be granted. He attacked Telecom's handling of the dispute and announced that oversight of public sector negotiations would be tightened. The following day the managing director of Telecom resigned (Age, 12 June 1981, 1; Canberra Times, 13 June 1981, 1). It was clear that if the Commission continued strictly enforcing the guidelines, employers would either be forced into agreements outside the guidelines or be faced with substantial industrial action.

The Prime Minister announced that although the government continued to oppose increases in labour costs, the present situation wherein claims were effectively shut out from the Commission was unworkable (Age, 18 July 1981, 3). His comment came shortly after Sir John Moore called a special conference on wage fixation for the end of July. The conference was apparently prompted by a letter from the Victorian government insisting that the existing wage fixation principles were urgently in need of review. Among the tensions within the system were continued unrest in the public sector, shorter hours deals, decisions by the WA Industrial Commission and NSW government which would allow productivity bargaining to continue, and ACTU opposition to the restraints imposed by the guidelines (AFR, 7 July 1981, 37).

A major strike in the road transport industry added to the pressure on wage indexation. The transport employers agreed that there should be an increase, but a figure could not be settled between the parties. An approach to the Commission was rebuffed on the ground that the claim fell outside the guidelines (AFR, 8 July 1981, 7; Age, 10 July 1981, 1). The TWU called for an indefinite transport stoppage in support of its $20 claim. Hearings before Deputy President Isaac made little headway and the parties threatened to escalate the dispute: the employers applied for bans clauses, the Commonwealth announced it would seek deregistration of the union, and the TWU threatened to call out petrol tanker drivers (AFR, 22 July 1981, 3; 23 July 1981, 1; 24 July 1981, 1).

The end of wage indexation

On 24 July a meeting was held in Canberra between the Prime Minister, the President of the ACTU and the President of the Conciliation and Arbitration Commission. The government agreed to halt deregistration and stand-down proceedings and the ACTU would recommend a return to work in several major disputes. Mr Fraser and Mr Dolan agreed that the wage indexation guidelines were "deficient as a safety valve", and Sir John Moore called for a national wage bench to be convened on 28 July to consider the future of the wage indexation system (Australian, 25 July 1981, 1). The TWU

responded sceptically, and aircraft refuellers and tanker drivers began industrial action in support of their colleagues. The union's hand was strengthened by a $20 wage rise granted to drivers by the NSW Industrial Commission, also on 24 July.

In a hearing on 27 July Deputy President Isaac again ruled that the TWU's claim was contrary to the guidelines. The parties took the matter to the Anomalies Conference, where it appeared the increase would be granted. As the union and the employers had agreed on a figure of $20, the Commission's imprimatur was the only obstacle to a settlement (AFR, 28 July 1981, 1). The anomalies hearing started, as drivers voted to return to work on 28 July, but was then postponed until the outcome of the hearings on wage fixation was known (AFR, 29 July 1981, 1).

During the hearings several senior members of the Commission expressed serious doubts on attempting to maintain the wage indexation system. Justice Ludeke asked

> If it is being demonstrated repeatedly, as it has over the past few weeks, that employers and unions simply are unable to conform with the principles of the system, then is it not necessary that the Commission face the industrial reality of that and do what we said we would do, namely, formally declare the system ought to be abandoned?
> (AFR, 29 July 1981, 2)

Deputy President Isaac and Justice Robinson joined in this line of argument. The Deputy Presidents were also critical of the "deal" struck on 24 July between the ACTU and the

Commonwealth, as it was made in the absence of the private employers. This could be construed as a criticism of Sir John Moore, who had been present at the meeting (AFR, 30 July 1981, 1). The employers had announced that in their view the system was no longer working, although they laid the blame on the unions (AFR, 29 July 1981, 2).

Amidst media predictions of industrial chaos, the Commission announced the end of wage indexation on 31 July 1981. The full bench noted the existence of widespread industrial action and the allegations that the guidelines were too restrictive. They stated

> To accommodate these strong pressures the ACTU and the Commonwealth proposed widening the safety valve provided by the principles dealing with anomalies and inequities. The belief that the answer lies in greater flexibility of the kind proposed is illusory. Such flexibility would resolve sectional claims at the expense of national adjustments and destroy the priority expected of a centralized system. It cannot be otherwise.
>
> (Australian, 1 August 1981, 6)

The system would therefore be abandoned. The Commission would continue to operate under the provisions of the Act, though no hint was given as to how decisions would be made. It was announced that no hearings on general wage increases on economic grounds would be heard before February 1982.

Conclusion

The conditions of existence for the Commission's purposive wage fixation strategy were tenuous throughout this period. The Commission's actions must be viewed in the context of wider contradictions within which they operated. Many unions sought improvements to wages and conditions outside national wage cases and backed their claims with industrial action. Other unions were unable to organize industrial campaigns, relying on full national wage increases. Responding to pressure from both groups of affiliated unions, the ACTU argued for full wage indexation plus unrestrained collective bargaining, though frequently denied that the latter was incompatible with the Commission's guidelines. Capital became increasingly divided during this time. The CAI and many affiliates adopted a hard line in opposition to any wage increases, while many other employers, particularly the larger ones best able to cope with a turbulent environment, gave in to the unions' demands in exchange for industrial peace. The Commonwealth urged the Commission to impose wage restraint, while following an erratic set of policies which often undermined the conditions deemed necessary by the Commission for restraint to be possible.

Finally, the economic context within which the parties operated was unprecedented, and incompatible with practices developed under different circumstances. The economy remained in a prolonged recession, but through mid-1981 this was not generalized through all sectors. Certain industries

remained buoyant, particularly those associated with resources. Other sectors remained prosperous under tariff protection. Key militant unions were able to pursue their claims in these conditions and many employers could concede them. The overall effect deepened the economic contradictions, which accentuated the class divisions which the Commission sought to manage.

Under these circumstances the Commission followed inconsistent policies. Its overall strategy sought to centralize and restrain wage increases. Where this was not possible it took advantage of the "safety valves" in the guidelines and followed a consensus policy which recognized key militant unions' ability to obtain higher wages and improved conditions. To varying degrees these gains were passed on to the rest of the workforce. In order to keep the employers and the Commonwealth within the system, the "safety valves" were closed off once they had been used. With little flexibility to deal with continued pressure from militant unions, the Commission accepted that it could no longer pursue a purposive strategy. The wage indexation system was finally abandoned.

Footnotes

1. See the MTIA News Bulletin (4 August 1977, 4-5). The MTIA stated, "Most companies are actively working to adequately train their foremen and supervisors to identify with management and the creation of an award for them could create a gulf between the lower levels of supervision and senior management".

2. The AMWSU argued that the proportion of the total payment to metal industry employees comprised by the overaward component had risen from its historical average of 18-22% to approximately 27% (AMWSU Monthly Journal, June 1978, 12). This was said to prejudice employees who did not have a paid rates award. Obtaining a paid rates award was the objective of the claims, though the AMWSU stated that they reserved the right to pursue overaward payments even if a paid rates award came into effect (AMWSU Monthly Journal, July 1978, 11). This was repeated before a full bench hearing by stating that the unions would pursue overaward payments "...so long as the award rates were not at a satisfactory level for metal workers" (AMWSU Monthly Journal, Sept 1978, 13).

3. Two major documents emerged from this case. Firstly, a two volume report was published (Australian Conciliation and Arbitration Commission, Inquiry in Principles of Wage Fixation, Report by Sir John Moore, President, Canberra, AGPS, referred to here as Report (I) and Report (II)) in May 1978. This consisted of a report by the President and a series of appendices comprising selected submissions to the conferences. Secondly, there is the decision (Print D8400, referred to here as Decision).

4. In particular, an ACTU Executive resolution urging affiliated unions to take action to seek compensation for partial indexation decisions was seen by employers and conservative governments to demonstrate the unions' intention to bypass any arrangements not to their liking (Carr, 1979, 97; Decision, 4). However, the ACTU declared that it was "strongly committed" to wage indexation (Decision, 5).

5. Apart from its concern about the industrial relations consequences of abandoning wage indexation, the Commission disagreed with those commentators who considered that it would be desirable to let "market forces" operate in wage fixation. The Commission stated, "We have given careful consideration to what might happen if we decided not to persist with an orderly and centralized wage fixing system. Without it we believe

there could be quite a rapid increase in industrial disputes. We have also concluded that despite the present economic situation and, in particular, the degree of unemployment, there are sufficient indications that economic reasons alone might not prevent an upsurge of wages, at first sectional and then becoming general, if no orderly system existed" (Decision, 5). While some commentators argued that indexation was keeping wages artificially high during the recession, the Commission took the view that, the recession notwithstanding, abandoning wage indexation would result in a sharp increase in wages.

6. It was partly for this reason that the Commonwealth's request for a firm statement with regard to discounting the CPI for government initiatives was rejected. Given the potential negative industrial (hence economic) consequences of discounting, "It is a moot point in these circumstances which course of action by the Commission leads to the frustration of government policy" (Decision, 15). The Commission expressed its intention to treat each request for discounting on its merits.

7. The Commonwealth noted the Commission's reassertion of its independence in the September 1978 Principles Case. The government submitted that no increase would be in line with its policies and economically beneficial. If the Commission decided to grant an increase on other grounds, the government said that this should be small (Commonwealth Submissions, 95).

8. The Australian Bulletin of Labour (March 1979, 11) considered 1978 to be an unremarkable year for industrial disputation in Australia, and implied that the perception of strikes was affected by disputes which caused great inconvenience or attracted publicity. The Commission made particular mention of the metal industry, but major stoppages also took place in telecommunications, coal mining, stevedoring, vehicle building and road transport (Commonwealth Submissions, 20-24).

9. A fairly typical union viewpoint can be found in the banking industry. "The banking industry unions do not say that 'high technology' is bad, nor that progress towards it must be halted. They believe that maintenance of present standards and potential for improvement in working conditions and the community's welfare, demand a complete change in the way in which technological change has been introduced so far. They do not accept that any employer has the right to introduce new technology or make major changes in work organisation without joint planning with representatives of the workforce affected, and consideration of the effect on the whole community of workers." (Modern Unionist, Jan/Mar 1979, 51). Unions with a more radical leadership tend to view technological

innovation with greater suspicion.

10. See e.g. a speech to metal industry shop stewards in March 1979 by MTIA Deputy National Director A.C. Evans.

11. In an unrelated Telecom case, see the remarks of Justice Staples on this point (1979 AILR 274).

12. A key paragraph in the agreement states," Telecom Australia and the unions agree that proposed changes in technology which could have important impact on staff will be jointly considered prior to any decisions being made to adopt such changes or to purchase equipment or systems employing new technology" (Musumeci, 1979A, 13).

13. A national test case on job security is currently before the Commission.

14. Sir John Moore, Williams, Robinson and Ludeke JJ., Deputy President Isaac, Acting Public Service Arbitrator Watson and Commissioner Stanton.

15. The Commission refused to criticize these increases, which would have been directed at its own decisions, but criticism is implicit in its statement. The full bench added "In a desire to meet the wishes of the parties in conciliation proceedings, approval has been given to some settlements which are in conflict with the Principles" (1979 IAS-CR 353). The increases in question will be considered in more detail in the next section.

16. The Commonwealth was continuing to argue that the level of real wages would need to fall in order to alleviate unemployment and encourage investment (Commonwealth Submissions, 102-103).

17. The CPI increased by 7.8% in 1978 (Australian Economic Review, 2nd quarter 1979, 19).

18. The Commission was sceptical about this last factor, citing the possibility that recent increases in excise had been taken more with a view towards increasing revenue than conservation.

19. The work value round was not restricted to the federal jurisdiction. Many important decisions were made in state tribunals, particularly NSW.

20. This increase was superseded two days later when Macken J. of the NSW Industrial Commission granted increases of at least $5.20 to groups of oil industry workers under NSW state awards, creating anomalies and giving rise to a "disastrous industrial crisis" in the refineries (1978 AILR 516). In a subsequent decision on 17 November,

Commissioner Neil acceded to union claims for further increases and granted an additional sum which brought the total rise to $7.50. The Commissioner's decision was supported in a statement by the President, both of whom cited the widespread disruption threatened by the existing anomalies. The conflicting pattern of coverage in the NSW oil industry continued to create industrial unrest for some time.

21. The aircraft industry provides a good example of this. See 1979 AILR 28(5); 125; 126; Plowman, 1980.

22. A national employers' official declared "We only have two choices - give it all round now and carry the extra cost or fight it all the way and carry the cost of continued industrial disputes. My personal opinion is that we'd be better off giving it now" (National Times, 8 April 1979, 9).

23. Inspections were conducted in 38 firms over a period of one month. The Metal Industry Award was still extremely complex, with some 340 classifications with differences in rates as low as 10 cents. Williams J. listed 27 key classifications which were inspected, though some attention was given to 106 classifications.

24. Sir John Moore, Williams J. and Commissioner Brack.

25. These increases were in line with changes in the closely related vehicle building industry, granted by Commissioner Paine over a series of work value cases in June through October 1979. For example, the Ford workers received $9.30 and $7.60, employees at GM-H $9.60 and $7.60 (Commonwealth Submissions, NWC Nov 1979, 148).

26. The full bench was Sir John Moore, Williams, Robinson and Ludeke JJ., Deputy President Isaac and Commissioner Stanton.

27. Efforts by the AMWSU to have Congress accept the position that wage indexation should be ignored were rejected, as this would disadvantage weaker affiliates (Hearn, 1981, 63).

28. One variation proposed by the Commonwealth would guarantee a minimum automatic increase of the quarterly CPI of 80%, with the remaining 20% argued in six-monthly hearings. While not seriously entertained by any of the parties, the Commission was approving of what seemed to be a significant change in approach by the Commonwealth.

29. Implicit in the submissions of the employers and Commonwealth was the accusation that in some cases the work value hearings had been a sham. This was also the

view of some commentators. The metal industry case was considered to be a prime example of this. Plowman (1980, 86) stated "...the metal trades work value case was a pragmatic exercise in maintaining established relativities with those industries in which work value wage movements had already taken place". The time spent on the inspections and their detail were viewed as inadequate. This was rejected by the NWC full bench, of which Williams J., who had conducted the inspections, was a member. The President was also involved in both cases. (See Print E1681). Interview evidence shows that members of the Commission viewed Justice Williams' inspections as adequate, though there was no suggestion that the result was within the parameters of the guidelines. One well-placed source indicated that the metal industry full bench had no option but to award an averaging increase on industrial relations grounds (Interview).

30. His decisions in cases involving Telecom and Australia Post were very critical of the industrial policies of the Commonwealth and its instrumentalities. See 1979 AILR 274; 1980 AILR 3; ACOA Journal (March 1980, 15).

31. The letter is published in Hansard (116 H of R 2154) and the Australian Quarterly (Dec 1979).

32. He queried "...which of us...would want to be like the judges in pre-war Germany who simply acted out their office in a train of events that culminated in legal conclusions that 'Jews' and 'Communists' were no longer full citizens entitled to rely on rights previously accumulated...".

33. See Hansard (H of R, 17 October 1979, pp 2153, 2158).

34. The Federated Storemen and Packers' Union.

35. Reprinted in JIR 22:3. Criticism of his decision was widespread, as evidenced in the introductory section of Staples' 17 March 1980 speech.

36. Communication Worker, Dec 1979, 5; and later in Staples' "Chifley Memorial Lecture", 9 Septemeber 1980, 38.

37. In a speech on 3 April 1980, Staples maintained that this was due more to his decisions in Telecom cases than in the wool industry.

38. Some of the manoeuvering which went on is outlined in newspaper accounts at the time. See also Staples' speech to the Queensland Society of Labor Lawyers, 3 April 1981.

39. Sir John Moore was acting out of jurisdiction, as he had no official role under the Trade Practices Act. Amoco,

the TWU, the NSW government and the ACTU were represented at the meeting; Laidely was not.

40. See the Prime Minister's speech in the House (Hansard, H of R, 19 March 1980, 909-910).

41. See for example, Hansard (H of R, 18 Mar 1980, 861; 19 Mar 1980, 909; 13 May 1980, 2617, 2619).

42. The Australian Petroleum Agents and Distributors Association (APADA).

43. See Hansard (H of R, 15 May 1980), speeches by L. Bowen (p 2832) and especially M. Young (p 2836). See also Guidebook to Australian Industrial Law (2nd edition), para 760.

44. It should also be noted that the Commonwealth proclaimed the controversial CE(EP) legislation, discussed in the previous chapter, on 13 July 1979, during a dispute in Telecom. The stand-down provisions in this legislation were used on a number of occasions. The "no work-no pay" provisions of the Public Service and Statutory Authorities Amendment Act of December 1980 are also of interest, as they deliberately bypassed the Public Service Arbitrator (see Yerbury, 1981).

45. Administrative and Clerical Officers' Association and Australian Public Service Association (Fourth Division Officers).

46. The progress of the dispute and subsequent deliberations can be followed in the ACOA Journal and APSA Review. Some detail is also provided in the PSB Annual Reports. Yerbury (1980B) provides a good account through 1979.

47. Determination 509 of 1977 covered the area in dispute. The unions sought a strengthening of the procedures and safeguards available to employees. The PSB considered this to be an encroachment on managerial prerogative.

48. The Opposition was quick to point out that no ruling of the Commission had been disallowed by a government since 1932. The L-NCP controlled Senate had done so in 1973. See speeches by Minister for Employment and Youth Affairs Ian Viner and by ALP Industrial Relations Shadow Minister R.J. Hawke (Hansard, H of R, 10 Mar 1981).

49. The full bench consisted of Sir John Moore, Williams and Robinson JJ., Deputy President Isaac, Acting Public Service Arbitrator Watson and Commissioner Vosti.

50. See 59 CAR 587. By 1980, many employees already worked less than 40 hours per week. Coal miners had worked a 35

hour week since 1971, oil industry workers since 1974 and waterside workers since 1972. Clerical workers in the public sector had long worked less than 40 hours, and inroads were starting to be made by blue collar workers. White collar employees in private enterprise had varying conditions, but many worked less than a 40 hour week. Even some production workers in manufacturing worked fewer than 40 hours (NEIC, 1980, 14-23; Inside Trade Unions, 5 June 1980, 12). A campaign for shorter hours had been launched in the metal trades in the early 1970s, but was abandoned in the scramble for higher wages which took priority at the time.

51. When it became known that the multinational chemical firm ICI was negotiating with the unions, the government threatened to introduce a deferred review into tariff protection for the chemical industry by the IAC (AFR, 30 Mar 1981, 1). ICI reacted by announcing the suspension of a $900 million expansion program, claiming it would not be viable under a revised tariff structure (AFR, 1 April 1981, 1). After hurried talks, the government withdrew its threat and ICI announced that it was "strongly opposed" to reduced working hours (AFR, 2 April 1981, 2). The company had given no promises, and reports soon appeared that negotiations were being conducted privately with union officials (AFR, 7 May 1981, 1). No government action eventuated.

52. For examples see AFR (7 May 1981, 7; 20 May 1981, 9; 2 June 1981, 1; 3 June 1981, 1; 23 June 1981, 1).

53. In Australia, "wage drift" refers to the difference between award wages and average earnings. This had almost disappeared from mid-1978 to early 1980, but earnings grew approximately 2 and a quarter per cent faster than award wages in the six months to September 1980 (Australian Bulletin of Labour, March 1981, 51).

54. The ACTU maintained that public hearings would be time consuming and accomplish little. Perhaps more importantly, they would provide a forum for the Commonwealth to oppose publicly full indexation on economic grounds (AFR, 20 Jan 1981, 4).

55. See in particular the editorials of the Australian Financial Review, which was quick to brand the hearings "navel gazing" on their conclusion. The AFR's editorial of 9 March 1981 claimed that the hearings had been a waste of time and blamed the Commission for not seeking views critical of their centralized wage format. It is unclear whether the editorialist(s) took Dr Isaac's views, which had been published in their own paper, into account. The AFR consistently adopted the "Treasury line" that decentralized wage fixation would greatly alter wage

relativities through market pressure, thus reducing labour costs, encouraging the acquisition of skills, and "clearing" the labour market. Isaac had argued that this view was unrealistic given past experience, and more recent support (though differing in their interpretation) has been given to this position by Hughes (1980) and Scherer (1981).

56. Sir John Moore, Robinson and Ludeke JJ., Deputy President Isaac, Acting Public Service Arbitrator Watson and Commissioner Griffin.

57. During the hearings, it became clear that the Commonwealth viewed centralized wage fixation as possibly only temporary. Reports from Cabinet and statements by Minister for Industrial Relations Andrew Peacock foreshadowed a major inquiry into the industrial relations system. However, there was considerable disagreement over the terms of reference, the ACTU made it clear that it would not participate, and the idea was abandoned early in 1982.

58. The President did not appoint himself to the full bench, suggesting that the hearings were considered to be a formality.

59. It will be recalled that the Anomalies Conference included the Commonwealth, which was most unlikely to agree to the claim. If the matter was referred to a full bench, the criterion of negligible economic cost would probably preclude the claim being successful.

Chapter 8: Conclusion

Following the abandonment of wage indexation, there was widespread speculation that the Commission's role as a central actor in Australian industrial relations would diminish. It is now apparent that the Commission's eclipse was temporary. Major factors behind its re-emergence were the unexpected depth of the economic recession, a successful ideological offensive by capital and the election of a moderate ALP federal government led by former ACTU President R.J. Hawke. However, it was not simply these circumstances which proved the predictions wrong. I would argue that those who expected a greatly reduced role for the Commission had a poor understanding of the tribunal's history, and inadequate theoretical insight into the Australian social formation and

the Commission's place within it.

The material in the preceding chapters demonstrates that the policies pursued by the Commission have varied markedly. The abandonment of a purposive strategy cannot be construed as evidence of a permanent decline. Furthermore, the institutional unity of the state and the mutually constitutive relationship of the state and social classes leads to the expectation that a reduced role for the Commission could not eventuate without significant developments elsewhere, particularly among trade unions and employers. Fundamental changes of this sort have not occurred. Although there are tendencies present in the Australian social formation which might undermine the Commission, there are also tendencies which reinforce it. In reviewing and developing the themes discussed in this thesis, these issues will be explicated.

Federal Conciliation and Arbitration 1967-81

Principles and purpose

The federal tribunal has always had to contend with the incompatible demands of labour and capital. The early principles of wage fixation established by the Court were not a consistent set of rules. They reflected ongoing struggles

and shifts in the state's role in managing the economic, political and ideological conditions of existence of capitalist relations.

The basic wage was never founded entirely on "needs". The significance of this ethical criterion began to be reduced in the 1931 basic wage cut, and the Court announced the demise of the "needs" basic wage in 1953. "Needs", in the sense of an irreducible "living wage", gradually diminished in importance. However, the tribunal continued to be concerned with ethical criteria, particularly the maintenance and improvement of real wages. This was repeatedly stressed in major decisions.

The "capacity to pay" doctrine was very important as well. The submissions and decisions placed great stress on this vague criterion. The conflict between these two principles continued through the era under consideration, in terms developed in the late 1950s and early 1960s.

The employers consistently argued that capacity to pay should be the determining factor in national wage fixation. They claimed that increases in economic capacity resulted only from productivity growth. According to this argument, termed "productivity gearing", wage increases greater than productivity would result in inflation. Price movements, in their view, had no effect on capacity to pay, and should not

be a criterion in determining wage increases.

The unions combined economic and ethical criteria in their submissions. They argued that "wage justice" required the maintenance of real wages. Above this irreducible floor, the unions sought real wage increases in line with productivity.

These two views placed a very different emphasis on the role of wages. Fisher (1983) argues that the Commission came to accept the employers' doctrine, at first implicitly, and later explicitly. In my view, the Commission accepted that wage increases could, and often did, lead to inflation, and that wage rises should be granted cautiously. However, they also accepted that inflationary wage increases should at times be granted, within limits. This was based not only on the belief that the industrial relations consequences of the employers' policy would be unacceptable, but also on the ground that real wage maintenance was a desirable end in itself. Although increases seldom exceeded the unions' prices plus productivity formula, and frequently fell below it, they were generally above the employers' productivity-gearing doctrine. The unions had to struggle to maintain real wages, but the Commission was not a willing tool of the employers.

These issues were linked with the question of whether the tribunal should restrict itself to settling industrial

disputes, or seek to formulate economic policy. In general, members of the Commission deny that they should attempt to produce particular economic outcomes, though they recognize that their decisions have economic effects. They argue that their primary obligation under the Act is to prevent and settle industrial disputes, and seek to avoid an active or interventionist role in economic policy.

Some commentators have been sceptical of this view. Fisher (1983, 212) maintains that the Commission has sought to control wages with economic policy objectives in mind, and that dispute resolution has not been its primary objective. He views the Commission's long-term policy as supporting the interests of employers, based on principles developed by academic economists.

Fisher's analysis is persuasive, but the public statements of the Commission should not be readily dismissed. Fisher demonstrates that the Commission has had an ongoing concern with controlling or reducing real wages. The NWC decisions of the late 1960s and during wage indexation stressed the need for wage restraint. However, when sufficient industrial pressure was exercised, the Commission readily abandoned the reality, if not always the rhetoric, of wage restraint. One must keep track of the Commission in all its forms, as the parsimonious decisions of national wage benches were often circumvented by industry tribunals bowing

to "industrial reality". This can be seen during the 1968-69 and 1978-80 work value rounds and during the early 1970s, particularly in 1974. Attempts to centralize wage fixation within the tribunal were an ongoing occurance during 1967-81, with varying success.

The Commission accepted a causal link between wage increases and inflation, and national wage benches repeatedly warned of the potential damage that could result from rapid wage movements. However, even national wage benches were at times willing to grant inflationary increases in order to avoid industrial unrest, as in 1970. These were often couched in terms of "equity" or "wage justice". The Commission's pursuit of economic policy objectives was not entirely at the expense of maintaining industrial peace. The Commission has been eclectic in its approach to economics, and has readily abandoned economic doctrines when they proved unworkable. The flirtation with the federal Treasury's investment-led recovery argument during the early partial indexation decisions, and its subsequent abandonment, is perhaps the clearest case in point.

The Commission, the state and the parties

The Commission's relationship with other branches of the state, particularly the federal government, has always been ambiguous. The constitutional limitations on

Commonwealth intervention have afforded the Commission a considerable degree of independence, yet the government is able to influence the tribunal's activities. Conflict between the Commission and the Commonwealth has often arisen, as seen in Chapter 3, and this became acute at times during 1967-81.

These conflicts were greater under conservative governments than with the ALP. A constant theme of the Fraser government was that Commonwealth economic policy should provide a framework within which the Commission's decisions were made. This argument was put most clearly in the 1978 Wage Fixing Principles Case (Print D8400, 17). The Commission rejected the Commonwealth's position, stressing its own industrial obligations and the necessity for continued autonomy.[1] However, the Commission reduced real award wages during the Fraser era, and Fisher (1983) claims that the long term policies of both branches of the state have been similar. Fisher is correct at a general level, but it is important to recognize the genuine conflict that erupted between the Commission and the federal government at times. If the Commission was not attempting to reduce wages fast enough for the Commonwealth, the tribunal frequently complained that the government's policies discouraged wage restraint.[2]

Turning to the parties, one must treat the major developments with caution, as unions and management constitute complex phenomena requiring detailed study in their own right.

The organizations of labour became both more unified and more diverse during this era. Growing economic interdependence and technological change increased the strength of unions in transport, warehousing, telecommunications and the oil industry. Other changes brought tremendous growth among unions covering clerks, shop assistants and various service workers, but these unions were generally conservative and non-militant. The public sector also grew rapidly, and white collar and technical government employees played an increasingly active role in industrial relations. The ACTU incorporated these groups, but became more diverse as a result. The militant unions generally sought to use both industrial action and arbitration in pursuing their claims, while a substantial number of workers were covered by unions which eschewed direct action.

The Commission was constantly concerned by the activities of militant unions, as their successes tended to flow through the workforce. These advances undermined industrial stability, and threatened to raise more general political issues of distribution. The events of 1974 stand out in this respect, but the work value round in the late 1960s and the wage pressures during the late indexation period were also significant.

These union activities raise the issue of compliance with the Commission's awards. The abandonment of penalties,

combined with a strong economy, reduced the Commission's ability to enforce wage restraint. After the onset of a recession in the mid-1970s, the Commission sought to obtain compliance through the threat of reduced wages, but was only partly successful. The Fraser government amassed a formidible array of repressive legislation, though little use was made of the new provisions.

The relationship between employers and the Commission is perhaps more complex. Capitalists have a variety of strategies for dealing with labour, such as investment, employment and pricing policies, and technological innovation. The presence of a conservative Commonwealth government in office through much of this era was also to their advantage, though federal economic policy was contradictory, and did not always benefit all sectors of capital.

Employers' associations generally opposed improvements to wages and conditions, but individual firms often undermined these policies, either under duress or in the interests of obtaining or keeping their workforce. To the extent that the Commission sought to restrain wages, one could argue that an important function of employers was in fact carried out by the Commission. Australian employers have been less active in opposing union claims than one might expect, as the Commission played a key role in opposing the unions. The Commission was not consistent, however, and employers regularly resorted to

other economic strategies or to other branches of the state.

Overall, the period from 1967 to 1981 was a time of considerable turbulence in Australia. The Commission's centrality in the management of class relations placed it under considerable pressure. These pressures, and the Commission's response, were the object of analysis of this thesis.

A major contention of this thesis is that an analysis of the Commission's development must rely on theoretical insights into the Australian social formation and the Commission's place within it. It was suggested earlier in this chapter that much of the literature on arbitration is characterized by an inadequate theoretical basis, and that this is a major source of its analytical weakness. The analysis in this thesis was informed by the theoretical perspective developed in Chapter 2, and I now turn to the key theoretical issues which have been raised.

Theoretical Considerations

The theoretical framework used in this study provides a distinctive view of the Conciliation and Arbitration Commission. The Commission has been conceptualized as a state apparatus with a relative autonomy from social classes,

but inscribed by contradictions produced by class struggles. In seeking to manage class conflict, while avoiding its politicization, the Commission must adopt an inconsistent, opportunistic approach to industrial relations.

The distinctiveness and utility of this theoretical framework can be assessed by a comparison with Fisher's Innovation and Australian Industrial Relations. In my view, this book is the best contribution to the literature on the Commission yet published. However, the analysis is limited by its theoretical orientation.

Fisher's approach to the state is instrumentalist. He argues

> 6. The behaviour of the state administrative apparatus[3] is a function of the prevalence within the apparatus of specific ideologies of social production.
>
> 7. The extent to which the definition of social purpose within the state administrative apparatus coincides with the private purposes of combinations is a function of the prevalence of specific ideologies of social production.
>
> (1983, 18)

In other words, where members of the state apparatuses[4] share an ideology, and that ideology supports the interests of a particular social group, then the state apparatuses will act in the interests of the group.

This situation, it seems, applies to the Commission.

> The ideology which has consistently supported Commission action has been broadly consistent with that of the employers and the departments

> of the state, all sharing a common source of inspiration in the work of academic economists. (1983, 213)

Fisher supports his claim with an analysis of the Commission's decisions, particularly those concerned with technological innovation. I generally agree with his discussion, but suggest that it is somewhat one-sided. Although the Commission may favour the interests of employers in the long run, Fisher neglects the frequent inconsistencies and decisions which appear to go against them. These anomalies remain epiphenomena surrounding an overall policy favouring capital.

This neglect of anomalies does not result from oversight or misrepresentation, but from a theoretical weakness. An instrumentalist approach allows for the state apparatuses to be "captured" by particular interests, generally capitalists. However, it then becomes difficult to explain actions contrary to these dominant interests. They must be construed as "mistakes" or the result of partial rejection of dominant ideologies. Instrumentalism predicts too much support for dominant interests. It cannot account for the numerous tribunal decisions which are against the interests of employers. Instrumentalism also fails to take the accounts of agents seriously, dismissing anomalous statements as rhetoric or self-delusion.

The approach used in this thesis seeks to avoid these problems. Working class victories in the Commission are not

anomalies, but a normal, integral part of the Commission's activities. Within the parameters of state autonomy, the balance of class forces will have a considerable influence on decisions.

This also takes the arbitrators' own accounts seriously. Their claims to impartiality are, within limits, perfectly acceptable. The repeated denials by Presidents Kirby and Moore that the Commission followed a particular policy can be viewed not as rhetoric, but as reflecting a very accurate understanding of the requirements for the Commission's successful operation. Fisher has identified the dominant thrust of the Commission's actions, but has not dealt with the inconsistent decision-making which is such a significant, integral feature of this state apparatus.

In criticizing Fisher, I do not wish to denigrate his contribution. Rather, I seek to establish the distinctiveness and utility of my own approach, which I hope offers comparable insights, while remaining truer to the phenomenon under study.

Industrial arbitration and crisis management

The state apparatuses must maintain the process of accumulation and the continuing legitimacy of dominance-subordination relations in the social formation. However, efforts to manage the economy tend to undermine political or

ideological relations and vice-versa. The state seeks to manage crises, and if interventions are unsuccessful or contradictory, this can be conceptualized as a "crisis of crisis management" (Offe, 1976), which may result in significant shifts of state policy in an effort to contain and overcome the problem.

The overall structure of the Australian state, particularly its legal codes, tends to direct industrial struggles towards the tribunals established to deal with these conflicts.[5] The Commission has developed a leading role in this area. The guiding principle of the Commission's economic role — "capacity to pay" — is oriented towards the maintenance of profitablity. However, the concept of "equity" is less clear cut. "Equitable" solutions serve the interests of capital by resolving disputes, thereby restricting industrial disputes to the economic sphere and avoiding their politicization. However, as "equity" can only be determined by political rather than exchange criteria, decisions can be detrimental to the economic interests of employers. In seeking to maintain economic stability, the Commission makes political decisions which can have adverse effects on accumulation in sections of industry. "Political" decisions can create crises of profitablity, but "economic" decisions can generate politically disruptive campaigns of industrial action. An examination of national wage decisions shows that the Commission is well aware of this dilemma.

Arbitration and employers

A peculiar feature of Australian industrial relations is the relatively low profile taken by employers. Dabscheck (1980, 216) observes,

> ...employers have developed the habit of hiding behind the decisions of industrial tribunals. This involves employers in adopting a negative stance with respect to the demands of unions. We could postulate that industrial tribunals, in their role as labour administrators, have absorbed many of the industrial relations functions that would "normally" be performed by employers in a collective bargaining system.

Fisher (1983, 213) concurs, arguing that the "...key social relations..." in wage control have become those between the state, particularly the Commission, and unions, rather than between unions and employers.

There is no doubt that the Commission has often acted to restrain wages. However, it would be an oversimplification to view the Commission as having "taken over" the "employer's role". The Commission does not act like an employer, or consistently in the interests of employers, as indeed, if the theoretical argument used here is correct, it cannot. The state apparatuses act in the overall interests of capital, but with a relative autonomy from social classes. The strong presence of working class interests in the practices and principles of the Commission render it an inconsistent "ally" for employers. However, the interests of capital can be

pursued through means other than wage policy, including other branches of the state. Dabscheck (1980, 217) says,

> If the security or profit objectives of Australian employers are threatened they will not seek redress within the industrial relations system as such, but will concentrate their efforts on receiving help from Governments, or a non-industrial relations Government instrumentality ... One of the "explicit or tacit rules and understandings" of the Australian system is that whilst trade unions can rely on industrial tribunals for aid and protection[6], employers have similar access to Governments and bodies such as the Tariff Board/Industries Assistance Commission. In other words, a major reason Australian employers have adopted a low industrial relations profile is because they have the wherewithal to solve their problems elsewhere.

This has significant theoretical implications. Poulantzas (1978) argues that ruling class interests can be crystallized in various locations within the state apparatuses, and that decisions taken in one branch of the state can be blocked or altered in another. Poulantzas suggests that the ruling class can "...shift the centre of real power from one apparatus to another as soon as the relationship of forces within any given one seems to be swinging to the side of the popular masses" (1978, 143). Dabscheck's point is that capitalists can obtain changes to tariff, taxation, monetary or foreign exchange policies when faced with adverse wage decisions. The working class, however, is "selected into" the Commission, as other branches of the state are less "permeable" to their interests. The adverse effects of state policies for the working class can result in industrial action to regain lost ground, and the Commission in recent years has often complained of the

"unhelpful" decisions of other branches of the state. The state is itself enmeshed in contradictions (Poulantzas, 1973; 1978). This can be seen in the conflicts which arise within the state, in which the Commission is frequently involved.

The relationship between the state and the ruling class is complex and uneven. One cannot simply "read off" support for ruling class interests from the Commission's actions, because this assumes a consistency of wage policy which does not exist. Under most circumstances, it is only in the long run, taken in conjunction with the policies of other state apparatuses, that the class nature of the tribunals can be perceived.

The subordinate classes

The relationship between the Commission and the subordinate classes is also complex. The state apparatuses disorganize the subordinate classes, seeking to divide them and legitimate the rule of capital. However, these classes have a presence within the state in the form of "centres of opposition to the power of the dominant classes" (Poulantzas, 1978, 142). If the Conciliation and Arbitration Commission is a favourable site for working class struggles, it also disorganizes and subverts these struggles.

It is important to recall Offe's concept of "selection

mechanism", introduced in Chapter 2. The state apparatuses are structured to deal only with certain issues. The Commission is restricted to dealing with specific types of industrial conflict, "selecting out" or minimizing various potential avenues for class struggle.[7] The Commission has tended to concentrate on disputes over wages and hours, while resisting intervention into "managerial prerogatives". In other words, it has sought to limit struggles over control of production, directing conflict towards distribution.[8] Even here the Commission's influence is restrictive, encouraging narrow, sectional claims and economism. The Commission has avoided consideration of the overall structure of the incomes hierarchy, and stressed that it was not an agency of redistribution — though this was at times overlooked if a need to increase the profit share of national income in order to promote economic recovery was perceived. The Commission also seeks to limit organized, militant industrial action by declining to hear union claims while a strike or ban is in progress.

Acceptance of arbitration by unions has important consequences. Some writers, such as Howard (1980), argue that by accepting the "ground rules" of arbitration, unions place their capacity to bargain, and the legitimacy of bargaining in doubt. Although the Commission encourages negotiated settlements, these only become legally binding if they are approved by the tribunal. Settlements outside the award

structure have worried the Commission for many years, and they have periodically tried to control these payments. Their success has varied, from the disaster of December 1967 to the successful centralization of wage movements in the early years of wage indexation.

In some respects, the development of arbitration has been advantageous to the subordinate classes. It has encouraged trade unionism, albeit of a dependent variety. Awards place certain limits on the powers of employers. Arbitration forces employers to deal with union claims, which has unquestionably been of advantage to weaker unions. At the request of the parties, the Commission intervenes informally in a wider area than its legal authority permits, such as dismissals. Perhaps most importantly, the legitimacy of principles such as "wage justice" have been incorporated into the state. Although the Commission has restrained working class advances, it has also been a site for working class defence of their interests. The frequent dismay of employers at the Commission's decisions is unlikely to have been entirely rhetorical.

The way in which trade unions have dealt with the Commission has varied. Just as one cannot talk of "the unions" as if they were a monolithic entity, it is inappropriate to assume a uniform policy towards arbitration. The orientations of trade unions range from opposition to

co-optation, with most adopting a compromise policy. This is not simply due to ideological differences. Union leaders of all persuasions make use of arbitration, though some apparently do so with little personal enthusiasm. Many conservative unions bypass the tribunals regularly. The willingness of the Australian Federation of Air Pilots, a very conservative union, to go outside arbitration has become legendary. The Federated Storemen and Packers' Union, with a moderate-conservative leadership, had become a spearhead of co-ordinated industrial campaigns by the early 1980s. Some unions with radical leadership seem less willing to work outside the Commission.

One important factor in explaining most unions' disinclination to abandon arbitration is the depth to which the tribunals are legally integrated into the industrial relations decision-making process. In practice, industrial agreements are not treated as having the force of law unless they are ratified by a tribunal. Although the overaward component of wages is often substantial, unions will still seek increases to awards. This becomes particularly advantageous in the context of wage indexation, more so if inflation is high. Another reason is that registration protects unions' membership coverage. Loss of registration can open the way to loss of members to unions which have access to the Commission.

Of great importance is the strategic location of

employees in the economy, and their class location. As discussed in Chapter 2, employees in the monopoly sector may be better placed to obtain concessions from firms that are able to pass on higher costs through price increases. Skill is another consideration, if it is in short supply. However, these may be seen as conditions aiding the success of militancy. Not all employees will make use of a strong bargaining position.

The importance of class location becomes clearer when we deal with unions outside the traditional, blue collar "core" of the working class. Poulantzas (1975) argued that there are significant political and ideological differences along a mental/manual labour division. The previously advantaged position of white collar employees within the firm made it less likely that strong organization and militant attitudes would develop. As the working conditions of many of these employees have deteriorated, particularly in the public sector, they have become more willing to struggle against management, though this has not been a uniform development. Similarly, Wright's (1978) discussion of contradictory class location helps to explain the development of union organization among managerial and technical personnel, particularly if the processes of proletarianization described by Braverman are taking place.

These factors have made the Commission's work more

complex, while opening up opportunities for new tactics. New groups have appeared before the Commission, requiring decisions over work far removed from the tribunal's original concerns. At the same time, many white collar employees have been unwilling to take industrial action, or have been relatively unsuccessful in doing so, which has made it difficult for the ACTU to develop a coherent wages policy. The Commission's threats in national wage decisions to compensate for the effects of industrial action resulted in the non-militant unions bringing pressure to bear within the ACTU for restraint. This tactic did not halt industrial campaigns, but appears to have delayed and disorganized them at times.

Industrial struggle in Australia has come to be organized in terms of arbitration. Even where trade unions have the strategic capacity to go outside the Commission, there are very strong political and ideological forces drawing them back in. The activities of the ALP following the wages explosion of 1974 is the most obvious example. The successful ideological offensive by capital following the 1981/82 wage campaigns, combined with ALP pressure to refrain from industrial action, is a more recent illustration. In both cases, most unions — even traditionally militant unions — sought a return to arbitration. This retreat was partly defensive, due to rising unemployment, but it is significant that strategically powerful unions either could not mobilize

campaigns or refrained from doing so. The specific actions taken by workers result from economic, political and ideological factors in the conjuncture. The development of class relations in the context of arbitration means that in general, trade unions cannot simply ignore arbitration.

Arbitration as a state apparatus

The state apparatuses have a relative autonomy from social classes as well as an institutional unity (Poulantzas, 1973, 256) which favours ruling class interests (Poulantzas, 1978, 136). The relative autonomy of the state, as seen in the actions of the Commission, is expressed in the numerous decisions that are taken against the interests of capital or individual capitals. When peak employers' associations make submissions that no wage rises should be granted, the advocates presenting the case know that at least some increase will probably result, but the fact remains that many employers would genuinely prefer not to pay higher wages, and it is in their short term interests not to have to do so.[9] Even when some employers agree to wage increases, others may object, fearing a threat of flow-on. The interventions by employers against consent decisions mentioned in the text attest to this.

At the same time, the state apparatuses have an institutional unity supporting the interests of capital in

general. There is no theoretical need for the state apparatuses to show a consistent bias in favour of capital in all their decisions. On theoretical grounds, it would be astonishing if they did. It can be shown, however, that even some decisions which seem to favour the working class contain elements supportive of capital. Let us examine the events of 1974, a period during which the Commission is often accused of handing down many decisions against the interests of employers. It will be recalled that many of the decisions during the wages explosion were consent adjustments. The increases were obtained in an unprecedented strike wave, and employers seemingly could do little to resist. For the Commission to attempt to stem the tide would have run the risk of politicizing an already precarious industrial situation. In this instance, heroics of the sort indulged in by the Industrial Court in 1968 during the absorption struggles would have been contrary to the interests of capital as a whole. Furthermore, although the Commission, through its fragmented structure, participated in activities which destabilized industry, key members sought to stabilize the wage structure. This is particularly true of the President, Justice Moore, whose political acumen is widely acknowledged. An examination of his decisions in the transport industry appeal in August 1974 and the second metal industry increase that year show how sensitive he was to this issue. In an extremely turbulent industrial climate, his actions were oriented towards reducing militant action and providing a basis for long term stability.

He helped to keep the Commission "in the game" until the unions were obliged to return to centralized wage fixing once again — on the Commission's terms.

Therefore, the Commission's institutional bias in favour of capital can be discerned only in the long run. Individual decisions cannot be examined for evidence of class bias, as individual arbitrators are responsive to immediate industrial problems in which working class strength is often decisive. It is only across a series of decisions and through the use of concepts such as "selection mechanisms" that the institutional unity of this state apparatus can be discerned.

It does not follow that the state is a unified whole. It is an ensemble of apparatuses, containing cleavages and conflicts. Class contradictions, between capital and labour and within capital itself, are inscribed within the state. These are materialized as conflicts between and within the state apparatuses. The importance of the Commission as a site for working class struggles makes it particularly vulnerable to these conflicts.

This argument provides insight into the wage indexation era, especially in the late 1970s. The contradictions focused sharply on national wage benches. As sections of the subordinate classes gathered strength after the onset of the recession, pressure mounted to keep pace with CPI movements,

especially as the cumulative effects of partial indexation were felt. Even after the redistributivist ideology of the early partial increases was abandoned, the full benches continued to pursue wage restraint in an attempt to reduce cost-push inflation.

The restraint imposed by the Commission was not sufficient for the Commonwealth. With an industrial relations policy suited to the interests of the petty bourgeois and small to medium capital electoral constituency of the Liberal Party, and supported by the neo-classical economic policies of the Treasury, the Commonwealth repeatedly sought little or no wage increases. Furthermore, these submissions urged the Commission to restrict its decisions to parameters set by government policy. This argument, and the Commission's refusal, are clearly seen in the 1978 Wage Fixing Principles Case. Mindful of the industrial relations implications of wages policy, as Treasury seemingly never was, the Commission declared

> We are ... convinced that had the Commission granted no increase when asked to do so, not only would the system of orderly wage fixation have ceased to exist, but the inevitable escalation in industrial disputation would have had deleterious economic consequences.
> (Print D8400, 17)

The Commonwealth was able to pursue its redistributivist objectives elsewhere, attacking the real wage and social wage through fiscal and monetary policies. However, the success of the Commonwealth and the Commission in reducing labour's

share of the national product did not advantage all sections of the dominant classes equally, as seen in the depressed share of GDP of companies in the late 1970s.

The Commission was in a contradictory situation. National wage benches, mindful of pressure from the Commonwealth, were also aware that "excessive" wage restraint could politicize economic struggles. At the same time, industrial pressure from militant unions grew, and the fragmentary structure of the Commission allowed wage increases through various "safety valves" in the indexation guidelines. Contradictions developed within the Commission itself, as individual members responded to industrial pressure by granting "back door" increases contrary to the spirit of the indexation guidelines and full benches continued to exercise restraint in national wage decisions. Intra-organizational struggles arose, as some Commissioners chafed under restrictive guidelines. Other instances, such as the 1964-66 national wage decisions, the work value round following the 1967 metal trades increase, and the years leading to and including the wages explosion are also readily explicable within this conceptual framework.

This line of analysis helps to explain a major feature of arbitration, as well as some other branches of the state; the repeated shifts of policy and inconsistent decisions. The contradictions in which the Commission is enmeshed are

complex, and a decision in one conflict may be inappropriate in another, or as in the later years of indexation, inconsistent policies may be the only way of managing struggles along several fronts. Indexation again provides an excellent illustration, as it demonstrates what happens when the Commission tries to follow a rigid policy in a highly contradictory situation. Forced by the employers and the Commonwealth to close off all the loopholes in the guidelines, the Commission was unable to deal with continuing working class pressures. The demise of indexation under these circumstances was assured.

On theoretical grounds, it is expected that the Commission will seek flexibility and avoid rigid procedures[10], and we find ample evidence of this. It is expected that the Commission's decisions will be characterized by inconsistency; in Offe's (1976, 49) terms, "... an opportunism whose adherence to its own principle is unswerving". Again, this explicates the Commission's actions. Significantly, inconsistent decision-making becomes a normal, regular process when viewed from the perspective used here. This is distinct from instrumentalist approaches, in which it is difficult to accommodate decisions favourable to the working class within the terms of the theory. In my view, the state seeks to manage, deflect or undermine the struggles of subordinate classes, which strict adherence to ruling class interests makes difficult to carry out. Again, capitalism requires not only

accumulation, but also legitimation, for which the state must have relative autonomy.

A central focus of this thesis was on the shifts in the form of the Commission's decision-making, and the conditions under which this occurred. It was argued that bureaucratic procedures could not accommodate the highly political activities of the Commission, and Offe's (1975) concepts of "purposive action" and "consensus" were used to categorize broad strategies employed by the tribunal.

The conditions of existence of the task-oriented purposive strategy included a relatively stable environment and an inability of the clients to achieve their goals other than through the specific state apparatus. A consensus[11] policy, sensitive to the power position of the clients, requires that the particularistic settlements made under the auspices of the state do not undermine the conditions of existence of the economic and political order as a whole. It was seen that the conditions for either policy did not obtain for long, and the result was periodic shifts of policy and attempts to pursue both strategies at once through different manifestations of the Commission.

National wage benches generally attempted to pursue a broadly purposive strategy of a level of wage restraint compatible with avoiding widespread industrial action. The

Commission consistently sought to centralize wage determination at this level, but was able to do so only to the extent that real wages were maintained or the unions were unable to pursue increases in the field. When militant action took place, individual members of the Commission often pursued a consensus policy. The increases granted at this level had often been won in any case through overaward payments. The classic instance of this was the 1967 Metal Trades Work Value Decision. These gains by militant unions then flowed through the workforce. My view is that flow-on usually occurred more slowly than one would believe from reading conservative commentators. The major work value rounds of the late 1960s and 1970s both took at least two years to flow on, and the December 1981 metal industry standard had still not reached all sectors of the workforce at the time of writing (October 1983). It must be stressed that the Commission's consensus strategy seldom involved "giving" increases, at least not at the point where they first passed into awards.[12] If the full increase had not already occurred in some form, then the arbitrated difference generally recognized the likelihood of significant industrial action. There is no magical formula of "splitting the difference" used by arbitrators. Rather, arbitrators tend to talk of "industrial realities", and are keenly aware of the nature of union claims, their ability to pursue them in the field, and of employers to resist.

The de facto abolition of penalties in 1969 made it

difficult to pursue a purposive wages policy. The 1967 NWC decision was a programmatic statement for centralized wage fixation. Various developments, apart from the demise of penalties, such as the fragmentation of awards, economic prosperity, and the election of a social democratic federal government, in the context of the height of working class strength since the late 1940s, made this impossible to implement. The Commission's activities became dominated by a consensus strategy pursued at industry level. This in turn became unworkable when imported inflation fueled a wage spiral that undermined profits and helped to trigger an economic recession. The effects of the recession, combined with the political offensive by capital which resulted in the demise of the Whitlam government, weakened labour considerably. In the indexation period, the Commission attempted to pursue a purposive policy which gradually reduced real wages. This was successful for a time, but was undermined by cleavages within the state and a resurgence of strength among key militant unions able to pursue industrial campaigns despite the recession. The struggles within the state forced the Commission to try to close off its machinery for a consensus policy, but the conditions for a renewed purposive policy were unfavourable, and wage indexation came to an end.

These concepts provide considerable insight into the broad sweep of the Commission's activities. They do not

explain individual decisions, although particular cases may be illustrative of the strategies. The Commission's fragmented structure, its relationship to other branches of the state, and its policy shifts are all explicable within this theoretical framework. These are aspects of the Commission which are not easily accommodated within alternative perspectives.

It is not novel to observe that the Commission's decisions are at times inconsistent, or that it employs different strategies or that it operates on contradictory principles. Nor does it break new ground to suggest that the overall activities of the Commission support the existing economic system. The contribution of this study has been to analyze key aspects of the Commission's activities in terms of concepts which are linked to a coherent theoretical framework. This framework, based on contemporary Marxist theory, seeks to comprehend the role and development of state apparatuses within capitalist social formations. The relative autonomy and institutional unity of the state apparatuses engaged in the management of the contradictions generated by class struggles lead us to expect that an agency deeply enmeshed in these conflicts, as is the Commission, would be characterized by inconsistent, opportunistic, highly political action. These inconsistencies are not mere logical problems, but have crucial material consequences. They are generated by, and in turn produce, contradictions in wider economic and political relations. In seeking to protect or manage accumulation, the

state apparatuses may trigger political crises, whose solution tends to produce new impediments to accumulation. If the capitalist state is a class state, this does not mean that it reproduces existing relations smoothly or successfully. In these terms, the full range of the Commission's actions can be incorporated into an historical explanation such as that undertaken here.

Critique

While I hope that my research has made a contribution to our understanding of state intervention in industrial relations in Australia, there are shortcomings which must be noted. Although significant insights into the actions of the Commission were obtained, certain limitations emerged. This is itself a useful finding, as a major objective of the exercise was to assess the framework that was developed.

The major difficulty stems from a lacuna in Marxist theories of the state. It emerges in the debate between structuralist and instrumentalist approaches and is linked with a deeper problem of the relationship between theories of structural determination and causal theories, and to a general dilemma within the social sciences of constructing theories which incorporate structural elements and those which focus on the consciousness of agents. As Jessop (1982) argues, what is

needed is "relational" theory, which can combine both. However, significant theoretical problems have yet to be resolved.

My theoretical framework relies greatly on concepts developed by Offe and Poulantzas, placing it largely within the structuralist tradition. These concepts are useful in analyzing the structural constraints under which the Commission operates, and the conditions of existence of particular strategies of crisis management. However, these concepts do not address the question of causation; nor, as O'Malley (1980, 54) notes, are they intended to do so. We are left to identify "... specific, historical, causal chains ..." to explain particular events. This leaves an explanatory gap between structure and causation, or in the case of the Commission, between the structural constraints on, and the form of, its actions, and the content of its actions. Following O'Malley (1980, 61), causation was analyzed in terms of "... the balance of forces ..." in the conjuncture. It was seen that class struggles led to alterations in the Commission's policy, and that the structure of the state limited the form of class struggle, but the connection between the two was not, in my view, adequately specified.

In defence of a structuralist approach, an analysis of structural determination may be seen to be theoretically prior to causal analysis. In a key passage, Jessop (1982, 255) argues

> ... the exercise of power is not the unconditional outcome of a mechanical clash of wills but has definite social and material conditions of existence and is circumscribed through its links with other determinations in a social formation. This is why politics can be justly described as 'the art of the possible'. The analysis of these limits and constraints is therefore logically prior to the study of the actions of the agents involved in a power relationship.

But he adds, "... it is also necessary to investigate how the attributes, capacities, and modes of calculation of these agents further limit the possibilities of action and thereby help to determine the resulting power relation". These aspects need to be more adequately conceptualized in a way which is compatible with a structural argument.

Another limitation arose from the restricted scope of my research. The study concentrates on the Commission, and my emphasis within the Commission is on national wage benches. The importance of the fragmented structure of the Commission became increasingly evident as the research progressed. The internal autonomy of the tribunal is a key organizational element permitting the flexibility needed to manage contradictory pressures. However, industry level tribunals are diverse. The complexity of the Commission has increased since Perlman's (1954) time, and this thesis did not attempt to detail fully the relationship between these tribunals, or between industry and national benches. Although the interaction between these levels played an important part

in the analysis, I do not consider the account to be complete.

A similar situation exists for the relationship between the Commission and other branches of the state. The role of the federal government is of great significance, and was analyzed in some detail. However, certain aspects of Commonwealth policy remain unclear. For example, if, as Plowman (1981, 163) argues, the level of investment funds available to companies is strongly influenced by federal government policy, why did an investment-led recovery fail to materialize in the late 1970s when the wages share of GDP fell? This was a key debate throughout the wage indexation period, as the promise of an investment-led recovery was the basis of the Commonwealth's submissions for zero indexation. The relationship between the Commission and other state apparatuses is also important. The most obvious omission is the role of the state tribunals. State governments, federal departments, and public instrumentalities and agencies also affect the Commission's work. The theoretical problem is that if capital regularly has recourse to other branches of the state, particularly when confronted with adverse wage decisions, then a full explanation of the context within which the Commission operates would trace these activities and outline their effects and the Commission's response.

A final difficulty in this respect is the amount of attention given to the parties. Trade unions and employers

are terms which mask very complex interests and divisions. The Commission seeks to manage their struggles, and their interests appear within the Commission in a variety of forms. These conflicts occupied an important place in the analysis, but a detailed account of the organizations of capital and labour was not attempted. A more complete explanation of the contradictory pressures with which the Commission deals would require a far more wide-ranging discussion of these organizations.

Towards the Future

The Commission

There have been significant developments in Australian industrial relations since the abandonment of wage indexation in July 1981. These will be briefly discussed, and possible future directions for the Commission examined.

The December 1981 Metal Industry Agreement quickly became a benchmark for flow-on pressures. In May 1982, the Commission rejected a claim by the ACTU to accept the wage increase as a community standard, ruling that claims would be heard on a case by case basis. Many employees obtained an increase, but there was not a full flow-on. There was widespread talk of a new "wages explosion", as substantial

gains were made in some industries. However, there was a precipitous decline in the economy, and by late 1982, few unions seemed able to pursue wage increases. There was a substantial increase in unemployment, reaching over 10% by February 1983. Much of this rise occurred towards the end of 1982 (Australian Bulletin of Labour, June 1983, 177).

In this climate, the Fraser government engineered an agreement among the heads of government for a "wages pause". Unlike 1977, the Labor Premiers fully supported the proposal. The pause was established by legislation and through the tribunals. The Commission agreed to the proposal on 23 December 1982, over the feeble protests of the ACTU. Apart from isolated breakthroughs, the freeze held through the first half of 1983.

The Prime Minister called an early election for March 1983, and was resoundingly defeated. A moderate ALP government, led by R.J. Hawke, took office. The ALP platform was based on a prices and incomes accord with the ACTU, which called for restraint of all prices and incomes, real wage maintenance, tripartite planning mechanisms, and a return to centralized wage fixation. An unprecedented "Economic Summit" was held in April, chaired by the Prime Minister and attended by senior representatives of labour, capital and the state. Few substantive developments emerged from the Summit, but there was consensus on the desirability of a return to

centralized wage fixation. Ironically, less than two years after the parties abandoned the indexation guidelines, the Commission was urged to re-introduce a new centralized system.

Most ACTU affiliates accepted that no additional claims could be made outside any new guidelines, and the Commonwealth promised full support for the system. The employers objected to proposals for full indexation, and argued that there was no capacity for increases before 1984. On 23 September, the Commission introduced a very restrictive set of wage fixation guidelines (Print F2900). A key provision allowed the increase to flow only to those awards in which the unions agreed to stay within the guidelines. The Commission had clearly learned that if it was to lock itself into inflexible arrangements, then its clients must be unable to seek their objectives through other avenues.

Discussion of possible future developments in wage fixation needs to take this background into account. Two tendencies appeared, both of which could develop further. The first year after the demise of indexation brought tentative moves towards collective bargaining. More recent developments suggest a possible move towards corporatist arrangements.

The argument that there should be greater reliance on

collective bargaining is not new.[13] A number of prominent academics have taken this view, as has the federal Treasury. Both the Shadow Treasurer, Mr Howard (AFR, 1 Sept 1983), and perhaps significantly, a senior Deputy President of the Commission, Justice Ludeke (AFR, 7 Sept 1983), have recently supported the idea.

It is not the merits of this position that concern us, but its likely eventuality. Free collective bargaining would require unions and employers who were able to negotiate and enforce settlements without recourse to the tribunals. This would require considerable change on both sides. Howard (1980) argues that arbitration allowed unions to grow quickly, but without a corresponding growth in their ability to engage in protracted industrial conflict. Although unions' fighting capacity varies greatly, Waters (1982) shows that when strikes occur, they are more likely to be short, demonstration stoppages than prolonged tests of industrial muscle. Dufty (1979) finds that Australian unions are inhibited by their meagre financial resources, and most lack a strong shop steward network to support extended industrial campaigns.

Dabscheck's and Fisher's comments on the reliance of employers on tribunals have been mentioned above. Even if employers were not dependent on the tribunals, we must take account of Crouch's (1979, 181) argument that in times of low economic growth, it is unlikely that free collective bargaining

and strong unions can co-exist without generating high inflation. Recent overseas evidence suggests that where adequate mechanisms for state intervention during economic or industrial crises do not exist, governments soon attempt to establish them, or to weaken the unions' ability to bargain effectively. In Australia, this would mean a revival of the Commission (as in 1975 and 1982/83), possibly accompanied by measures aimed at reducing union power.

The organizational weaknesses of unions and employers, their reliance on the Commission, and the likelihood of state intervention to manage economic crises, suggests that a shift towards collective bargaining in Australia will be partial at most.

Another possible development which has been discussed in recent years, increasingly so since the election of the Hawke government, is corporatism. The literature on corporatism is varied, and its applicability to Australia is unclear. All capitalist states influence industrial relations, and this took a highly institutionalized form at an early date in Australia. However, state intervention is not synonymous with corporatism, which requires some form of co-operative tripartism. The Commission has frequently encouraged co-operation between the parties for particular ends, but co-operation does not mean that the Commission is a corporatist agency or part of a corporatist state. Although

some limited co-operation may be achieved through the Commission, it cannot be mistaken for "... a share in making ... economic policy ..." which is a key characteristic of corporatism identified by Crouch (1979, 190-191).

Recent developments may prove significant. The Hawke government was elected on a platform of co-operation with trade unions, supported by the ACTU. Since then, there have been efforts made to establish tripartite economic policy mechanisms. Significantly, under government prompting, the ACTU has sought to exercise an unprecedented degree of control over its affiliates, and peak employers' councils have attempted to foster greater co-ordination within capital. These are essential steps for the successful implementation of an incomes policy (Wright and Apple, 1980), the establishment of which is characteristic of corporatist initiatives.

The Commission has responded by establishing a framework which is consistent with the ALP/ACTU Prices and Incomes Accord. In exchange for economic benefits, the Commission is attempting to keep economic struggles within very limited parameters. With few exceptions, trade unions (even radical and militant ACTU affiliates) appear to have accepted these restrictions in exchange for access to economic policy-making machinery and support from the government for real wage maintenance or its equivalent (e.g. through tax reductions).

These initiatives support Jessop's (1978, 45) assertion that corporatism is most compatible with the rule of social democratic political parties in a parliamentary system. The strong relationship between the ALP and key trade unions tends to weaken industrial struggles, as unions pursue gains through political action. As the Liberal Party appears to be adopting a policy contrary to these centralized arrangements, the direction of industrial policy will depend on political developments. We may conclude that the Commission is not itself a corporatist agency, but may participate in corporatist arrangements, the success of which depend on the active support of the government and the ability of the organizations of labour and capital to control their members.

The institutional basis of corporatism in Australia is weak, and it would not be surprising to see a return to more openly adversary conditions within a few years. Crouch (1979) suggests that the capitalist societies will undergo shifts between forms of corporatist and collective bargaining arrangements. Over the next few years, this will probably apply to Australia. Although the importance of the Commission may decline if collective bargaining becomes established, it is unlikely that arbitration will be abandoned entirely. As free collective bargaining is unlikely to flourish for long without state intervention, this would bring about a renewed role for the Commission.

Some further questions

I would like to conclude by outlining two broad areas in which further research on the Commission might be pursued.[14]

Firstly, there is a need for research on the Commission's actions in dealing with disputes at the level of industries or firms. This is where much of the Commission's work takes place, and it is poorly understood. Very little of the literature on arbitration appears to be based on first-hand observation, as Deputy President Isaac (1979) points out in his critique of Professor Niland's (1978) work.

My brief observations of the activities of Commission members suggested that arbitrators are integrally linked into industrial relations networks. Arbitrators occupy strategic locations in the conduct of everyday industrial relations. Some of their most important work appears to be very informal, taking place out of court or closed conferences, through telephone or private conversations. A high degree of informality may be restricted to certain industries or specific sections of industries, but it seems possible that it constitutes a significant element of Australian industrial relations. If these informal activities could be studied, it would provide valuable insight into an aspect of industrial

relations which is largely hidden from public view. Many published decisions at industry level give little information on the nature of the dispute or the processes leading to the decision, and the informal activities very rarely are publicized at all. It is likely that observational research would reveal how the Commission "selects out" some forms of industrial conflict and channels them into more "acceptable" avenues. Although the legal parameters are set by macro-political decisions of courts and legislatures, the activity of selection and dispute resolution occurs within the Commission's panels. The ideological construction of disputes into forms compatible with the maintenance of capitalist relations would be an important conceptual aspect of such an investigation.

Secondly, there is need for further study of the relationships between the Commission and unions, employers and other branches of the state. One possibility would involve the detailed, historical analysis of the Commission and various institutions. To the extent that Howard's (1980) generalization about the power of Australian trade unions is correct, how did it develop and how is it reproduced? What accounts for the differences between the unions in this respect — the industry? ideology? workplace organization? As various authors (e.g. Clegg (1976) and Frenkel (1980)) argue that trade union structure is strongly influenced by the activities of the state, this is an important area for

exploration on theoretical grounds.

Similarly, the argument that the Commission has "absorbed" some of the functions of employers needs to be studied. It is often observed that there is very little research available on the industrial relations policies of Australian employers, and this would appear to be a key topic. It would be essential to determine the nature of the Commission's relative autonomy from capitalists, and whether the interests of different fractions or sections of capital were treated differently.

Theoretically, contradictions between the branches of the state were viewed as an important conceptual issue. Some analysis of the relationship between the Commission and the Commonwealth was provided, but a more detailed study would be worthwhile, with an emphasis on its historical development. There are important links which could be explored between the Commission and other state apparatuses, an example of which is the relevant chapter of Nieuwenhuysen and Daly's (1977) study of the Prices Justification Tribunal. One would expect to find that such relationships depend on the actions of employers, with key initiatives occurring in response to adverse decisions in the Commission.

There are relatively few available discussions on federal-state arbitral relations, and these tend to be

legalistic. This topic is therefore another area to be explored.

The study of the Commission has advanced considerably in recent years with the work of Romeyn (1980), Dabscheck (1980; 1981), and Fisher (1983). The significance of these studies lies in their attempt to apply the insights of sociological theory to an institution which has previously been viewed only from commonsense perspectives. These final sections have indicated the areas in which further work may usefully be done, and the theoretical development that will be necessary to undertake this research. The utility of this or similar research must ultimately be judged in terms of the extent to which it assists our understanding not only of the Commission, but of the role of the state in Australia and other capitalist social formations.

Footnotes

1. See the 1978 Wage Fixing Principles decision and Kirby (1982).

2. The failure to introduce tax indexation, periodic devaluations and increases in indirect taxes and government charges, and increased interest rates partly due to restrictive monetary policy were among the most significant measures which complicated the Commission's work.

3. Fisher divides the state into an administrative and a participative apparatus. The latter appears to refer to government, which relegates other branches of the state, including the Commission, to the administrative apparatus.

4. Fisher seems to view the state apparatuses in the singular, which in my view is mistaken, as it overstates their cohesiveness.

5. Although most disputes are resolved without recourse to the tribunals, they establish guidelines in terms of which most disputes are resolved.

6. This is clearly relative. My interpretation would be that the tribunals are state apparatuses through which the working class can pursue its interests more easily than in others. In Poulantzian terms, it is a favoured site for working class struggles within the state.

7. The role of the High Court is significant here, as the practices of the Commission have been circumscribed by the Constitution and judicial interpretations.

8. See Fisher (1983, ch 3).

9. Thus avoiding higher wage costs. This increases profit, but in the long run a general fall in real wages reduces aggregate demand, and potentially the demand for the products of individual employers.

10. The restrictive, inflexible guidelines handed down by the Commission in the September 1983 national wage decision must be seen in the context of unprecedented moves to incorporate the trade unions into state decision-making and attempts by the ACTU to control its affiliates. The Commission indicated that without these developments, which greatly enhance the prospects for a successful purposive policy, such guidelines would not have been established.

11. It bears repeating that Offe's use of this term is quite different from its commonsense usage or that in structural-functionalism.

12. This is only a tendency, but is in line with the Commission's "appropriation" of some of the functions of employers. However, decisions stand out, such as the 1959 Basic Wage Decision, in which a large increase was granted in a year with the lowest number of working days lost due to industrial action since the Great Depression (Plowman et al., 1980, 59-60). There were peculiarities to this case, such as the return to the basic wage bench of Judge Foster after some years' absence, the determination of the President to revise the 1953 principles, the very low share of the national product accruing to labour in 1958, and the extraordinary advocacy of Hawke. The employers responded vigorously to this landmark decision, and it may be seen to have set off developments that led to the turmoil within the Commission during the mid-1960s. The 1959 increase clearly favoured the unions. The Commission is no "black box" which automatically favours capital. However, that one must look hard to find decisions like 1959 is indicative of the overall thrust of the Commission's national wage policy. Again, we are dealing with tendencies, to which there are always exceptions, but the need for the unions continually to struggle to keep pace with movements in prices plus productivity is surely noteworthy. The Commission is far from the scourge of the employers for which conservatives sometimes mistake it.

13. See the relevant chapters in Isaac and Ford (1971).

14. Further research into the concrete, causal processes underlying the Commission's decisions is clearly essential. This was stated above, and will not be repeated in detail here.

A Note on Sources

This research is based almost entirely on documentary sources. Considerable reliance was placed on the Commission's own records in the form of decisions and transcript. This primary material was supplemented with newspapers and union and employers' journals, among other materials. The emphasis in the thesis on the metal industry was due not just to the centrality of this industry to the Commission's work, but also because there was ample documentary material from the relevant organizations. The publications of the AEU and its successors are perhaps the most carefully researched and clearly argued of any union operating largely in the private sector. The publications of the MTIA, VEF and VCM also concentrated heavily on the metal industry. Given the importance of the metal industry for federal wage fixation, this focus should not have prejudiced the argument developed in the thesis.

A number of confidential interviews were conducted with members of the Conciliation and Arbitration Commission. Most took place in Melbourne in June 1981. These interviews were exploratory, and combined with my observations while at the Commission, provided useful background. I have referred to interview data at several points in the thesis, but have restricted their use to illustrative purposes. At no point does my argument rely on field work, though this material has

influenced my understanding of the Commission and the orientations of its members. I have also made very restricted use of anecdotal material from conversations with industrial relations practitioners such as trade union officials and industrial relations managers. Again, at no point does this material carry the weight of the argument.

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AMWSU Monthly Journal

AMWSU Quarterly Journal

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APSA Review

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Maritime Worker

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MTIA News Bulletin

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VCM File

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Appendix 1

Wage Indexation Guidelines

April 1975 Guidelines
(Print C2200)

1. The Commission will adjust its award wages and salaries each quarter in relation to the most recent movement of the six-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment.

2. For this purpose, the Commission will sit in April, July, October and January following the publication of the latest CPI. We expect the time of such hearings to be short.

3. Any adjustment in wage and salary award rates on account of CPI should operate from the beginning of the first pay period commencing on or after the 15th of the month following the issue of the quarterly CPI.

4. The form of indexation will be determined by the Commission in the light of circumstances and the submissions of the parties, provided that an increase of less than 2 per cent in any one quarter should be applied fully to all award rates.

5. No wage adjustment on account of the CPI will be made in any quarter unless the movement in that quarter was at least 1 per cent. Movement in any quarter of less than 1 per cent will be carried forward to the following quarter or quarters and an adjustment will occur when the accumulated movement equals 1 per cent or more.

6. Each year the Commission will consider what increase in total wage should be awarded on account of productivity.

7. In addition to the above increases, the only other grounds which would justify pay increases are:
   (a) Changes in work value such as changes in the nature of the work, skill and responsibility required, or the conditions under which the work is performed. This would normally apply to some classifications in an award although in rare cases it might apply to all classifications.

   (b) Catch-up of community movements. As a result of a series of industry wage increases last year a firm

base has been widely established with appropriate relativities between and within awards on which indexation can be applied. However, there may be some cases where awards have not been considered in the light of last year's community movements. These cases may be reviewed to determine whether for that reason they would qualify for a wage increase but care must be exercised to ensure that they are genuine catch-up cases and not leapfrogging. It will be clear that this catch-up problem is a passing one and should not occur under the orderly system of wage fixation we propose as the basis of indexation.

It is to be understood also that the compression of relativities which has occurred in awards in recent years does not provide grounds for special wage increases to correct the compression. Compression is a matter which could be raised for consideration in cases dealing with the form of indexation and in cases dealing with national productivity distribution.

8. Any applications under paragraph 7 above whether by consent or otherwise will be tested against the principles we have laid down, and viewed in the context of the requirements for the success of indexation. This does not mean the frustration of the process of conciliation but it does mean that the Commission should guard against contrived work value agreements and other methods of circumventing our indexation plan. We draw attention to section 4 (1) (q) of the Act which says that the meaning of 'industrial matters' includes 'all questions of what is right and fair in relation to an industrial matter having regard to the interests of the persons immediately concerned and of society as a whole'.

September 1978 Guidelines (Wage Fixing Principles Case)
(Print D8400)

1. The Commission will adjust its award wages and salaries every six months in relation to the last two quarterly movements of the six-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment.

2. For this purpose, the Commission will sit in October and April following the publication of CPI for the September and March quarters respectively. We expect the time of such hearings to be short.

3. Any adjustment in wage and salary award rates on account of the CPI for the six month period will, if practicable, operate from the beginning of the first pay period commencing on or after the 15th of the month following the issue of the September quarter CPI in one case and the March quarter CPI in the other.

4. The form of indexation will be uniform percentage adjustment unless the Commission decides otherwise in the light of exceptional circumstances. It is to be understood that the compression of relativities which has occurred in awards in recent years does not provide grounds for special wage increases to correct the compression.

5. No wage adjustment on account of the CPI will be made in any six month period unless the movement was at least 1 per cent. Movement in any six month period of less than 1 per cent will be carried forward to the following six months period or periods and an adjustment will occur when the accumulated movement equals 1 per cent or more.

6. Each year the Commission will consider what increase in total wage or changes in conditions of employment should be awarded nationally on account of productivity.

   No hearing under this principle will commence before October 1979.

7. In addition to the above increases, the only other grounds which would justify increases in wages or salaries are:

7.(a) Changes in work value

Changes in work value being changes in the nature of the work, skill and responsibility required, or the conditions under which the work is performed. This would normally apply to some classifications in an award

although in rare cases it might apply to all classifications.

(i) Prima facie the time from which work value changes should be measured is the last movement in the award rates concerned apart from National Wage and Indexation. That prima facie position can only be rebutted if a party demonstrates special circumstances and even then changes can go back only to 1 January 1970.

(ii) Changes in work by themselves may not lead to changes in the value of work. The change should constitute a significant net addition to work requirements to warrant a wage increase.

(iii) Where it has been demonstrated that a change has taken place in accordance with the principles, an assessment will have to be made as to how that change should be measured in money terms.

(iv) The expression 'the conditions under which the work is performed' relates to the environment in which the work is done.

(v) Re-classification of existing jobs is to be determined in accordance with this principle.

7.(b) Catch-up of community movements

As a result of a series of industry wage increases in 1974 a firm base has been widely established with appropriate relativities between and within awards on which indexation can be applied. However, there may be some cases where awards have not been considered in the light of the community movements in 1974. These cases may be reviewed to determine whether for that reason they would qualify for a wage increase but care must be exercised to ensure that they are genuine catch-up cases and not leap-frogging.

(i) This principle refers to only one community and not to a plurality of communities.

(ii) The $24 awarded in the Metal Industry Award should not simply be converted into a percentage and applied throughout a wage and salary scale.

(iii) Paid rates awards should not be accorded increases for 1974 which differ from those granted in minimum rates awards nor is it relevant to compare minimum with paid rates.

Any application under this Principle must be lodged before

31 December 1978.

7.(c) Anomalies

The resolution of anomalies and special and extraordinary problems by means of the Conference already established to deal with anomalies and in accordance with the procedures laid down for them.

7.(d) Inequities

(1) The resolution of inequities existing where employees performing similar work are paid dissimilar rates of pay without good reason. Such inequities shall be processed through the Anomalies Conference and not otherwise, and shall be subject to all the following conditions:

(i) The work in issue is similar to the other class or classes of work by reference to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is performed.

(ii) The classes of work being compared are truly like with like as to all relevant matters and there is no good reason for dissimilar rates of pay.

(iii) In addition to similarity of work, there exists some other significant factor which makes the situation inequitable. An historical or geographical nexus between the similar classes of work may not of itself be such a factor.

(iv) The rate of pay fixed for the class or classes of work being compared with the work in issue is a reasonable and proper rate of pay for the work and is not vitiated by any reason such as an increase obtained for reasons inconsistent with these guidelines as a whole.

(v) Rates of pay in minimum rate awards are not to be compared with those in paid rates awards.

(2) In dealing with inequities, the following over-riding considerations shall apply:

(i) The pay increase sought must be justified on the merits.

(ii) There must be no likelihood of flow-on.

(iii) The economic cost must be negligible.

(iv) The increase must be a once-only matter.

(3) The requirements of (1) and (2) above shall be observed in the Anomalies Conference and by a full bench to which an inequities application might be referred. The peak union councils must initiate these claims and, in particular, assist in the resolution of issues as to possible flow-on.

8. Allowances

Allowances may be adjusted from time to time where appropriate but this does not mean that existing allowances can be increased extravagantly or that new allowances can be introduced the effect of which would be to frustrate the general intention of the principles.

8.(a) Existing allowances

(i) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

(ii) Existing allowances which relate to work or conditions which have not changed may be adjusted from time to time to reflect the movements in wage rates as a result of national wage decisions.

(iii) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7(a).

8.(b) New allowances

(i) New allowances will not be created to compensate for disabilities or aspects of the work which are comprehended in the wage rate of the classification concerned.

(ii) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(iii) New allowances to compensate for changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7(a).

(iv) New allowances to compensate for new work or conditions will be determined in accordance with the relevant provisions of Principle 9.

8.(c) Service increments

Service increments shall not be introduced or altered except in accordance with the following provisions:

(i) Existing service increments covered by federal awards may be adjusted in the manner prescribed in (a) (ii) of this Principle.

(ii) New service increments to compensate for changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 7(a).

9. First awards and extensions of existing awards

(a) In the making of a first award, the long established principles shall apply, i.e. the main consideration is the existing rates and conditions (General Clerks Northern Territory Award [111 CAR 916]).

(b) In the extension of an existing award to new work or to award-free work the rates applicable to such work will be assessed by reference to the value of work already covered by the award.

(c) In awards regulating the employment of workers previously covered by a State award or determination, existing rates and conditions prima facie will be the proper award rates and conditions.

N.B. The above Principles must be applied in the context of the following statement made by the Commission in the April 1975 National Wage Decision:

> "Regardless of the reasons for increases in labour costs outside national productivity and indexation, regardless of the source of the increases (award or overaward, wage or other labour cost) and regardless of how the increases are achieved (arbitration, consent or duress), unless their impact in economic terms is 'negligible', we believe the Australian economy cannot afford indexation."

Appendix 2

National Wage Case Decisions: Increase to Total Wage

(a) 1967-1974

Year	Increase
1967	$1.00
1968	$1.35
1969	3%
1970	6%
1971/72	$2.00
1973	2% + $2.50
1974	2% + $2.50

Source: Niland, J.R. & Isaac, J.E. (eds), Australian Labour Economics: Readings, (Second edition), Melbourne, Sun, p. 13

(b) Wage indexation decisions: 1975-81

Quarter		Wage variation		CPI variation
1975	March	Full	3.6%	3.6%
	June	Full	3.5%	3.5%
	September	None		0.8%
	December	Full	0.8% + 5.6%	5.6%
1976	March	Full	3.0% to $125 p.w.	3.0%
		Flat	$3.80 thereafter	
	June	Full	2.5% to $98 p.w.	2.5%
		Flat	$2.50, $98-$166 p.w.	
		Partial	1.5% thereafter	
	September	Full	2.2%	2.2%
	December	Flat	$2.90 for Medibank	6.0%
		Partial	2.8% to $100 p.w.	
		Flat	$2.80 thereafter	
1977	March	Partial	1.9% to $200 p.w.	2.3%
		Flat	$3.80 thereafter	
	June	Partial	2%	2.4%
	September	Partial	1.5%	2.0%
	December	Partial	1.5% to $170 p.w.	2.3%
		Flat	$2.60 thereafter	
1978	March	Full	1.3%	1.3%
	June/Sept	Full	4%	4.0%
1979	Dec/Mar	Partial	3.2%	4.0%
	June/Sept	Partial	4.5%	5.0%
1980	Dec/Mar	Partial	4.2%	5.2%
	June/Sept	Partial	3.7%	4.7%
1981	Dec/Mar	80%	3.6%	4.0%

Sources: Plowman, D., Deery, S. & Fisher, C., Australian Industrial Relations, (Revised edition), Sydney, McGraw-Hill, p. 266; 1981 AILR 241.

Table 1: Quarter-to-quarter changes in the Consumer Price Index, Average Weekly Earnings and Minimum Award Rates

		CPI(a)	AWE(b)		MAR	
Year	Q	% Change	Nominal(c)	% Change	Nominal	% Change
1967	1	0.6	62.20	1.5	43.71	1.5
	2	0.9	63.30	1.8	43.87	0.4
	3	1.5	64.40	1.7	44.92	2.4
	4	0.3	64.90	0.8	45.00	0.2
1968	1	0.3	65.80	1.4	45.84.	1.9
	2	0.9	66.90	1.7	46.40	1.2
	3	0.3	67.90	1.5	47.20	1.7
	4	0.9	69.80	2.8	49.00	3.8
1969	1	0.9	72.10	3.3	49.40	0.8
	2	0.6	72.30	0.3	49.70	0.6
	3	0.6	73.90	2.2	49.90	0.4
	4	0.9	75.30	1.9	51.80	3.8
1970	1	0.9	77.20	2.5	52.00	0.4
	2	1.4	78.90	2.2	52.40	0.8
	3	0.6	80.40	1.9	53.10	1.3
	4	2.0	82.50	2.6	54.20	2.1
1971	1	1.1	86.90	5.3	58.00	7.0
	2	1.6	88.70	2.1	58.50	0.9
	3	1.9	90.00	1.5	60.40	3.2
	4	2.4	91.70	1.9	61.60	2.0
1972	1	1.0	93.40	1.9	62.20	1.0
	2	0.8	95.40	2.1	64.80	4.2
	3	1.5	97.90	2.6	66.00	1.8
	4	1.0	99.80	1.9	67.70	2.6

Table 1 (cont.)

Year	Q	CPI % Change	AWE Nominal	AWE % Change	MAR Nominal	MAR % Change
1973	1	2.2	102.50	2.7	68.90	1.8
	2	3.4	106.40	3.8	74.50	8.1
	3	3.5	111.30	4.6	76.00	2.0
	4	3.6	115.00	3.3	77.70	2.2
1974	1	2.4	119.40	3.8	79.60	2.4
	2	4.2	126.80	6.2	95.20	19.6
	3	5.1	139.50	10.0	102.10	7.2
	4	3.7	147.20	5.5	105.60	3.4
1975	1	3.6	152.00	3.3	107.40	1.7
	2	3.6	154.20	1.4	112.80	5.0
	3	0.7	158.80	3.0	117.70	4.3
	4	5.5	166.00	4.5	117.90	0.2
1976	1	2.9	170.10	1.7	125.80	6.7
	2	2.5	179.40	5.5	129.70	3.1
	3	2.3	184.60	2.9	132.40	2.1
	4	5.9	188.10	1.9	135.30	2.2
1977	1	2.3	191.50	1.8	141.10	4.3
	2	2.4	199.10	4.0	144.00	2.1
	3	1.9	202.40	1.7	146.80	1.9
	4	2.4	206.90	2.2	149.10	1.6
1978	1	1.3	211.40	2.2	151.40	1.5
	2	1.9	216.00	2.2	153.50	1.4
	3	2.0	220.90	2.3	154.60	0.7
	4	2.2	222.20	0.6	161.00	4.1

Table 1 (Cont.)

Year	Q	CPI % Change	AWE Nominal	AWE % Change	MAR Nominal	MAR % Change
1979	1	1.7	230.40	3.7	161.20	0.1
	2	2.6	230.90	0.2	166.80	3.5
	3	2.3	239.10	3.6	167.30	0.3
	4	3.0	244.30	2.2	168.80	0.9
1980	1	2.2	250.90	2.7	177.20	5.0
	2	2.8	258.60	3.1	177.80	0.3
	3	1.9	270.20	4.5	186.40	4.8
	4	2.1	278.10	2.9	187.10	0.4
1981	1	2.3	283.90	2.1	194.10	3.7
	2	2.3	295.00	3.9	201.50	3.8

(a) CPI all groups weighted average six state capital cities (1980-81=100.0)
(b) Average weekly earnings per employed male unit
(c) Seasonally adjusted
(d) Weighted male average weekly minimum wage rates, exclusive of overtime, all industrial groups excluding rural

Sources: ABS, Time Series Data, Cat. No. 1311.0; Average Weekly Earnings, Cat. No. 6302.0; Wage Rates and Earnings, Cat. No. 6312.0.

Table 2: Annual changes in the Consumer Price Index, Average Weekly Earnings and Minimum Award Rates (July-June) (a)

Year	CPI(%)	AWE(%)	MAR(%)
1967-68	3.1	5.7	5.8
1968-69	2.7	8.5	7.1
1969-70	3.8	9.1	5.4
1970-71	5.3	12.4	11.6
1971-72	6.2	7.6	3.7
1972-73	8.3	11.5	15.0
1973-74	14.4	19.2	27.8
1974-75	16.9	21.6	18.5
1975-76	12.2	16.3	15.0
1976-77	13.5	11.0	11.0
1977-78	7.8	8.5	6.6
1978-79	8.9	6.9	8.7
1979-80	10.7	12.0	6.6
1980-81	8.8	14.1	13.3

(a) Data based on Table 1.
Sources: As for Table 1

Table 3: Industrial Disputes

Year	Number	Working days lost ('000)	Working days lost per thousand employees
1967	1340	705.3	149
1968	1713	1079.5	260
1969	2014	1958.0	282
1970	2738	2393.7	507
1971	2404	3068.6	642
1972	2298	2010.3	435
1973	2538	2633.4	552
1974	2809	6232.5	1273
1975	2432	3509.9	717
1976	2055	3399.2	773
1977	2090	1654.8	336
1978	2277	2130.8	434
1979	2042	3964.4	787
1980	2420	3320.2	650
1981	2877	4192.2	800

Sources: Plowman, D., Deery, S. & Fisher, C. (1981), Australian Industrial Relations, Sydney, McGraw-Hill, p 60; ABS, Labour Report, Labour Statistics.

Table 4: Unemployment (%) (a)

1967	1.7
1968	1.6
1969	1.4
1970	1.3
1971	1.5
1972	2.5
1973	1.8
1974	2.4
1975	4.6
1976	4.7
1977	5.7
1978	6.2
1979	5.8
1980	5.9
1981	5.6

(a) Civilians 15 years and over

Sources: ABS, Labour Report; Labour Statistics

Table 5: Wage (a) and Profit (b) Shares of Gross Domestic Product (c) 1967-1981 (per cent)

Year	Q	Wages	Profits	Year	Q	Wages	Profits
1967	1	57.4	16.0	1974	1	61.4	15.1
	2	57.4	16.0		2	64.6	12.3
	3	59.5	16.0		3	66.0	12.5
	4	58.9	16.0		4	65.9	13.2
1968	1	58.2	16.8	1975	1	65.8	12.7
	2	58.7	16.2		2	64.4	14.5
	3	57.2	16.3		3	65.0	12.9
	4	57.6	16.2		4	64.9	13.2
1969	1	57.7	16.3	1976	1	64.4	13.1
	2	57.7	16.8		2	64.0	13.7
	3	58.3	17.0		3	63.8	13.7
	4	58.0	17.3		4	63.7	13.8
1970	1	59.0	16.9	1977	1	64.0	13.0
	2	58.5	17.4		2	64.2	13.0
	3	59.2	17.1		3	64.2	13.3
	4	60.1	16.7		4	64.9	13.0
1971	1	61.2	15.8	1978	1	64.6	12.9
	2	61.3	15.9		2	63.7	13.4
	3	60.3	15.9		3	62.2	13.0
	4	60.0	16.5		4	61.0	13.5
1972	1	60.8	15.3	1979	1	61.5	13.2
	2	60.5	15.5		2	61.0	13.3
	3	60.2	15.6		3	61.6	13.2
	4	59.2	16.3		4	61.3	13.4
1973	1	58.4	16.6	1980	1	61.6	13.2
	2	59.8	15.9		2	61.2	13.8
	3	58.7	16.1		3	62.4	13.2
	4	59.8	15.6		4	61.9	14.3
				1981	1	62.6	14.0
					2	63.1	13.8

(a) Wages, salaries and supplements, seasonally adjusted
(b) Gross operating surplus, trading enterprises, companies, seasonally adjusted
(c) Gross domestic product at factor cost, seasonally adjusted

Source: ABS, Historical Series of Quarterly Estimates of National Income and Expenditure Australia: September Quarter 1959 to June Quarter 1980, Cat. No. 5207.0; Quarterly Estimates of National Income and Expenditure Australia, September Quarter 1983, Cat. No. 5206.0.

Table 6: Annual Wage and Profit Shares of Gross Domestic Product 1967-1981 (per cent)

Year	Wages	Profits
1966-67	57.5	15.2
1967-68	58.9	16.1
1968-69	57.6	16.3
1969-70	58.4	17.1
1970-71	60.6	16.3
1971-72	60.5	15.8
1972-73	59.4	16.1
1973-74	61.1	14.7
1974-75	65.5	13.3
1975-76	64.7	13.2
1976-77	63.9	13.4
1977-78	64.4	13.1
1978-79	61.4	13.2
1979-80	61.5	13.4
1980-81	62.6	13.8

Definitions and sources as for Table 5

Appendix 4

Chronology of Events

5 June 1967: Total wage introduced.

11 December 1967: Metal Trades Work Value decision grants significant increases, but employers are encouraged to absorb the rise.

January-February 1968: Absorption conflict. Massive use of penal powers. Commission retreats on absorption of metal industry work value increase. Work value round follows.

May 1968: Imprisonment of Clarrie O'Shea and demise of penalty provisions in C & A Act.

4 October 1968: 1968 NWC decision.

19 June 1969: Equal Pay Case decision provides for equal pay for equal work.

10 September 1969: Bob Hawke elected ACTU President with support of the Left.

25 October 1969: Federal election cuts Coalition majority from 40 to 7.

1 December 1969: 1969 NWC decision.

June 1970: Changes to the C & A Act make it more difficult to apply penal sanctions against industrial action.

16 October 1970: Oil Industry Case decision rejects industry profitability as grounds for wage increase.

14 December 1970: 1970 NWC decision.

March 1971: Members of several militant metal industry unions vote to form the AMWU.

March 1971: Prime Minister Gorton replaced by W. McMahon.

16 July 1971: Metal Industry Interim Award established with $4.50-6.00 wage increases. Marks beginning of negotiated settlements in metal industry.

August 1971: Federal Budget accentuates a decline in economic activity.

April 1972: Legislation passed establishing the panel system for the Commission. Union amalgamation made more difficult following the formation of the AMWU.

5 May 1972: 1971-72 NWC decision.

2 December 1972: ALP federal government elected, but the Coalition retains control of the Senate.

15 December 1972: Equal Pay Case provides equal pay for work of equal value.

8 May 1973: 1973 NWC decision.

1 June 1973: Mr Justice Moore becomes President of the Australian Conciliation and Arbitration Commission following the retirement of Sir Richard Kirby.

July-September 1973: CPI exceeds 10% on an annual basis.

18 July 1973: Tariffs reduced by 25% across the board.

1 August 1973: Prices Justification Tribunal established.

8 December 1973: Prices and Incomes Referendum defeated.

January-September 1974: "Wages explosion" results in award increases of over 30% for year. Record levels of industrial disputation.

2 May 1974: 1974 NWC decision. Minimum wage extended to females.

18 May 1974: Early federal election returns Whitlam government.

June 1974: Unemployment begins to increase sharply.

July-September 1974: Opposition mounts within labour movement to Whitlams's Treasury-line economic strategy. Federal government leaders attack union wage campaigns. "Social contract" offered to unions.

August-October 1974: Wage indexation conferences.

14 March 1975: Malcolm Fraser becomes leader of the federal Liberal Party.

30 April 1975: Wage indexation introduced.

June 1975: Clyde Cameron removed as Minister for Labor.

28 June 1975: Bass by-election shows severe erosion of ALP electoral fortunes.

19 August 1975: Federal Budget based on monetarist assumptions. Welfare cuts, indirect tax increases introduced.

18 September 1975: June Quarter 1975 NWC decision.

3 November 1975: September Quarter 1975 NWC decision.

November-December 1975: Whitlam government sacked, election of L-NCP government led by Malcolm Fraser.

February 1976: Fraser government begins attack on public sector with budget cuts and staff ceilings. Commonwealth opposes full indexation in the Commission.

13 February 1976: December Quarter 1976 NWC decision.

28 May 1976: March Quarter 1976 NWC decision contains first partial indexation decision.

12 July 1976: One day national general strike in protest against cuts in the Medibank health program.

12 August 1976: June Quarter 1976 NWC decision.

22 November 1976: September Quarter 1976 NWC decision.

28 November 1976: Australian dollar devalued by 17.5%.

31 March 1977: December Quarter 1976 NWC decision.

April-May 1977: Abortive wage-price freeze.

24 May 1977: March Quarter 1977 NWC decision.

June 1977: Section 45D of the Trade Practices Act passed, outlawing secondary boycotts. Legislation passed creating the Industrial Relations Bureau.

22 August 1977: June Quarter 1977 NWC decision.

10 December 1977: Snap federal election returns Fraser government. Bill Hayden becomes federal ALP leader.

12 December 1977: September Quarter 1977 NWC decision.

December 1977: Formation of the Confederation of Australian Industry.

1978: Inflation falls to 8% for much of the year.

28 February 1978: December Quarter 1977 NWC decision.

7 June 1978: March Quarter 1978 NWC decision.

August 1978: Telecom strike.

14 September 1978: Wage Fixing Principles decision.

12 December 1978: June/September Quarters 1978 NWC decision.

27 June 1979: December 1978/June 1979 Quarters NWC decision. Commission warns that indexation is on the brink of abandonment.

1978-1980: Work value round. (May 1978: Stevedoring industry; December 1978: Transport Workers Award; November 1979: Metal Industry Award.)

1979-1980: Passage of CE(RR) Act and disputes in public service.

4 January and 28 March 1980: June/September Quarters 1980 NWC decisions. Work value loophole closed.

February-March 1980: Laidely dispute over secondary boycott in petrol distributing industry.

1 May 1980: Mr Justice Staples removed from his panel of industries.

1980-81: Shorter working hours campaign.

14 July 1980: December 1979/March 1980 Quarters NWC decision.

August 1980: Bob Hawke resigns as ACTU President in order to stand for federal parliament. Replaced by Cliff Dolan.

18 October 1980: Fraser government returned in federal election with a significant swing to Labor.

9 January 1981: June/September Quarters 1980 NWC decision. Wage indexation abandoned.

7 April 1981: Revised wage indexation guidelines introduced.

7 May 1981: December 1980/March 1981 Quarters NWC decision. (80%).

June 1981: Telecom dispute over claims outside guidelines.

July 1981: Transport industry dispute over claims outside guidelines.

31 July 1981: Wage indexation abandoned for a second time.

18 December 1981: Metal industry agreement for pay increases and a shorter working week ratified by the Commission and becomes new community standard in case by case proceedings before the tribunal.

Appendix 5

Members of the Australian Conciliation and Arbitration Commission 1956-1981(a)

Commissioners

Name(b)	Date of appointment	Date of termination(c)
E.A.C. Chambers (d)	29.3.54	24.7.61
L.P. Austin	30.10.47	3.7.65
J.R. Donovan	8.10.47	23.10.67
G.A. Findlay	13.10.44	29.9.67
J.M. Hewitt	24.12.47	30.12.62
F.D. Kelly	8.10.47	26.11.58
J.H. Portus	1.7.44	11.5.78
E.W. Tonkin	1.9.49	11.12.58
F.J. Webb	29.3.54	25.1.63
J.P. Horan	15.11.57	12.10.70
D.G. Apsey	11.1.59	4.8.63
N.J. Hood	24.7.61	30.9.72
J.E. Taylor(e)	18.9.61	27.3.78
J.L. Gough	4.6.62	*
L.G. Matthews	16.4.63	17.3.80
T.C. Winter	16.4.63	21.4.71
J.J. McCreadie	20.1.64	3.10.68
E.J. Clarkson	1.3.65	*
H.G. Neil	18.3.65	12.11.79
J.B. Holmes	10.7.67	23.8.80
O. O'Reilly	15.7.68	1.3.73
R.H.C. Watson	15.7.68	*
T.J. Brack	2.9.68	*
E.G. Deverall	30.9.68	19.8.80
W.B. Wilson	30.9.68	13.12.73
M.P. Lyttleton	1.6.70	26.12.73
J. Stanton	5.4.71	*
T.W.S. McCloghry	4.8.72	11.11.75
N.J. Mansini	4.8.72	*
P.D. Allsop	4.8.72	12.11.76
A.R. Vosti	6.11.72	28.9.80
N.A. Taylor	6.11.72	*
F.W. Brown	27.11.72	*
M.E. Heagney	27.11.72	*
L.H. Booth	27.11.72	*
A.S. Paine	18.12.72	*
J.E. Heffernan	3.12.73	10.10.81
G.L. Walker	19.5.75	*
J.J. Cohen	19.5.75	3.6.80
P.M. Griffin	1.7.75	*

Commissioners (cont.)

Name	Date of appointment	Date of termination
J.W. Coleman	1.12.75	*
R.G. Sweeney	6.12.76	*
V.J. Connell	30.5.77	*
P. Barnes	1.7.78	*
K.C. Turbet	1.7.78	*
F.J. Neyland	10.12.79	*
R.F. Merriman	21.4.80	*
I.T. McKenzie	5.5.80	*
A. McLagan	23.6.80	*
E.C. Bennett	22.9.80	*
B.R. Johnson	27.10.80	*

(a) The information is complete through 1981.
(b) The table excludes Conciliators.
(c) No distinction is made between resignation, retirement or death.
(d) Senior Commissioner.
(e) Senior Commissioner until 3.8.72 when the position was abolished.
* Member of the Commission as of 31.12.81.

Presidential Members

Name(a)	Date of appointment	Date of termination(b)
R.C. Kirby(c,e)	15.8.56	30.6.73
A.W. Foster(e)	15.8.56	26.11.62
S.C.G. Wright(e)	15.8.56	26.4.70
R. Ashburner(e)	15.8.56	10.9.63
F.H. Gallagher	9.12.57	1.7.71
J.C. Moore(d)	19.8.59	*
C.A. Sweeney	8.2.63	27.4.69
J.A. Nimmo	30.1.64	29.4.69
L.H. Williams	30.12.68	*
R.J.A. Franki	1.2.69	21.6.72
A.P. Aird	12.5.70	15.3.74
J. Robinson	8.8.70	*
P.A. Coldham	18.2.71	*
J.T. Ludeke	23.5.72	*
F.V. Watson	15.8.72	6.2.74
E.A.C. Chambers	16.8.72	10.6.75
E.A. Evatt	26.4.73	*
J.B. Sweeney	14.6.73	1.12.73
M.G. Gaudron	10.4.74	30.5.80
J.E. Isaac	2.1.74	*
R.D. Williams	9.12.73	31.1.75
M.D. Kirby(f)	1.1.75	*
J.F. Staples	24.2.75	*
I.G. Sharp	31.3.75	22.4.78
S.G. Alley	1.2.77	*
J.E. Taylor	28.3.78	6.7.79
K.C. McKenzie	31.1.79	*
K.D. Marks	14.4.80	*
B.J. Maddern	21.4.80	*
J.J. Cohen	3.6.80	*

(a) The information is complete through 1981
(b) No distinction is made between resignation, retirement or death.
(c) President
(d) Became President 1.7.73
(e) Previously member of the Court of Conciliation and Arbitration.
(f) Various presidential members of the Commission have taken leave of absence, mostly to undertake related professional duties. The more substantial leaves of absence have been:
M.D. Kirby, to the Australian Law Reform Commission for seven years from 4.2.75.
J.F. Staples, leave from January 1977 to February 1979 to inquire into human rights practices.
E.A. Evatt, full leave for Royal Commission into Human Relationships from May 1975, and in January 1976 appointed to Family Law Court.
L.H. Williams, to the Prices Justification Tribunal from June 1973 to 1977.
* Member of the Commission as of 31.12.81.

Sources for Appendix 5: Up to 30.6.80 directly from Dabscheck, B. & Niland, J. (1981), Industrial Relations in Australia, pp264-265. Additional information from Deputy Industrial Registrar (Tasmania) and Commonwealth Record.