

A LIVING WAGE FOR WOMEN
THE CLOTHING TRADES CASE OF 1919

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I, Carolyn Margaret Skinner, hereby
declare that this thesis is entirely
my own work and that all sources
used have been acknowledged.



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ABSTRACT

During the period from 1907 to 1921 Mr Justice Higgins, in his capacity as President of the Commonwealth Court of Conciliation and Arbitration, delivered a number of judgements which were to have a significant influence on the process of wage fixation in Australia long after he resigned from the Presidency. The first, though it was not an arbitration case, was the so-called "Harvester" judgement in which he established the principle that the minimum or "living" wage for an unskilled male should be sufficient to enable him to support a family in "frugal comfort". At that time (1907) there was no assessment of what constituted an appropriate "living wage" for unskilled females as the issue did not arise. Subsequently, however, there were several opportunities in which it would have been possible to determine the female "living wage" but it was not until 1919 that this issue was finally resolved.

The basis and circumstances of the "Harvester" judgement have received substantial academic attention. Of particular importance is the study, undertaken by P.G. McCarthy, which traced the development of the concept of a living wage in the Australian context and its ultimate expression as an "ideal" of seven shillings per day. McCarthy, however, was not able to determine with any certainty the basis of Higgins' decision in the Harvester case. This uncertainty as to Higgins' motivation is also applicable to his decision in the Clothing Trades case in 1919. This case has received little detailed analysis with most commentators relying on Higgins' printed judgement to explain the outcome. The sequence of cases leading up to the Clothing Trades case and the process by which Higgins reached his decision on the "living wage" for females are the subject of this thesis. The conclusion, however, is that the basis of Higgins' living wage award for females is no more certain than his award for males.

CHAPTER 1 : INTRODUCTION

The period during which the Commonwealth Court of Conciliation and Arbitration was under the Presidency of Mr. Justice Higgins (i.e. from 1907 to 1921) was an extremely significant one in the history of wage fixation in Australia. Through his judgements Higgins established a set of wage fixing principles¹ which had a considerable impact on the relationship between employers and employees. In particular, the adoption in 1907 of the principle of a minimum wage for a male unskilled labourer based on the needs of a family and which could not be reduced, except in unusual circumstances, was a significant step towards standardising the wages of unskilled males. The concept of a fixed minimum rate was eventually incorporated into all awards by wage fixing authorities but this took a considerable time², the process not being completed until the early 1920s.

The impact of Higgins' wage fixing principles on women's wages is less clear-cut. Indeed, Higgins himself, in his own review of his Presidency, paid little attention to the fixing of women's wages, devoting only two paragraphs to outlining the principles applied³, whereas he discussed in detail the

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1. H.B. Higgins, A New Province for Law and Order, Dawsons of Pall Mall, London, 1968. First published in 1922.
 2. Colin Forster, "An Economic Consequence of Mr. Justice Higgins", Australian Economic History Review, Vol. XXV, No. 2, September 1985, pp. 95-97.
 3. Higgins, op. cit., p. 11.

principles he adopted for fixing male wages. His 1907 decision which established a "living wage", based on the needs of a family, for adult unskilled males was evidently of far greater significance, in his retrospective view, than his 1919 decision fixing a "living wage" for adult females. Indeed, he only mentioned the latter case in his book in relation to his decision to reduce working hours from 48 to 44 per week.

Yet the 1919 case, The Federated Clothing Trades of the Commonwealth of Australia v. J.A. Archer and others⁴ (generally known as the Clothing Trades case), was as much a landmark decision in the fixing of female wages as the 1907 Harvester case⁵ was for male wages. Although Higgins had given a preliminary indication of his thinking in 1912, in the Rural Workers' case⁶, it was in 1919 that he gave a definitive ruling on a "living wage" for adult women. It has been argued, on one hand, that "women's wage rates were to be adversely affected for over 60 years by [these] two early decisions of the Commonwealth Arbitration Court"⁷ while on the other hand it is claimed that the impact of

4. 13 Commonwealth Arbitration Reports (CAR), pp. 647-803.

5. 2 CAR, Ex Parte McKay, pp. 1-25.

6. 6 CAR, Rural Workers Union and the South Australian United Labourers Union v. Mildura Branch of the Australian Dried Fruits Association and others, pp. 61-88.

7. Edna Ryan and Ann Conlon, Gentle Invaders: Australian Women at Work, 1788-1974, Thomas Nelson (Australia) Ltd., Sydney, 1975, p. 89.

Higgins' decisions on women's wages has been exaggerated⁸.

However, there has been little investigative analysis of how the 1919 decision was made. The existing literature about the Clothing Trades case is extremely limited - hardly more than a dozen pages in total - and lacks detailed evidence, relying on statements quoted from Higgins' published judgement to "explain" his decision. The object of this thesis, therefore, is to provide a more detailed examination of the Clothing Trades case using, among other sources, the verbatim transcript of the evidence presented to the Court in 1919. The transcript itself has not previously been examined and, although the evidence provided by the transcript is not conclusive, it does provide significant insights into the foundations for Higgins' award. While the literature presents a number of views about how this decision was made Higgins did not carry out "the calculations as though it were a male occupation and then adjusted the notional rate of pay downwards"⁹.

8. Laura Bennett, "Legal Intervention and the Female Workforce: The Australian Conciliation and Arbitration Court, 1907-1921", International Journal of the Sociology of Law, Vol. 12, 1984, pp.23-26.

9. R.G. Gregory, P.J. McMahon and B. Whittingham, Women in the Labour Force: Trends, Causes and Consequences, Conference Paper No. 25, Bureau of Labour Market Research, Canberra, 1983, p. 19.

The view held by Edna Ryan and Ann Conlon was that, although the family wage concept was not the creation of Higgins, but rather the application of an idea that had been widely discussed elsewhere, its adoption in 1907 incorporated society's view of the role of women into the wage fixing system, establishing a precedent which was to inhibit women's later attempts to achieve equal pay. This view has been supported by several other writers. For instance, Domenica Whelan has argued that, while differences in the treatment of male and female workers existed before the advent of industrial tribunals, the development of the formal wage fixing process meant that these differences became entrenched¹⁰. Whelan sees the lower wage awarded to women as a means of discouraging them from deserting their "proper role"¹¹. Penny Ryan and Tim Rowse take this view a step further and argue that the emphasis on the family wage reinforced the sexual division of labour between wage work and house work, which was of advantage to the capitalist system as it ensured the reproduction of labour¹².

10. Domenica Whelan, "Women and the Arbitration System", Journal of Australian Political Economy, No. 4, March 1979, p. 54.

11. ibid., p. 55.

12. Penny Ryan and Tim Rowse, "Women, Arbitration and the Family", in A. Curthoys, S. Eade and P. Spearritt (eds), Women at Work, Sydney, 1975, pp. 18-20.

Laura Bennett refers to this approach as "a simple form of cultural determinism"¹³ which provides "an inadequate explanation of the relationship between women workers and the Court"¹⁴. While it is true that the ideological view of Ryan and Conlon does not provide a sufficient explanation for the differential treatment of male and female workers by the Commonwealth Court of Conciliation and Arbitration it was not their intention to provide "a definitive account"¹⁵ as claimed by Bennett. Ryan and Conlon indicated that they regarded their book as "a primer"¹⁶, an initial work which they hoped would "inspire others to enlarge upon, and to dig deeper into, the vast territory left to be explored"¹⁷. The challenge to "dig deeper" was not taken up by Bennett and, as a result, she also fails to establish a satisfactory explanation for Higgins' decision.

Bennett criticises Ryan and Conlon for their limited approach, arguing that

"their crude conceptualisation of the legal system, as one which does not operate under specific economic and political constraints, causes misunderstandings as to why the Court adopted sexist ideologies." (18)

13. Bennett, op. cit., p. 23.

14. ibid.

15. ibid., p. 24.

16. Ryan and Conlon, op. cit., p. ix.

17. ibid.

18. Bennett, op. cit., p. 24.

She further argues that, because low wages for women and the sexual division of labour preceded the Court's establishment, then it

"could not substantially challenge the existing sexual division of work ... Furthermore, the political and economic unfeasibility of substantially changing the level of wages, or introducing women into male jobs, left the Court with little other option but to accept and thereby to legitimize the sexual division of work." (19)

Bennett, therefore, ascribes a fairly passive role to the Court on the way women's wages were fixed. She contends that Higgins merely adopted pre-existing wage relativities and job segregation in his decisions²⁰. Having said that, however, Bennett then goes on to argue that the Court did have the power to effect change in some areas. Indeed, the Court consciously acted to maintain job segregation where there was evidence that employers were attempting to employ women on work that could be claimed as men's work²¹. The Court also used its power to incorporate protective provisions into awards which, Bennett argues, were to the benefit of women workers even though these provisions effectively excluded women from male occupations and therefore

"contributed to the overcrowding in female work and the accompanying industrial weakness which produced the need for special protection in the first place." (22)

19. ibid., p. 29.

20. ibid., pp. 26-27.

21. ibid., p. 30.

22. ibid., p. 34.

This line of argument implies, however, that the Commonwealth Court of Conciliation and Arbitration under Higgins may not have been as passive a participant in the wage fixing process as she suggests. Indeed, its adoption of the family wage in 1907 as the basis of the male minimum wage shows that it could be extremely active in pursuing a form of social justice. However, this same decision also created a serious dilemma for the Court when it was asked to fix minimum wages for adult females.

While there is merit in Bennett's claim that Ryan and Conlon give insufficient weight to economic factors in their explanation for the low level of female wages (after all, Australia was not the only country where this occurred), Bennett's own argument has significant weaknesses. In her article Bennett argues that Higgins based his determination in the Clothing Trades case on prevailing relative wage rates and cites three pieces of statistical evidence to support her contention. Firstly, she claims that "relativities in industry generally fluctuated around the 50% mark"²³. Secondly, she cites "the relevant Victorian Wages Board determination" which "set the relativity at 54%"²⁴. Finally, she argues that

23. ibid., p. 26.

24. ibid.

"[i]f money figures are looked at, the average wage in the Victorian clothing industry in 1918 for women was 33 shillings and for men 75 shillings, giving a relativity of 44%." (25)

This latter point does not appear to lend much support to her argument but she attempts to explain it by asserting that "most males under the Federal (sic) award would earn more than the basic wage whereas most women would not"²⁶. She does not, however, adduce any evidence to support this claim.

Bennett's use of data on Victorian wage rates to support her argument implies that the prevailing rates in Victorian industry and those awarded in "the relevant Victorian Wages Board determination" would have had the most influence on Higgins in making his determination. However, it is not self-evident that this would have been the case. In bringing a claim before the Commonwealth Court of Conciliation and Arbitration it was necessary for the union to establish an interstate dispute. This it did by serving a log of claims on employers in all States except Western Australia. The Minute Book of the Federal Council of the Federated Clothing Trades of the Commonwealth of Australia²⁷ clearly indicates that it was the New South

25. ibid.

26. ibid.

27. Minutes of the Federated Clothing Trades Council, Vol 1, Archives of Business and Labour (ABL), E138/12/1, Australian National University (ANU).

Wales awards which were used as the basis for the Federal log of claims. The fact that the minimum wages for males in the various New South Wales awards were higher than Victoria may have influenced this choice. In addition, evidence on State awards in all States was submitted to Higgins during the hearing. Indeed, the terms of the State awards were summarised in matrix form for Higgins' convenience²⁸.

Her claim that "relativities in industry generally fluctuated around the 50% mark" is based on the calculation of averages at three points in time from the average wage rates collected by the Victorian Chief Inspector for Factories and Shops and published in Appendix C of his annual Report to Parliament²⁹. Bennett does not explain how she has calculated her average but it is not apparent from an inspection of the appendix that such an average would be valid³⁰ because the industries included in Appendix C varied considerably over time and they were not representative of industries in which women were employed. In fact,

28. Verbatim Transcript of Proceedings, in the papers of Herbert Carter, ABL E138/18/5, ANU, p. 77.

29. Appendix C is entitled "Return for the Year ... showing Average Weekly Wages paid in various Trades, compiled from information supplied by Manufacturers".

30. There is also the question of what an average of averages means. Higgins commented during the proceedings "An average of averages is always dangerous. You must take the original figures", Transcript, op. cit., p. 73.

few of the industries which were included in Appendix C were significant employers of female labour.

Each year the Chief Inspector for Factories and Shops published two tables of average weekly wages in his Report. The first table, Appendix B, showed "the Average Weekly Wages paid in various Trades for which Special Boards [i.e. Wages Boards] have been appointed, compiled from information supplied by Manufacturers". The second table, Appendix C, showed "average weekly wages paid in various trades" which were not under Special Boards. The industries listed in Appendix B and Appendix C therefore changed over time as more trades came under the regulation of Boards and as new industries were established. In 1904, the first year for which Bennett calculated her "average", Appendix B listed 43 trades and Appendix C listed 73. The trades in which large numbers of women were employed such as boots and shoes, clothing, dressmaking and underclothing are listed in Appendix B as they were all "board" trades and had been since the beginning of the Wages Board system. In 1904, about 70 per cent of female employees counted by the Chief Inspector³¹ were employed in the trades listed in Appendix B. By 1918, the third year that Bennett used to calculate her "average", there were

31. To be counted by the Chief Inspector the factory or shop had to have four or more employees (except where Chinese were working, in which case one person constituted a factory).

140 trades listed in Appendix B representing 88 per cent of female employees and 80 trades in Appendix C. Since the majority of female factory employees had been covered by Wages Boards since 1896, averages based on Appendix C could not be representative of the wage relativities of females in industry as a whole as the industries included in Appendix C employed relatively few women.

Bennett's second point that a relativity of 54 per cent had been set by "the relevant Wages Board determination" is somewhat vague. If she means the Clothing Trades award which came into force from 14 March, 1917³², and which set a female minimum wage of 28 shillings and a male minimum of 50 shillings, the relativity was actually 56 per cent. However, this implies that the Clothing Trades award maintained a consistent relativity over time. This was not so. For example, the previous Clothing Trades award³³ which was effective from 31 March, 1916, set the minimum for females at 28 shillings and the minimum for males at 48 shillings - a relativity of 58 per cent. The relativity depended on the level of the male minimum and this varied over time and from State to State. Nor is it

32. Victorian Government Gazette, April 5, 1917, pp. 1149-1169.

33. Victorian Government Gazette, March 22, 1915, p. 1256.

self-evident that Higgins would have based his decision on the apparent relativities in the Victorian award. In Sydney, for example, the minimum rate for females in the clothing industry was 28 shillings in 1918, while the male (statutory) minimum was 60 shillings³⁴ - a relativity of 47 per cent. In late 1918 a statutory female minimum wage was declared in New South Wales at exactly half the male wage - why did not Higgins adopt this as his benchmark?

The third piece of statistical evidence cited by Bennett was that average female wages in the clothing industry in Victoria were 33 shillings while average male wages were 75 shillings, giving a relativity of 44 per cent. The data is said to be derived from Appendix B of the Report of the Chief Inspector for Factories and Shops for 1918. Inspection of the Appendix reveals that the average weekly wage for females employed at the minimum wage or over was 32/4 while the average weekly wage for males employed at the minimum wage or over was 71/3 - a relativity of 45 per cent. If pieceworkers' average weekly wages are used, the average for females was 33/5 and the average for males was 59/1 - a

34. New South Wales Government Gazette, 16 February 1917, p. 1090 and New South Wales Industrial Gazette, Vol XIV, No. 4, October 1918, p. 391.

relativity of 57 per cent. (However, it must be said that there were few male pieceworkers in this industry³⁵).

Another important point to be made about this data is that it refers to a particular week only. The averages are derived from "records sent in by employers and show the sums paid to shop employees for the second week in March 1918, and to other employees for the first week in December 1918"³⁶. As Higgins pointed out when presented with similar evidence for 1917³⁷ the first week in December was the busiest week of the season for the clothing trade. It was therefore not a typical week. One of the witnesses explained that when it was extremely busy the female workers often took work home thereby increasing their earnings for that week³⁸. Consequently, this data cannot be used to show that prevailing wage rates were at that level. In addition,

35. Report of the Chief Inspector for Factories and Shops for the Year ended 31 December, 1918, Victorian Parliamentary Papers, 1919 (2), p. 251.

36. ibid.

37. Transcript, op. cit., pp. 167-169. The 1918 Report was not available at the time of the hearing as it was not presented to Parliament until October 1919, well after the completion of the hearing.

38. ibid., p. 179.

it is unlikely that Higgins would have used such an average to assist him as he did not regard it as a fair test week³⁹.

This evidence also undermines Bennett's explanation that the relativity of average male and female wages was low because "most males would earn more than the basic wage ... whereas most women would not". Even if it is accepted at face value, as Bennett does, the average wage reported by the Chief Inspector for Factories and Shops in 1918, for females employed at the minimum wage and over, suggests that most females were earning more than the minimum wage which was set by the Victorian Clothing Board, that is, 28 shillings per week for trouser and vest hands. Bennett's average of 33 shillings is higher than the highest margin for skill in the award which was 32/6 for female coat hands in order clothing. In ready made clothing, where the majority of females were employed, the highest award rate was 29/6. In addition, it was claimed at the hearing that only ten per cent of females employed in the industry would have been on the minimum rate⁴⁰. Furthermore, other available evidence also contradicts Bennett's assertion.

For at least the previous decade there had been employer complaints of a shortage of female labour. This

39. ibid., p. 169.

40. Transcript, op. cit., 15 April, 1919, p. 306.

shortage had an effect on the average level of female wages as employers were forced to offer higher wages in an attempt to attract them. Such evidence can be found in the Reports of the Chief Inspector for Factories and Shops in Victoria and the Reports of the Operations of the Department of Labour in New South Wales throughout the period. In particular, the Reports of both Victoria and New South Wales in 1918 and 1919 highlighted the fact that there was a severe shortage of female labour. For example, the Victorian Chief Inspector noted, in his report for 1918, that

"[t]he difficulty of obtaining sufficient labour in the clothing trade was accentuated through there having been a demand owing to war conditions for female labour in a number of occupations in which males had hitherto been exclusively employed." (41)

Nor did the ending of the war ease the shortage. Again in 1919 and 1920 the scarcity of female labour was highlighted.

"So scarce was female labour that a large number of factories worked short handed. The occupiers tried with little success to attract additional labour. Amongst the expedients tried were ... free morning and afternoon tea, a fortnight's holiday on full pay and considerably higher wages than those fixed by law. Girls 15 years of age were offered as much as £1 as a starting wage." (42)

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41. Report of the Chief Inspector for Factories and Shops for the year ended 31 December, 1918, VPP, 1919 (2), p. 241.
 42. Report of the Chief Inspector for Factories and Shops for the year ended 31 December, 1919, VPP, 1920, pp. 641-642.

In 1920 it was noted that "the offer of wages considerably in excess of legal rates, and other special attractions, led many girls to change their places of employment and in some cases their trades"⁴³.

Similar reports were made in New South Wales.

For example, in 1919

"[t]here has been a great shortage of female labour in the first class tailoring factories which was strange considering the great improvements in this trade ... Increased activities were noticeable in a number of trades, but more particularly in order tailoring, dressmaking, millinery, underclothing ... insufficient female labour, skilled or unskilled was available for their requirements." (44)

Like comments were made in subsequent reports. Thus the difficulties experienced in obtaining female labour, both skilled and unskilled, meant that prevailing wage rates were higher than award rates as employers competed with each other to fill their requirements for female labour.

Bennett's use of literary evidence to support her claim that the Commonwealth Court of Conciliation and Arbitration "in its early days never markedly departed from existing wage rates" is extremely selective and relates to the fixing of male wages. For example, she cites P.G.

43. Report of the Chief Inspector for Factories and Shops for the year ended 31 December, 1919, VPP, 1921, p. 839.

44. Report of the Operations of the Department of Labour and Industry for 1919, New South Wales Parliamentary Papers (NSWPP), Second Session, 1920, Volume 2, pp. 992-993.

McCarthy to support her view that the Court was conservative in the following passage:

"For the period 1910-1921 McCarthy has found the most significant effect of decisions to be the 'closing of the intra-unskilled workers differential'. Otherwise he sees the effects of the courts in this period as minimal, although he argues that the wage data 'point to the gradual strengthening of institutional forces in the wage determination process'." (45)

An inspection of the cited article⁴⁶ reveals that Bennett's selected phrases do not reflect the whole of McCarthy's argument. For example, McCarthy also noted that

"[t]he marked convergence in the rates for unskilled workers occurred during the war and immediate post-war years, especially 1920 and 1921, as wages boards, almost as one, tried to gear real wages paid for unskilled work up to the 7s. a day standard." (My emphasis) (47)

and further, with respect to one of Bennett's selected phrases:

"Most impressively, the wage data point to the gradual strengthening of institutional forces in the wage determining process: the gradual implementation of the living wage concept that every adult male wage-earner, however menial his work, should by right receive the labourer's wage." (My emphasis) (48)

45. Bennett, op. cit., p. 26.

46. P.G. McCarthy, "Wages for Unskilled Work, and Margins for Skill, Australia, 1901-1921", Australian Economic History Review, Vol. 12, No. 2, September 1972, pp. 142-160.

47. ibid., p. 156.

48. ibid., p. 158.

The implication to be derived from these two statements is that it was the Commonwealth Court which led the way when it fixed the Harvester standard and it was followed, albeit slowly, by the State tribunals. Nor can it be argued, as Bennett does⁴⁹, that the seven shillings per day award for unskilled male labourers made by Higgins in the Harvester case was merely a recognition of prevailing wage rates even though some unskilled workers were being paid this rate. Higgins himself claimed that

"[t]he average wage was not more than 5/6 per day, 33/- per week. This would mean that the standard was raised by over 27 per cent in 1907." (50)

Forster argues that the average increase would not have been so great since many unskilled labourers were already earning more than 5/6 (H.V. McKay, the employer in the Harvester case, paid six shillings per day which implied an increase of 16.7 per cent)⁵¹. In examining the Harvester judgement it is therefore necessary to look further than the rate paid by public authorities, on which Bennett claims the Court laid great stress, and examine the historical context of the decision. This requires a wider reference to P.G. McCarthy's work than Bennett undertook in order to explain the significance

49. Bennett, op. cit., p. 26.

50. Higgins, op. cit., p. 97.

51. Forster, op. cit., p. 95.

of the seven shilling standard and why employees of public authorities had already achieved this standard.

Before 1890 wages for the unskilled were extremely high relative to the skilled⁵². Unskilled male labour was in great demand and rates as high as seven shillings or eight shillings per day were paid to railway workers and miners⁵³. After 1891, however, wages fell dramatically, to five shillings per day and below⁵⁴. Seven shillings per day, therefore, became the "ideal" to which the labour movement hoped to return when the economic situation improved. Employers, however, were able to resist claims for higher wages for nearly two decades.

Concern for the situation of the unskilled developed during the 1890s and the first decade of the twentieth century as structural economic changes resulted in high level of unemployment, particularly for those lacking skills⁵⁵. The advent of depression in the 1890s and the humbling of the trade union movement in a series of "great strikes" meant that the employed

52. P.G. McCarthy, "Wages in Australia, 1891 to 1914", Australian Economic History Review, Vol. 10, No. 1, March 1970, p. 57.

53. ibid.

54. ibid., p. 50.

55. P.G. McCarthy, "Labour and the Living Wage, 1890-1910", Australian Journal of Politics and History, Vol. 13, No. 1, April 1967, pp. 67-68.

unskilled were in a weak bargaining position. The plight of the poorly paid gave rise to demands for a "living wage"⁵⁶.

While unions began rebuilding their membership from the mid-1890s onwards their industrial strength remained weak. In addition, the unskilled were not well unionised⁵⁷. This, together with high levels of unemployment, meant that wages for unskilled labourers remained low, around 5/6 to 5/9 per day⁵⁸. However, by exerting pressure on governments through politicians favourable to the labour movement (and Higgins had been one of these), the unions were able to improve the conditions of the unskilled who worked on government projects⁵⁹. By the early years of the twentieth century the rate of seven shillings per day was again "established" as the norm for unskilled male workers employed on public works. The new Commonwealth Parliament, for example, adopted this standard for its employees⁶⁰. Such success, however, was not achieved in the private sector⁶¹.

56. ibid.

57. ibid., pp. 69-70.

58. ibid., p. 72.

59. ibid., p. 75.

60. ibid.

61. ibid., pp. 76-77.

The development of compulsory arbitration assisted in the adoption of the living wage concept as a basis for wage fixing. The State Industrial Courts had accepted it as a principle for determining wages⁶² but most did not specify what this meant. Mr Justice Heydon, the second President of the New South Wales Arbitration Court, was the first to clearly articulate the principles to be adopted in a wage fixing case determined in 1905, which included a reference to a "living wage"⁶³. These principles were very similar to those adopted by Higgins in November 1907. Heydon, however, did not attempt to determine the specific amount that would be sufficient to provide a living wage for an unskilled labourer. He appeared to adopt what was then the general rate for an unskilled labourer in the less well paid industries as the basis for his standard⁶⁴. Between 1905 and 1907 Heydon refined his "living wage" principle and by 1907 was prescribing a standard equivalent to that being paid in government employment in New South Wales⁶⁵. However, Heydon did not advocate his living wage as an absolute minimum and

62. ibid., p. 79.

63. P.G. McCarthy, "Wage determination in NSW - 1890-1921", Journal of Industrial Relations, Vol. 10, No. 3, November 1968, p. 194.

64. ibid., p. 195.

65. ibid., p. 197.

awarded lower amounts if economic conditions as a whole, or conditions in a particular industry, warranted it⁶⁶. Consequently, many workers were awarded less than seven shillings per day.

The decision of Mr Justice Higgins, in the Harvester case, to define "fair and reasonable" wages to be based on the "normal needs of the average employee, regarded as a human being living in a civilized community"⁶⁷, can therefore be seen as a further step in the process of ensuring that the lowest paid male workers received a wage at least sufficient to provide some "frugal comfort for a family". It is also evident that Higgins had perceived the need to clarify the concept of "fair and reasonable wages", as defined in the Excise Tariff Act, in advance of the case. In particular, his deliberate choice of H.V. McKay's application for excise tariff exemption out of 112 Victorian applications because it was the largest firm, because it had a large number and variety of employees, and because the application for a declaration that a fair and reasonable wage was being paid was being contested⁶⁸ indicated that Higgins was intent on making a definitive statement as to what were "fair and reasonable wages". He was aware that "the amount

66. ibid., p. 198.

67. 2 CAR, p. 3.

68. ibid., p. 2.

payable should not be out of proportion to the work done"⁶⁹ and that he ought not "to bring the Judicial Department within the range of political fire"⁷⁰.

Although both of these considerations may have acted as constraints on the degree to which he was prepared to depart from the prevailing rates for unskilled workers in private employment (he did consider awarding 7/6 per day), that he did so depart is evident from his own description.

In the event, Higgins decided that wages for the unskilled adult male should be sufficient to provide proper food, water, clothing and a condition of frugal comfort for a family of five persons⁷¹. To assist in determining what wage would be sufficient for this purpose, Higgins took evidence from the budgets prepared by the wives of several unskilled labourers as well as on the wages actually being paid. However, McCarthy has argued that neither of these sources provided the real foundation for Higgins' award of seven shillings per day for unskilled adult males. This amount was an "ideal" that had been in existence since the 1890s and, although it was the amount paid to most unskilled labourers in

69. ibid., p. 3.

70. ibid.

71. ibid., p. 44.

government and municipal employment⁷², a significant proportion of adult male labourers earned less⁷³. It is also evident that Higgins' determination to provide a degree of economic justice for the unskilled was influenced by the writings of reformers such as Sidney and Beatrice Webb and Seebohm Rowntree⁷⁴. The budgets were therefore used as evidence to support his belief that anything less than seven shillings was not sufficient.

Thus Higgins' decision to award a male minimum rate of seven shillings per day had a far more complex basis than Bennett demonstrates and was, in fact, fixed at the leading edge of existing rates in contrast with Heydon's adoption of a rate at the lower end of the range. Higgins, himself, reported that the seven shilling standard was attacked by employers during the case related to the Marine Cooks, Bakers and Butchers award in 1908⁷⁵ where he applied the Harvester principles for the first time in an arbitration case. This suggests that the amount was above what many employers regarded as the prevailing rate. Higgins also

72. P.G. McCarthy, "Justice Higgins and the Harvester Judgement", Australian Economic History Review, Vol. 9, No. 1, 1969, pp. 31-34.

73. ibid., p. 34.

74. ibid., p. 29 and footnote.

75. Higgins, op. cit., p. 5.

refers, in his book, to frequent attacks by the daily press on decisions made by the Court⁷⁶, which indicates that the Judicial Department was under considerable fire!

Bennett's attempt to show that the wage decisions were made by the "Court" and not as a result of "the influence of one particular judge"⁷⁷ ignores the historical role that Higgins (as the sole judge for seven years) played in the development of this "new province for law and order"⁷⁸. Indeed, it could be argued that Higgins' decision in the Harvester case was foreshadowed by his appearance on behalf of the employees before the Victorian Court of Industrial Appeal in 1904. In this case, among other issues, the Appeal Judge was required to interpret the phrase "living wage" which appeared in the Victorian factory legislation⁷⁹.

The standard fixed by the Commonwealth Court for male unskilled workers was not adopted generally by

76. ibid., p. 142.

77. Bennett, op. cit., p. 25.

78. Higgins was, in fact, instrumental in having Section 51 (xxxv) - giving the Commonwealth conciliation and arbitration powers in interstate disputes - incorporated into the Constitution. See John Rickard, H.B. Higgins : The Rebel as Judge, George Allen and Unwin, Sydney, 1984, Chapter 5.

79. 10 Argus Law Reports (ALR), 1904, Re The Artificial Manure Board, pp.230-234. See Chapter 4 below for further details.

State tribunals until the period of the First World War and afterwards. Hence, it can be argued that while State tribunals continued to be conservative in their approach to fixing a male minimum wage the Commonwealth Court was setting the pace between 1907 and 1921. On the other hand, McCarthy's work relates to the fixing of the male minimum wage. It does not necessarily apply to the fixing of the female minimum wage.

In her article Bennett sets out to demonstrate that economic and political factors primarily determined the level of women's wages in the period between 1907 and 1921. She does not, however, achieve her goal. Her statistical evidence is weak, due to the choice of inappropriate data, and her literary evidence relates to the male minimum. Furthermore, she does not adequately explain the role of economic forces in determining wage levels. Indeed, the only economic factor that she discusses in detail as having an influence on the level of female wages is labour market segmentation⁸⁰ but this is a structural characteristic of the labour market which she does not adequately link to the process of wage determination. For it does not follow necessarily that labour market segmentation itself results in lower wages. While market forces are referred to⁸¹ there is

80. Bennett, op. cit., pp. 27-31.

81. ibid., p. 27.

no attempt at an analytical explanation of what this means for wage levels nor any examination of what specifically influenced Higgins to distinguish between "men's jobs" and "women's jobs" in 1912. Nor does she examine other published economic explanations for lower female wages which include differences in relative productivity and differences in human capital.

Blandy⁸², for example, analysed and rejected the contention that lower wages for women were due entirely to their lower productivity. He argued that a "rational estimation of the difference between male and female productivity would have resulted in a much lower gap between male and female wages than actually occurred⁸³. He argued that the "correct" differential was that which made employers indifferent between hiring an extra man and hiring an extra woman⁸⁴. If the differential between male and female wages did not correctly reflect real differences in productivity then there was an incentive for employers to attempt to substitute female labour for male labour. Evidence that such substitution was taking place may have influenced Higgins in setting equal rates for females who were

82. Richard Blandy, "Equal Pay in Australia?", Journal of Industrial Relations, Vol. 5, No. 1, 1963, pp. 13-14.

83. ibid., p. 21.

84. ibid.

employed in the "men's job" in the Rural Workers' case in 1912. It was also a factor in the claim of the Federated Clothing Trades [union] for equal pay for some classifications in the Clothing Trades case in 1919. This implies that employers were not indifferent between hiring an extra man and hiring an extra woman which suggests that the differential was not "correct".

Peter Riach has also rejected the claim that the lower wages paid to women were entirely due to their lower productivity, stating that

"[s]everal bodies and individuals investigating this problem have in fact concluded that, in many cases, female pay has been discounted in excess of any relative efficiency." (85)

Riach argues that excessive discounting of female wages because of over-estimation of their relative inefficiency should have led to the substitution of female for male labour by "rational" employers. This, in turn, should have resulted in the market forcing female wages upwards to the level at which the relative wages of males and females were equivalent to relative efficiency levels⁸⁶. That this did not happen, he claims, was the result of factors, such as social pressure and convention, which artificially depressed

85. Peter Riach, "Equal Pay and Equal Opportunity", Journal of Industrial Relations, Vol. 11, No. 2, 1969, p. 99.

86. ibid., p. 100.

the demand for female labour and restricted the degree to which women were able to penetrate the labour market⁸⁷. The exclusion of women, either wholly or partly, from many occupations therefore reduced the relative scarcity of females in occupations which were regarded as suitable for women⁸⁸. Consequently, females with limited alternative employment opportunities outside the range of "women's jobs" could be obtained and retained at a lower wage than was the case for males⁸⁹. This is the link between labour market segmentation and wages which Bennett fails to explore.

Furthermore, as Blandy argues, supply factors also contributed to the lower levels of wages for women.

"Female wage rates are less than male rates because the aggregate demand for female labour is considerably less than the demand for male labour. Moreover, peculiarities of the aggregate supply schedule of female labour produce a market situation in which upward pressure on wages from the supply side is normally much less for female labour than for male labour." (90)

That is, a smaller proportion of females of working age were in the labour force compared with males and therefore an increase in the demand for female labour was less likely to

87. ibid.

88. ibid.

89. ibid., p. 101.

90. Blandy, op. cit., p. 14.

result in very much higher wages⁹¹. According to this view small wage increases would be sufficient to encourage more females to enter the labour force. In effect, therefore, the male labour force was wage inelastic in that increases in the wage level for males would not induce a greater supply of labour since most males of working age were already in the labour force. On the other hand, the supply of female labour tended to be more wage elastic in that small increases in the wage level could induce a relatively greater increase in the supply of female labour, although wages were not the only factor affecting the supply of female labour. However, Bennett does not consider such supply side differences in her attempt to find an economic explanation for the differential between male and female wages.

Bennett claims that Ryan and Conlon present "a highly selective and ahistorical reading of the cases"⁹² to support their view that ideological factors determined the differences between male and female wages but she, also, is selective in choosing her evidence and demonstrates little knowledge of contemporary Australian history, particularly political history. Her failure to "dig deep" in her search for a more plausible explanation for the differences between male and female wages than

91. ibid., p. 17.

92. Bennett, op. cit., p. 25.

that provided by Ryan and Conlon has the effect of limiting her conclusions to broad generalisations about how and why the Court made the decisions it did. The object of this thesis is, therefore, to take up Ryan and Conlon's challenge "to dig deeper into the vast territory left to be explored"⁹³ and examine in detail the background to the judgement in the Clothing Trades case, as well as the evidence presented in Court.

The explanation for Higgins' decision in the Clothing Trades case must be sought in the context of the history of wage fixing by the Federal Court and in the evidence presented to him at the hearing. An examination of the various cases involving female wages that had already been heard in the Commonwealth Court of Conciliation and Arbitration reveals that there was considerable uncertainty as to the appropriate basis on which a minimum wage for adult females should be fixed. Indeed, it is apparent that, in several cases heard before 1919, there was an unresolved conflict between the principle of fixing female wages according to the value of the work done and the principle of fixing their wages according to social needs. In this context, therefore, the 1919 decision can be regarded as an attempt to bring some certainty into the wage fixing process with regard to females as the Harvester judgement

93. Ryan and Conlon, op. cit., p. ix.

had done for male minimum wages. For example, by 1919, the fixing of male minimum wages had become a relatively simple process of determining the change in the cost of living since 1907 and applying it to the seven shilling standard to obtain the appropriate current wage while the appropriate wage for females required a considerable amount of evidence to be presented. The relevant previous cases in the Federal sphere are outlined in Chapters 2 and 3.

The concept of a "living wage" also influenced the wage fixing process in the State jurisdictions but it was some time before the State tribunals adopted the principle of having a fixed minimum tied to the cost of living of a man with a family. Indeed, in the early years of wage fixing by tribunals or boards the concept was often specifically rejected. Nor did the State jurisdictions accept the principle, established by Higgins, of equal pay for females employed in "men's jobs" in order to protect male employment. In some cases where equal pay had been awarded by a board or tribunal it was disallowed on appeal on the basis that it would exclude females from obtaining employment. However, as time progressed the decisions of the Commonwealth Court encouraged more unions to seek a Federal award and gradually the State tribunals followed the same principles. State tribunals, however, led the way in fixing a living wage for females as both New

South Wales and South Australia had made such awards before the Clothing Trades case was heard in 1919. The development of wage fixing principles and attitudes to female minimum wages in Victoria, New South Wales and South Australia are outlined in Chapters 4, 5 and 6 respectively.

Dissatisfaction with the level of wages fixed in the clothing industry by the State tribunals, and fear that the lower wages payable to females would eventually displace male workers in the industry, motivated the Federated Clothing Trades [union] to seek a Federal award as outlined in Chapter 7. The union quickly established its claim with regard to the minimum wage for males but the award for females was considerably less than was claimed. The evidence brought before the hearing on behalf of females and its eventual outcome is discussed in Chapter 8.

Although Higgins insisted on adequate and appropriate evidence being brought before him at the hearing of the Clothing Trades case the minimum wage which he awarded to females is not firmly based on that evidence. It has been argued that, in fact, Higgins merely adopted the going rate for unskilled females as his minimum. An analysis of actual wages being paid is presented in Chapter 9. The final chapter draws together the evidence and draws conclusions.

CHAPTER 2 : THE RURAL WORKERS CASE

When Mr Justice Higgins, President of the Commonwealth Court of Conciliation and Arbitration, made his determination in November 1907¹, as to what constituted "fair and reasonable" wages for an adult male unskilled labourer with a wife and three children to maintain, the question of the appropriate level of wages for an unskilled female did not arise because of the nature of the business in which the employer was engaged. H.V. McKay Pty Ltd was a manufacturer of agricultural implements, the largest in the industry, and employed only males. Higgins first dealt with what he termed "the problem of female labour"² in 1912 during what became known as the Rural Workers' case.

On 21 February 1911, the Mildura branch of the Australian Dried Fruits Association, representing the growers, applied to the Court for a compulsory conference because a fruit pickers' strike in the fruit growing district at Renmark in support of a log of claims for improved wages and conditions was threatening to spread to Mildura if a settlement could not be reached quickly. The situation was critical as the

1. 2 Commonwealth Arbitration Reports (CAR), Ex Parte McKay, pp. 3-6.

2. 6 CAR Rural Workers' Union and S.A. Labourer's Union v. Mildura Branch of the Australian Dried Fruits Association and others, p. 70.

harvest had already begun in Renmark and was about to commence in Mildura. The growers were fearful of losing the whole harvest³.

At the conference the unions, the Rural Workers' Union and the South Australian United Labourers' Union, presented their log of claims. This log included an adult minimum rate, that is the same rate was claimed for male and female employees, of one shilling per hour or eight shillings per day. Those doing heavy work such as dippers, barrowmen and carriers-out, were to be paid nine shillings per day⁴. The prevailing rate was 10½ pence per hour or seven shillings per day for adult males. Prevailing adult female rates ranged from 5¼ to 6 3/4 pence per hour or 3/6 to 4/6 per day. However, female rates were higher, 7½ pence per hour or five shillings per day, on the blocks which were a greater distance from Mildura⁵. The employers offered a minimum of seven shillings per day for adult men, with barrowmen, dippers and gangers being offered eight shillings⁶. For adult females the rate

3. 5 CAR In the matter of an application for a Conference under the provisions of Section 16A of the Act made by the Australian Dried Fruits Association, p. 37.

4. ibid., p. 38 and 6 CAR, p. 70.

5. 6 CAR, p. 73.

6. ibid., p. 63.

offered was 5/6 per day⁷. The employers' offer therefore improved wages for adult females⁸ while maintaining the adult male rate at the prevailing level. The employers' offer for females represented 79 per cent of the male rate.

The representatives of the Renmark employers and the United Labourers' Union were unable to reach agreement and both parties consequently withdrew from the conference. The United Labourers' Union appears to have been more militant in its outlook than the Rural Workers' Union and was therefore more determined to continue the strike⁹. The growers in Renmark were able to obtain some female pickers from Mildura, but not in sufficient numbers to break the strike¹⁰. The Renmark harvest was almost completely lost as a result¹¹.

7. ibid.

8. It should be noted, however, that while the Commonwealth Arbitration Report records the employers offer for adult females as 5/6 per day, the Argus ("Fruitgrowers' Dispute: Mr Justice Higgins at Mildura", June 1, 1912, p. 15) reported the employers as offering 4/6 per day for packers and sixpence extra (i.e. five shillings per day) for female pickers. The CAR has been accepted here as the 'official' version but the wages offer as reported by the Argus was more in line with prevailing rates.

9. Argus, "Renmark Trouble : Union Official's Boast 'Fruit Rotting on the Vines'", April 22, 1911, p. 19.

10. ibid.

11. 5 CAR, p. 40.

An interim agreement was reached, however, between the Mildura growers represented by the ADFA and the Rural Workers' Union, representing employees in the Mildura region. The agreement provided that the difference between the prevailing rates and the rates claimed by the union, for the period 6 March to mid-April, be placed in a trust account until the case was resolved¹². There was no distinction made between pickers who harvested the fruit and packers who arranged the fruit in boxes and made them ready for display. Both were to receive the same rate¹³. The case was to be listed for final arbitration at a later date but this had not occurred by the beginning of the next fruit-picking season in November 1911. As the interim agreement had expired the growers reverted to the old rates at the beginning of the new fruit-picking season in November 1911, whereupon the Rural Workers' Union applied to the Court for another compulsory conference. As a result the temporary agreement of the previous season was renewed¹⁴ for the following season. The matter was eventually listed for arbitration in November 1912, nearly two years after the issue was first raised.

12. ibid.

13. ibid.

14. 5 CAR, p. 185.

The hearing of evidence began in Mildura on May 30, 1912¹⁵. The veteran union organiser W.G. Spence, then the President of the Rural Workers' Union and Member of the House of Representatives, appeared on behalf of the Rural Workers' Union¹⁶. Mr Justice Higgins' first concern was to ensure that any award he made would be binding. Only 225 out of a possible 500 growers were "parties" to the dispute and he refused to hear any evidence until such time as a clear majority had signed an agreement to be bound by the award¹⁷. When the hearing resumed on the following day two-thirds of the growers had signed and Higgins agreed to proceed following an undertaking from the union representatives that the union would also be bound by the award¹⁸.

In evidence, it was stated that 1400 people were employed in harvesting operations of whom about 1000 were casual workers coming from outside the region¹⁹. Statements of earnings from twelve union members were presented which showed that, as a result of broken time, average earnings per man ranged from 4/1 to 8/1 per day. Higgins was critical of the fact that the union was only

15. Argus, "Fruitgrowers' Dispute: Mr Justice Higgins at Mildura", May 31, 1912, p. 7.

16. ibid.

17. ibid.

18. Argus, "Growers' Dispute", June 1, 1912, p. 15.

19. Argus, "Mildura Fruit Pickers", June 3, 1912, p. 7.

able to obtain statements of earnings from twelve members out of a membership of about 1200²⁰.

Most of the women and children employed in picking and packing lived locally²¹. Several female witnesses stated that they preferred packing fruit to picking because it was under cover and more constant (that is, less broken time) than picking²². Evidence was also heard relating to the cost of living in Mildura but the females who gave evidence were married women who only worked during the picking season²³. At the conclusion of the Mildura evidence, Spence addressed the Court in support of equal minimum rates for males and females²⁴. Higgins' reported response was that the request was reasonable where a man and a woman worked in the same class of labour and the woman was equal to the man but he failed to see how it could apply where the class of work was different²⁵.

Higgins continued hearing evidence at Renmark. In response to an employer's claim that few women were employed as pickers at Renmark, Higgins is reported as

20. ibid.

21. Argus, "Fruit Growing Industry", June 4, 1912, p. 4.

22. Argus, "Fruitgrowers' Dispute", June 5, 1912, p. 5.

23. ibid., and "Wages at Mildura", June 7, 1912, p. 8.

24. Argus, "Position of Women Workers", June 12, 1912, p. 5.

25. ibid.

responding:

"If you employ no women in picking then it will do you no harm to make an award that women should be paid the same as men. I am not going to interfere with the employer in choosing whether he will employ women or men, but I am not going to make a lower wage for women to enable them to take men's places at less wages." (26)

At Renmark evidence was presented to Higgins which attempted to show the cost of living for young women. In particular, five girls gave evidence regarding their expenditure on clothing. The reported expenditure ranged from £26 to £39 for a year (averaging ten shillings to fifteen shillings per week) but Higgins noted that items such as overcoats, which could be expected to last more than a year, were included²⁷.

It was also at Renmark that Higgins heard evidence regarding the superiority of women as packers. An employer stated, in evidence, that packing apricots was women's work as a man's hand was not supple enough to do it. He also stated that he would prefer to employ women for packing even if he had to pay women the same wages as men²⁸. After fourteen days of hearing evidence Higgins made his award on June 24, 1912.

26. Argus, "Fruitgrowing Arbitration: Evidence at Renmark", June 19, 1912, p. 11.

27. Argus, "Fruitgrowing Arbitration", June 20, 1912, p. 7.

28. ibid.

In fixing the male minimum rate for fruit-picking Higgins utilised a concept he had developed for the shearers in the previous years²⁹. In determining appropriate rates for shearers consideration was given to the fact that they had to follow the job. In order to compensate for expenditure in money and time in getting to the next place of work and for "broken time" due to the weather, Higgins adopted the concept of "the rate for the expedition". This principle was also applied in the Rural Workers' case. As a result, Higgins accepted the union claim of one shilling per hour or eight shillings per day based on the Harvester living wage plus an allowance of one shilling per day for following the job. Dippers, barrowmen and carriers-out were awarded an extra 1½ pence per hour or one shilling per day³⁰. He then turned his attention to the "problem" of female wages.

It was in this case that Higgins made his famous distinction between "men's work" and "women's work". The necessity for this distinction was the result of the union's claim for the same wage rates to be paid to males and females in the industry. Higgins argued, however, that the claim "equal pay for equal

29. ibid., Australian Workers' Union and Pastoralists Federal Council and others, pp. 73-78.

30. 6 CAR, pp. 68-70.

work" was ambiguous because it was not clear whether the phrase meant equal pay for equal output or "equal pay ... for work of the same character"³¹. Piecework rates, in effect, provided equal pay for equal output but the union had asked for piecework to be rejected. Higgins, therefore, decided that the phrase "equal pay for equal work" meant equal pay "for work of the same character" and that those who did work of the same character constituted a "distinct class of workers"³². From this it could be inferred that each member of a class of workers, that is those who did work of the same character, should be paid the same rate according to the value of the work, regardless of whether the workers in that class were male or female. However, Higgins did not address the issue of work value. Instead he took a different line. He argued that a class of work, that is work of a certain character, should be remunerated according to whether the work was "usually" done by men or by women.

"Men's work", he argued, was work in which men were usually employed or in which most of the employees were men but women were in competition for the work, particularly as a result of being paid less. He decided that, in these cases, it was necessary to fix a minimum

31. ibid., p. 71.

32. ibid.

wage which recognised the domestic responsibilities of men, that is, the obligation to support a family³³. On the other hand, "women's work" was work which was suitable for women, in which the majority of employees were women and in which employers would still prefer to employ women rather than men even if they had to pay the same rates. Higgins hypothesised that

"[t]he best test is, I suppose, that if employers had to pay the same wages to women as to men, they would always employ women, and in such work as this, even if the wages for men and women were the same, women would be employed in preference." (34)

However, he does not explain how this test could be applied. Firstly, there were few, if any, occupations where women were paid the same wages as men. It was only when legally obliged to do so that employers paid the same rates (provided, that is, that the job was "the same"). Secondly, in most occupations where women were employed in large numbers it was because these occupations were seen to be particularly fitted for women, and for which men showed little interest. Higgins himself noted with respect to fruit packing, that it was light work particularly suited to women. He commented that

"I have no doubt that the work is essentially adapted for women with their superior deftness or suppleness of fingers." (35)

33. ibid.

34. ibid., p. 72.

35. ibid.

Higgins also remarked on the tendency for females to be substituted for males in industries, "even in occupations more suited for men" which he believed was largely a result of women generally being paid at a lower rate than men. In practice, therefore, it was the lower wage that could be paid to women which influenced an employer's "preference". Thus, as he saw it, in order to protect men from displacement from "men's jobs", where men and women were in competition for the same jobs, it was necessary that women be paid the same rate in order to remove the temptation for employers which lower wage rates provided³⁶. In packing, however, there was no requirement for such protection for men as they were not in competition for those jobs. In these circumstances women could be paid at a lower rate because they "only have to find their own food, shelter and clothing"³⁷ while the rate for men had to support a family. Consequently, in his judgement, Higgins decided to award the packers nine pence an hour while the female pickers were awarded one shilling an hour, the same rate as the men.

At the same time Higgins was concerned with the need to protect adults, both males and females, from competition from the young. He directed that pickers, whether male or female, were to be paid the adult rate

36. ibid.

37. ibid.

from the age of eighteen, because

"so far as I can find, the person of 18, 19 or 20 is usually as efficient as a full adult, and ought to be paid the same wages." (38)

With reference to packers, he also ordered that females be paid the full adult rate from the age of fifteen, because

"[i]f I were to prescribe a lower wage there would be a tendency to employ girls under 21, and at that age to pass them by, and take on other girls under 21. The employer would get the same results for lower wages." (39)

Between fifteen and eighteen years female packers were to be paid nine pence per hour which represented 86 per cent of the rate set for males in the same age group who were awarded $10\frac{1}{2}$ pence per hour, whether they worked as packers or pickers. Females and males under fifteen were to be paid $7\frac{1}{2}$ pence per hour regardless of whether they were packers or pickers as they were still learning. Males were, therefore, effectively excluded from packing after the age of fifteen years because employers would have been forced to pay more for the same work if males had been employed. This would have meant a substantial addition to the wages bill if males had been employed - a considerable incentive for employers to "prefer" females for this class of work.

38. ibid., p. 74.

39. ibid.

The adult rate awarded by Higgins for the "women's job" represented 75 per cent of the rate awarded for the "men's job" which was supposed to be sufficient to support a family. Did this mean Higgins regarded the needs of a single female who had "only to find [her] own food, shelter and clothing" as three-quarters of that of a man, his wife and three children? Apparently not. As Higgins pointed out:

"There has been little or no evidence adduced directly bearing on this subject, and my finding must be taken as tentative, liable to be corrected hereafter on better materials." (40)

However, he did concede that

"[t]here is a considerable difference between males and females - say from the age of 15 onwards - in the expense of dress." (41)

That is, a single female needed to spend more on clothing than would a married female who did not need to go outside her home very often. It was, therefore, essential that a single female be paid a sufficient wage to enable her to maintain a respectable public appearance.

Without sufficient evidence to guide him as to the appropriate wage for females, the rate Higgins fixed for "women's work" was roughly in the same proportion to the male rate as the ratio between the employers' offer of 5/6 per day for females and seven shillings per day for males. He apparently accepted the employers'

40. ibid., p. 72.

41. ibid., p. 73

valuation that the female wage should be approximately three-quarters that of the male wage and applied this to packers. The fundamental issue of what the female living wage should be was deferred to another time when more detailed evidence should be available.

It is necessary to emphasise at this point that the Rural Workers' case was not the case in which Blandy claims

"the female 'single unit' wage was fixed in 1912 at amounts up to 60 per cent (in practice about 50 per cent) of the male 'family unit wage'." (42)

(an error which is repeated by others⁴³) as a close reading of the actual judgement clearly shows.

Blandy's statement appears to be based on a misreading of the secondary source which he used. Higgins did not fix the female "single unit" wage until 1919 in the Clothing Trades case. However, as the next chapter shows, there were several cases in which this issue could have been resolved before 1919.

42. Richard Blandy, "Equal Pay in Australia?", Journal of Industrial Relations, Vol. 5, No. 1, 1963, p. 20.

43. e.g. Bruce Chapman, "Australian Women and Wages: A Survey of Research" in Mavis Hoy (ed), Women in the Labour Force: The Proceedings of a Conference, Bureau of Labour Market Research Monograph Series No. 4, AGPS, Canberra, 1984, p. 112.

CHAPTER 3 : MR JUSTICE POWERS' AWARDS

Higgins did not deal with the question of the "living wage" for women in the Rural Workers' case because there was insufficient evidence on which to base such a wage. He intimated that his decision was "liable to be corrected hereafter on better materials". In the event, however, another seven years passed before the "living wage" for females was determined by Higgins himself in 1919. In the meantime several cases in the Commonwealth Court in which such a determination could have been made, each of which was arbitrated by Mr Justice Powers¹, were heard. In his judgements, however, Powers experienced difficulty in making a definitive determination regarding the appropriate amount that would provide a living wage for women.

The first opportunity after the Rural Workers' case in which a determination on the living wage could have been made occurred in 1914 in the case of the Federated Felt Hatting Employees' Association v. Denton Hat Mills and others². The Federated Felt Hatting Employees' Association was formed early in 1912 and was registered under the provisions of the Conciliation and

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1. Powers was appointed a Deputy President of the Commonwealth Court of Conciliation and Arbitration in 1913 after Higgins had served seven years as sole arbitrator and was about to take a year's leave of absence.
 2. 8 CAR, pp. 346-449.

Arbitration Act in June 1912. The Association claimed 922 members in three states - Victoria, New South Wales and South Australia³. In August 1912, not long after it achieved Federal registration, the Federated Felt Hatting Employees' Association served a log of claims on twelve employers in the three states in which it claimed members. This had elicited no response by 1 September, the deadline set in the claim⁴. After representation from the union, Higgins summoned a compulsory conference on 16 February 1913, but no agreement was reached⁵. Higgins ruled that a dispute existed and on 7 April the matter was referred to Arbitration. On 28 April 1913, Higgins appointed Powers to deal with the matter. However, the case was delayed at this point because the employers denied the existence of a dispute and appealed to the High Court⁶.

The High Court did not hear the appeal until March 1914. On 27 March it ruled that the Commonwealth Court of Conciliation and Arbitration (CCAC) was justified in finding that a dispute existed. Its view was that whether or not a dispute existed was "entirely

3. ibid., p. 367.

4. ibid.

5. ibid.

6. ibid., p. 368 (Also see 18 Commonwealth Law Reports (CLR), pp. 88-115).

a question of fact" for the CCAC to decide and not "a question of law" in which it was appropriate to obtain advice from the High Court. After deciding the issue of the existence of a dispute⁷ Powers called a further compulsory conference in May 1914. After lengthy negotiations spread over several months, agreement was eventually reached on piecework rates. There were, however, several matters on which agreement was not reached. Among these were: the appropriate minimum rate to be paid to adult males, lads aged from 14 to 21 years and to all female employees⁸. Powers was therefore obliged to arbitrate on these issues.

The Federated Felt Hatting Employees' Association had claimed a minimum rate of 51 shillings per week for unskilled males. This amount was granted by Powers in his decision handed down on 7 September 1914, because it was the same amount he had awarded in a previous case, in May 1914⁹, in which he followed the precedent set in an award handed down by Higgins in April 1914¹⁰. For males under 21 Powers granted rates

7. ibid., pp. 369-371.

8. ibid., p. 372.

9. See 8 CAR, The Federated Tanners and Leather Dressers Employees' Union and Addison and Co. and others, pp. 145-178.

10. 8 CAR, Waterside Workers Federation and Commonwealth Steamship Owners and others, pp. 64-65.

of 12 shillings per week for fourteen year olds up to 42 shillings per week for 20 year olds. Then he turned his attention to female rates.

Skilled workers in the felt hatting industry were paid at piecework rates. There were no separate piecework rates for male and female workers¹¹. Both male and female skilled workers, therefore, were paid according to their output. Male skilled workers, on average, earned at least £4 per week¹² while females earned up to 55 shillings to 60 shillings per week¹³ (roughly 65 to 75 per cent of male earnings). Unskilled males were employed either as assistants to skilled workers or as pullers up, pressers and machine blockers. Unskilled females were employed in wool forming, feeding machines and general work¹⁴. Unskilled male and female employees were, therefore, employed on different work. Females were, in fact, "machine minders", generally regarded as "women's work".

The only available wage guideline to assist Powers in this instance was the Rural Workers' case. This case did not help him very much because Higgins had awarded nine pence per hour or 36 shillings per week as

11. 8 CAR, p. 356.

12. ibid.

13. ibid., p. 375.

14. ibid.

the minimum rate for females working as packers. The Felt Hatting Employees' Association had only claimed thirty shillings per week (about 59 per cent of the male rate) for females whereas if they had taken a lead from the Rural Workers' case and adopted the same ratio in their claim they could have asked for at least 38 shillings - that is, 75 per cent of the claim for males. Powers could only arbitrate on the difference between the claim by the union and the offer of the employers, which was 22/6 per week¹⁵.

The employers' offer for females, which was about 44 per cent of the rate for males, was clearly unacceptable to Powers.

"The 22/6 offered is the wage the respondents offered for a lad of 17 years of age and less than I have allowed for a lad of that age ... I cannot bring myself to think that a living wage for a woman is less than that of a lad between 17 and 18 years of age ... Women as well as men are entitled to a 'living wage' as defined by this Court, namely sufficient to provide proper food, shelter, rest, clothing and a condition of frugal comfort estimated by current human standards." (16)

Powers dismissed the employers' argument that the work was "girls' work" and therefore to be paid at a lower rate.

"I think 'girls' work' is often worth more than is paid for it, and this is a case in which, in my opinion, this is done." (17)

15. ibid.

16. ibid., pp. 375-376.

17. ibid., p. 376.

Powers accepted the union's claim and awarded thirty shillings (about 59 per cent of the amount awarded to males) per week for adult women, because

"[t]he work they do is, in my opinion, worth 30 shillings per week, whether it is, or is not, a living wage. Thirty shillings per week for a woman who has to board and clothe herself properly cannot possibly allow for any provision to be made for illness, want of work, or future needs." (18)

The work was "worth" 30 shillings per week, Powers argued, because the women

"have to stand up for 8 hours per day, day after day, month after month, and they are kept going while at work. The machines will not wait." (19)

Powers' difficulty in finding an appropriate basis for fixing a minimum wage for unskilled adult females is plainly evident in this case. He wavers between "the value of the work" and "a living wage", two entirely different concepts, and decides to use "worth", or value of the work because he is constrained, by the form of the claim, from awarding more than 30 shillings. He declares that he does not know whether 30 shillings "is, or is not, a living wage". The use of "worth" as the basis for his award enables him to evade, for a time, the issue of determining what "is a living wage" for women.

18. ibid.

19. ibid.

The conclusion that Powers was prepared to award more than thirty shillings per week for females, but was constrained by the amount claimed by the union, is reinforced by a comment that Powers made in a subsequent case. In his judgement in the Theatrical Employees' case in 1917, he remarked that

"I allowed in 1915, with some hesitation, less to women working in hat factories where rough working clothes only are necessary and the union only claimed £1-10-0 per week for the work. The cost of living has increased since then. I am also satisfied that the work done by women in the industry is worth £1-15-0 per week". (20)

If the union had asked for more it could have relied on the precedent set in the Rural Workers' case, although Powers may not have awarded the full amount of 36 shillings because this amount included an allowance for following the job. In the Theatrical Employees' case Powers awarded 35 shillings per week but this was exactly the same proportion of the male minimum wage as the thirty shillings awarded in the Felt Hatters' case.

In 1916, Powers was required to resolve two claims involving clerical officers in the Commonwealth Public Service. The Public Service was placed under the jurisdiction of the Commonwealth Court of Conciliation and Arbitration in 1911 when the Arbitration (Public Service) Act, 1911, was enacted by the Federal Parliament. Under the Commonwealth Public Service Act

of 1902²¹ no distinction had been made between male and female clerks as the Act merely referred to "officers". Consequently, the practice had arisen by paying single male and female employees at the same level the same rate of salary. Males who were married had their salary immediately increased to £150 per year if they were earning less than that amount at the time of marriage. For those already earning £150 or more at the time of marriage, it was believed that the incremental pay structure would enable them to make sufficient provision for family responsibilities. Thus the responsibilities of men to provide for a family was recognised by the Public Service Act but only if the male actually married before his salary had reached a certain level. The incremental pay scale meant that a single male would eventually earn £150 per year, or more, even if he did not marry. The fact that single male and female clerks were paid the same salary caused Powers some difficulty when he was called upon to arbitrate on wage increases for clerks. However, the first of the cases he dealt with was filed under the provisions of the Conciliation and Arbitration Act and not the Arbitration (Public Service) Act.

On 8 December 1915, the Federated Clerks' Union filed an application for a compulsory conference on

21. No. 5 of 1902.

behalf of its members employed in the Commonwealth Public Service as temporary clerks²². The Federated Clerks' Union was registered under the provisions of the Conciliation and Arbitration Act. Of its 5,600 members, less than one third were employed in the Commonwealth Public Service²³. In its application for a compulsory conference the union declared that it was in dispute with the Commonwealth Government over its claim for an increase in the minimum wage for temporary clerks from 10 shillings per day to 12/6 per day²⁴. There were no other respondents to the claim. Following the employment practice of the Public Service there was no distinction in the claim between male and female clerks. At the time many temporary clerks were employed in the Public Service to replace those who were in the defence forces²⁵. A significant proportion of the males were over 50 years old and would not have been accepted for employment in the permanent Public Service²⁶. While some had been employed for up to four years as temporary

22. 10 CAR, Federated Clerks' Union and the Commonwealth of Australia and Commonwealth Public Service Commissioner and others, p. 17.

23. ibid.

24. 9 CAR, Federated Clerks' Union and the Commonwealth of Australia and others, pp. 292-293.

25. 10 CAR, p. 23.

26. ibid., p. 24.

clerks, the average length of employment was about nine months²⁷.

The compulsory conference was duly convened but no agreement was reached and the matter was referred for arbitration in February 1916²⁸. Powers found himself faced with a claim for equal pay which he could not reconcile with previous Court decisions. He observed that

"[t]he claim for 12/6 a day as an adult equal living wage for women and men has never before been submitted to this Court. A living wage for a man has always been fixed by this Court on the basis that a man is maintaining a wife and family of two at least, or is likely to do so - but in this case no woman has been called to give evidence in support of this new claim and I do not propose to attempt by this award to fix a living wage for women. It is a difficult task yet to be undertaken by this Court when evidence is submitted in support of it. So far as it is a claim for the same pay solely because the work done by women is of equal value to that done by men that is an entirely different thing but I have no evidence at all on that point." (29)

Powers effectively evaded the issue of equal pay by arguing that no evidence had been presented to support the claim and that therefore he could only make an award which applied to adult males. At the same time he noted the Government's practice of paying female clerks the same rate as men. He apparently expected

27. ibid., p. 23.

28. ibid., p. 18.

29. ibid., pp. 32-33.

that the award would be applied to females, even though they were not specifically included, which removed the problem of determining what female clerks should be paid.

Powers rejected the union's claim for a wage increase for lack of evidence to support such an increase. He argued that on the basis of the value of the work performed it was well paid at 10 shillings per day and therefore the only basis for awarding an increase was that 10 shillings per day was not a living wage³⁰. He was very critical of the union's argument that 10 shillings per day was not a living wage.

"I feel it is my duty to protest against the meagre evidence submitted in support of this ... I have not had any real assistance from any evidence submitted to me to decide what a living wage for a labourer is at present or what a clerk should be allowed more than a labourer as a living wage." (31)

He therefore referred to existing awards, both Federal and State, to determine whether 10 shillings per day was a living wage³². The highest Federal award was for nine shillings per day made in June 1915, and "the struggle outside has been to bring the living wage up to the Federal rate of nine shillings"³³. He also found

30. ibid., p. 42.

31. ibid., pp. 43-44.

32. ibid., p. 48.

33. ibid., p. 49.

that clerical officers who were permanently employed in the Public Service were earning less than 10 shillings per day and "came to the conclusion that 10 shillings was not less than a living wage in 1916"³⁴.

Immediately following this case Powers heard a similar case involving permanent clerks in the Commonwealth Public Service, who were members of the Australian Commonwealth Public Service Clerical Association³⁵. This Association represented more than 80 per cent of the clerical officers in the Public Service³⁶. The claim had originally been submitted to the Public Service Commissioner (under the provisions of the Arbitration (Public Service) Act, 1911) in July, 1914³⁷ but the case was not heard until March-April, 1916. The claim was for a minimum adult rate of £156 per year compared with an existing rate of £126³⁸. The Public Service Commissioner claimed that the existing rates were fair and reasonable³⁹.

Again Powers was faced with a claim for equal pay for male and female clerks. However, one of the

34. ibid., p. 50.

35. 10 CAR, Australian Commonwealth Public Service Clerical Association and the Public Service Commissioner and others, pp. 58-111.

36. ibid., p. 62.

37. ibid., p. 65.

38. ibid., p. 64.

39. ibid., p. 66.

parties to the claim appears to have taken note of Powers' comment in the case involving the Federated Clerks Union, that no evidence had been produced to support the argument that the work done by females was of equal value to that done by males. The Public Service Commissioner submitted that the male clerks did not usually marry before the age of 23 and that the majority did not marry until they reached 29 years of age⁴⁰. The Public Service Clerical Association, however, did not produce any evidence to support its claim for equal pay. Salary increments enabled males to make provision for marriage and the practice of the Public Service Commissioner was to increase the salary of males to £150 upon marriage if they had not already reached that level by normal increments⁴¹. In addition, it was admitted that the value of the work done by females was equal to that done by men. As a result, Powers could "see no reason why ... the Award as a whole should not apply to men and women"⁴² in those classes and subdivisions to which they were both appointed. The claim for increased wages, however, was only partially granted. There were minor adjustments to the subdivisional boundaries for the lower classes of

40. ibid., p. 91.

41. ibid., p. 104.

42. ibid.

the Public Service and a higher minimum rate for officers who entered the Public Service after the age of 18 years⁴³.

In dealing with the Public Service clerical workers, therefore, Powers was again able to avoid the issue of determining an appropriate living wage for females. Though he was obviously uncomfortable with the concept of equal pay he was prepared to award the same rate for single male and female clerks on the basis that the work done was declared to be the same. It is evident that Powers felt that there was a conflict between the concept of a "living wage" for a man and the claim for equal pay⁴⁴ but he was unwilling to resolve it at this point, deferring it until some future time, perhaps not until after the war was over.

"It will be hard after the war and the part women have taken, and are taking in it, to refuse to acknowledge their claims to equal pay for equally good work, solely on the ground that it is done by a woman." (45)

However, another opportunity presented itself in 1917 in the Theatrical Employees' case. In July 1916, the Australian Theatrical and Amusement Employees' Association filed an application for a compulsory conference on the ground that a log of claims on wages and working conditions had been served on the employers in

43. ibid., pp. 101, 107.

44. ibid., p. 103.

45. 10 CAR, Federated Clerks Union, etc., p. 33.

several states but these had not been granted⁴⁶. This application was withdrawn and a new application made in August with a larger number of respondents⁴⁷. A compulsory conference was summoned in September 1916, but only a few of the respondent employers were represented and no agreement was reached⁴⁸. The matter was referred for arbitration and came before Mr Justice Powers in April 1917. The Australian Theatrical and Amusement Employees' Association represented persons employed in dramatic and vaudeville theatres as well as in continuous night picture theatres. The Association claimed a minimum adult rate of 3 per week for males and £2-5-0 for females⁴⁹. The claim for females represented 75 per cent of the minimum amount claimed for males. It appears that the Association took the hint, given by Powers in the Felt Hatters' case, that the claim therein for females was not sufficiently high and therefore applied the only precedent available for female wages and that was the wage set in the Rural Workers' case.

46. 10 CAR, In the matter of the Australian Theatrical and Amusement Employees' Association and J.C. Williamson and others, p. 439.

47. ibid.

48. ibid.

49. 11 CAR, Australian Theatrical and Amusement Employees' Association and J.C. Williamson and others, pp. 139-140.

Fixing the male minimum rate was relatively simple. The principles had been laid down in the Harvester case and it was only a matter of determining how the cost of living according to the Commonwealth Statistician's index in 1917 compared with 1907. The Association claimed £3 and this amount was granted by Powers on the basis of cost of living changes⁵⁰. However, he was not prepared to grant the union's claim for females. Females were generally employed as ticket sellers, ticket takers, ushers and cloakroom attendants for which the union had made a claim for £2-5-0 per week. Ticket selling and cloakroom attendance was plainly "women's work" because there was no separate claim for male ticket sellers or cloakroom attendants. There was, however, a separate claim for male ushers and ticket takers for whom the union claimed the minimum male rate of £3-0-0, five shillings per week more than was claimed for female ushers and ticket takers⁵¹. Witnesses at the hearing claimed that male ushers were required to deal with drunken men who went to sleep in the seats⁵².

In his judgement Powers noted that in 1911, 1912 and 1913 the parties had negotiated agreements

50. ibid., p. 145.

51. ibid., pp. 139-140.

52. Argus, "Theatrical Employees: Arbitration Proceedings", 14 April 1917, p. 8.

which set the minimum female wage at £1-5-0⁵³, which was half of the male rate, and " £1-5-0 has since 1913 generally been paid by the respondents for a woman's work"⁵⁴. The claim for £2-5-0 therefore represented a more significant increase than was the case for males - an eighty per cent increase compared with a twenty per cent increase for males.

Powers attempted to ascertain the actual cost of living for a single female by hearing evidence on the matter from female witnesses. The evidence submitted was "very meagre. I, however, must do the best I can on the evidence before me"⁵⁵. Board and lodging of a reasonable standard of comfort, he was told, would cost not less than 17 shillings per week in 1917. Tram fares to and from work averaged three shillings per week. This meant that on average these two items alone cost about a £1 per week, leaving only five shillings per week for all other requirements including lunches, clothing and laundry expenses at the existing wage.

"It must be recognised that a woman cannot in 1917 live in reasonable comfort and clothe and maintain herself on £1-5-0 a week in the way she has to do as an employee at a theatre. On the evidence before me on the increased cost of living and the greatly increased cost of clothes, I propose to fix

53. 11 CAR, p. 146.

54. ibid.

55. ibid., p. 145.

£1-15-0 as the minimum Federal wage for women working in this industry under existing circumstances for 48 hours." (56)

This may have been "higher than has been allowed"⁵⁷ in previous cases such as the Felt Hatters' case but the amount represented 58.3 per cent of the minimum male rate, almost the same proportion as had been set for females working in hat factories in 1915. On the other hand, this award raised the relativity of the minimum female wage to the minimum male wage in the theatrical industry from 50 per cent to 58 per cent. From the decisions in the Felt Hatters' case and the Theatrical Employees' case it appears that Powers had fixed on a rate of just under 60 per cent of the adult male rate as the basis for his awards to adult females.

Although Powers argued that the cost of living had increased since 1915 thus justifying the award of a higher money wage and that he was satisfied the work done was worth the amount awarded⁵⁸ he nevertheless was not prepared to stray too far from the precedent set in previous cases. That he chose to apply the ratio of the Felt Hatters' case rather than the Rural Workers' case can also be sourced to precedent. Higgins argued in the Rural Workers' case that increasing the female rate

56. ibid., p. 146.

57. ibid.

58. ibid.

"from 3/6 or 4/6 or 5/- for a full day to 8/- certainly seems violent"⁵⁹.

Although Powers appeared to give consideration to the "needs" of a single woman who wanted to live in "reasonable comfort honestly"⁶⁰ the analysis of costs was quite superficial. While actual data on the cost of board and lodging and tram fares provided the basis of the cost of living for females, the vexed question of what constituted an appropriate level of spending on clothing for a young woman was difficult to determine and Powers did not pursue this issue. The award itself implies that Powers thought a woman required fifteen shillings per week in addition to the cost of board, lodging and tram fares, for clothing and other miscellaneous expenses.

Powers appeared to be concerned about the expenses a woman necessarily incurred if she were to live "honestly" and noted that some women needed to supplement their low wages in order to do so. Referring to front-of-the-house employees (that is, ushers and ticket takers) he observed that

"[s]ome employees in permanent work in the day time do this work. Some widows, women and girls are glad to get the work for a few hours in the evening to enable them to try and make up for the small wage allowed

59. 6 CAR, p. 73.

60. 11 CAR, p. 146.

to women, because they are women, in so many occupations." (61)

The essence of female "honesty", therefore, was seen to be the ability to dress well and the cost of clothing was established as a major factor in the assessment of the needs of a single woman having only herself to support. However, Powers was reluctant to encourage "extravagance" in this matter as was indicated a month later in his judgement on the Telephonists' case⁶².

In May 1916, the Commonwealth General Division of the Telephone Officers' Association filed a plaint with the Conciliation and Arbitration Court under the provisions of the Arbitration (Public Service) Act, 1911⁶³. The respondents represented by the Public Service Commissioner rejected all but two of the claims which were relatively minor concessions. Hearing of the case began before Mr Justice Powers in February 1917, in Melbourne. The major claim was for substantially increased wage rates for telephonists. The prevailing rates ranged from £39 per year in the first year of employment up to £110 for an adult or person in the sixth year of employment. The claim was for £84 per year in the first year up to £162 per year in the

61. ibid., p. 157.

62. 11 CAR, Commonwealth General Division Telephone Officers' Association and the Public Service Commissioner and others, pp. 295-315.

63. ibid., p. 296.

eighth year of employment, with a minimum adult rate of £144 per year which was also the rate for the sixth year of employment.

In his judgement Powers argued that the existing wage rate for telephone employees in their first year "could never have been intended to keep a girl, woman or lad, away from home including the cost of board, lodging and clothes"⁶⁴. He noted that the rate in 1917 was only £13 more than that set in 1901 "while the cost of living including clothing has greatly increased"⁶⁵ since then. The maximum salary of £110 was set in 1904.⁶⁶ The representatives of the Public Service Commissioner conceded that £39 was inadequate but argued that the adult minimum of £110 was more than the work was worth and an adequate living wage⁶⁷. Powers raised the minimum rate for first year employees by £15 per year to £54 which was accepted by the respondents. Second year rates were increased by £20 per year and third, fourth and fifth year rates were increased by £12 per year.

In fixing the adult minimum rate, or sixth year rate, for telephonists, Powers decided that it was

64. ibid., p. 305.

65. ibid.

66. ibid., p. 304.

67. ibid., p. 305.

first necessary to determine whether the work was men's work or women's work.

"This is necessary for two reasons.

- (1) Because the Court does not fix any lower rate for a woman's work than for a man's if the work done is man's work; but if the work done is recognised as women's work the wages fixed are those determined by the Court as fair, on the evidence submitted, for the class of work in question.
- (2) Because if the work is man's work the minimum wage to be fixed for an adult is a wage sufficient to keep a man, his wife and a family of three children in reasonable comfort. If it is a woman's work, a wage sufficient to keep a single woman in reasonable comfort." (68)

Thus did Powers clearly spell out the principles which had been established since 1912 for the fixing of the minimum adult wage for women. The concept of a fair wage for the value of the work done was particularly developed in Powers' various judgements although he had never spelt out a clear methodology for determining such value and it seems to have been based on a relatively subjective assessment.

Powers judged that the work of telephonists was "clearly woman's work, not only in Australia but it is recognised as such in England, Canada, the United States, and in Europe"⁶⁹. While males under 21 years

68. ibid., p. 306.

69. ibid.

were employed as telephonists as soon as they reached 21 they were moved on to other work where there was opportunity to progress further. He considered that £110 per year "was sufficient to keep a reasonable woman in reasonable comfort"⁷⁰. Since this amount represented about 42 shillings per week it was considerably above the 35 shillings he had awarded as a minimum rate for females in the Theatrical Employees' case in the previous year. Hence his conclusion that £110 was at least a living wage for women.

On the basis of the evidence provided he decided that, in fact, the work of a telephonist was worth more than the existing minimum rate of £110 and awarded £126 per year for adult females and for those who were in the sixth year of employment but who were not yet 21. For telephonists working on trunk lines in Central Exchanges he awarded an additional £6 per year⁷¹. The award of £126 per year merely brought the minimum rate for adult telephonists up to the same minimum rate received by adult clerks in the Commonwealth Public Service. Again, Powers had evaded the issue of determining a living wage for women by using the concept of "worth" of the work as the basis for his award. Since adult males were not employed as telephonists, but

70. ibid.

71. ibid., p. 308.

were given clerical work, he was not required to decide a minimum adult male rate.

In the following year, the Commonwealth General Division Telephone Officers' Association applied for a variation of this award on the basis of the increased cost of living since June 1917, when the award was made⁷². The union claim was for an increase of £16 for those employed as monitors and supervisors⁷³ to compensate them for the increased cost of living in the intervening period since the award had been made.

As Powers noted, no application for an increase had been made on behalf of those aged 17 to 20 years who had been awarded from £78 -£102 in 1917⁷⁴. In November 1917, Powers had dealt with a similar claim involving males employed in the Public Service and had awarded them £12 as a war bonus because of the increased cost of living particularly the cost of clothing, although the claim had been for an increase of £24⁷⁵. The claim for telephonists represented two thirds of the original claim that had been made for males in the Public Service. The claims of other Public Service

72. 12 CAR, The Commonwealth General Division Telephone Officers' Association and the Public Service Commissioners and others, p. 712.

73. ibid., pp. 713-714.

74. ibid., p. 714.

75. ibid.

Associations with female members were conjoined with this application.

Powers noted that he had awarded a bonus of £12, about ten per cent of the minimum adult salary, to men on the basis of "the increased cost of living (rent, food, clothing and miscellaneous expenditure) for a family of five - a man, his wife and a family of three children under 14"⁷⁶. Yet the claim for female telephonists who were single was £16. It is evident that Powers did not have a great deal of sympathy for the claim. The union had produced six witnesses to give evidence that telephonists could not live comfortably and dress comfortably on £126 per year which represented about 48/6 per week. Powers was not impressed by the evidence provided to support this claim.

Mr Justice Powers was forced to inquire again into the cost of living for adult females. This was necessary because a female "living wage" had not been fixed as it had been for males. In the case of adjusting the male minimum wage it was simply a matter of taking the "Harvester" wage and applying the information obtained by the Commonwealth Statistician to determine the increase in the cost of living. This could not be done for female wages because there was no basic wage on which to perform the calculations.

76. ibid., p. 715.

Powers accepted that it was necessary for a woman to be able to dress respectably because, quoting Seebohm Rowntree, she would otherwise "be seriously handicapped in the matter of marriage"⁷⁷. However, he considered that the witnesses who were called to support the claim for an increase were not typical of those for whom the claim was made⁷⁸.

"The witnesses who were called by the organisation, with one exception, showed - if their lists of estimated expenditure are correct - that they were not living on their salary whether it was £114 or £126, but they did not prove that they could not live in reasonable comfort on £126 if reasonable economy on dress, or the use of it, was exercised." (79)

Powers also criticised the evidence given on the basis that it represented only estimates of the costs incurred in purchasing the required clothing rather than actual expenditure and no allowance had been made for the fact that some items, although purchased in one year, would last longer than that⁸⁰. Nor was Powers very sympathetic with the witnesses who "batched" by themselves or lived further away from their work than was absolutely necessary, thus incurring additional expenditure⁸¹. Five out of six witnesses called spent

77. ibid., p. 716.

78. ibid., p. 718.

79. ibid., p. 716.

80. ibid., pp. 716-717.

81. ibid., pp. 717-718.

more than they earned because they either had private means of their own or parents who were prepared to subsidise them⁸². Powers, therefore, did not consider it appropriate to base the cost of living for a female on those expenditures because "they are not entirely independent, and have not had to learn to economise"⁸³.

Powers then referred to a range of cases, which had been submitted in evidence by the respondents, in which the wages of females were much less than was claimed for telephonists but where women were expected to dress respectably such as the Theatrical Employees' case in the Federal sphere, female teachers in Victorian State schools and

"young women in shops, mercantile offices, banks, etc., are also living on less than £110 and dressing nicely." (84)

As a result, Powers concluded that a telephonist could clothe herself with reasonable economy on less than £126 per year and that an increase of £16 was not justifiable on the ground that it was

"necessary to enable a young woman working in the General Division of the Services as a telephonist, to live in reasonable comfort and dress properly." (85)

82. ibid.

83. ibid.

84. ibid., p. 719.

85. ibid.

He then went on to determine what increase, if any, was justifiable "because of the decreased purchasing power of the sovereign since June 1917"⁸⁶.

Powers granted a cost-of-living increase of £6 to female telephonists, half that granted to adult males and an increase of about five per cent over the minimum adult salary. He based his judgement on the fact that he had awarded telephonists £126 per year in June 1917, on the ground that the work done was worth that amount and, therefore, it was necessary to maintain the value of the work in terms of "the decreased purchasing power of the sovereign"⁸⁷. The question was - how could he determine the increase in the female cost of living?

On the matter of the cost of board and lodging there was very little evidence produced as only one of the witnesses paid it and she lived in an expensive suburb paying 25 shillings per week which was the same rate as she paid in 1917⁸⁸. The respondents to the claim brought evidence to prove "that board and lodging could be obtained in some cases at much lower rates than 25 shillings a week"⁸⁹. Consequently, the increased cost of clothing was the only item in which Powers had

86. ibid.

87. ibid.

88. ibid., p. 722.

89. ibid.

sufficient evidence in which to base an award⁹⁰. It was estimated that the increased cost of £30 worth of clothing at June 1917 prices was about 20 per cent or £6⁹¹. So, in order to maintain the purchasing power of £126 Powers awarded a war bonus of £6 per year, based solely on the increased cost of clothing, to females earning up to £150 per year. Females earning more than £150 per year were not awarded a bonus which was in line with the no bonus award for highly paid males⁹².

These cases demonstrate that by 1918, when the Federated Clothing Trades of the Commonwealth of Australia began their action to obtain a Federal award, certain procedures had been established for determining the minimum rates for males and females. The determination of the minimum rate for males was relatively straightforward. As Powers indicated in 1918

"[t]he usual method of ascertaining ... increased cost for adult males has been to obtain from the Commonwealth Statistician particulars of the average decreased purchasing power of a sovereign for twelve months prior to the first award, compared with the purchasing power for twelve months prior to the new award. In adopting that practice it has been assumed that the increase on expenditure other than food and rent has been at the same rate as the average increased rate of food and rent combined." (93)

90. ibid.

91. ibid., p. 723.

92. ibid.

93. ibid., p. 722.

This procedure the claimant organisations understood and claims for increases in the minimum male rates based on the increased cost of living as indicated by the Statistician's cost of living index were easily established with the only debate being about which index should be used and whether variations in the minimum should be made reflecting variations in the index between capital cities and major towns. However, establishing change in the cost of living for females was not so simple for two reasons.

Firstly, there was the problem of the base against which changes in the cost of living could be measured. For male wages it was simply a matter of finding the current money amount required to maintain the purchasing power of the "Harvester" living wage of 42 shillings awarded in 1907. Thus there was an accepted fixed point with which to compare the current cost of living. For female wages there was no accepted fixed point because a female living wage had not been declared by the Court. Higgins declared in 1912, that he

"must, therefore, endeavour to find a fair minimum for these women, assuming that they have to find their own food, shelter and clothing." (94)

However, Higgins found that he had insufficient evidence on which to base such a minimum.

In 1913, Powers was unable to determine whether the minimum amount provided a living wage "for lack of evidence"⁹⁵. In 1917, Powers described the evidence produced in support of the claim for increased wages for female as being "very meagre"⁹⁶. In 1918, the claimant organisation brought six female witnesses to testify as to their expenditure but did not pay sufficient attention to the kind of evidence that was required. Consequently, the evidence on expenditure was criticised by Powers as not being typical of the average telephonist and not being actual expenditure⁹⁷.

The second problem was the difficulty in determining the change in the cost of living for females because the cost of living index was

"based on the increased cost of rent, food, and groceries only, and in the great majority of cases telephonists are at home, or living at boarding houses and do not pay rent or buy food and groceries." (98)

The cost of living index did not include clothing costs and it was clothing that was assumed to be the major item of expenditure for females after that of board and lodging. Thus changes in the cost of living as measured by the cost of living index did not accurately reflect the changes in the cost of living for single females.

95. 8 CAR, p. 376.

96. 11 CAR, p. 146.

97. 12 CAR, p. 176.

98. ibid., p. 722.

The claimant organisations appear to have been confused as to what was required of them in order to sustain their case in claims relating to the female minimum wage. That is, evidence should have been collected to show the actual expenditure by an adult female, being paid the minimum legal wage under the relevant State award, who had to find her own board, lodging and clothing and who either did not or could not depend on members of her family or friends for assistance. Up to this point, without adequate evidence to establish a living wage for women, the minimum wage for adult women had been set at just under 60 per cent of the male minimum wage. In the Clothing Trades case, Higgins was determined to obtain more detailed evidence relating to the female cost of living. The result was not so favourable to adult women as the decisions which had been made by the Court without such evidence. In general, however, the Commonwealth Court of Conciliation and Arbitration was more generous to both male and female workers than were the various State industrial tribunals during the period up to 1919.

CHAPTER 4 : THE AWARDS OF THE VICTORIAN CLOTHING BOARD

Until 1919, when the Federal award was made, the clothing industry was under the jurisdiction of State industrial tribunals. The structure of the industrial tribunals varied between States. In Victoria, a system of special boards was established by the Factories Act 1896. The Act itself provided for six special boards to be established to fix, inter alia, the minimum price or wages to be paid to employees engaged in the manufacture of boots and shoes, articles of men's and boys' clothing, shirts, articles of women's and girls' underclothing, breadmaking and baking, and furniture making¹. Regulation of these trades was deemed necessary because of the widespread practice of "sweating" where employees were obliged to work for long hours at low wages. The members of some Boards, such as the Furniture Board, were appointed by the Governor-in-Council but most Boards were made up of at least three elected representatives from each of the parties and a neutral chairman. The usual practice was to have five elected representatives from each side². The Boards

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1. Report of the Chief Inspector for Factories, Workrooms, and Shops for the year ended December 31, 1896, VPP, 1897(2), pp. 1647-1651.
 2. Report of the Royal Commission Appointed to Investigate and Report on the Operation of the Factories and Shops Law of Victoria, VPP, 1902-1903(2), p. 473.

were appointed for two years³.

In fixing wages the Boards were required, under the Act, to take into account "the nature, kind and class of work, the mode in which the work is to be done, the age and sex of workers, and also any other matter which may be prescribed by regulation"⁴. Power to suspend an award was vested in the Governor-in-Council who could then refer the award back to the Board in question for re-examination. If the Board refused to alter the award it was gazetted and then (up until 1904) could only be challenged in the Supreme Court⁵. In 1900, the Act was amended to provide for additional Boards to be established and in 1904 to provide for a Court of Industrial Appeal.

The Clothing Board was established in November 1896 to regulate wages and conditions of those employed in the manufacture of articles of men's and boys' clothing. The award of this Board covered most of the employees who, in 1918, applied to the Commonwealth Court of Conciliation and Arbitration for a Federal award. The area of the trade not covered was ladies' tailoring which later was covered by the Dressmakers'

3. ibid., p. 455.

4. ibid.

5. ibid., p. 474.

Board established in 1903⁶ after the Factories and Shops Act was amended in 1900 to provide for a further 21 Special Boards.

The responsibility of the Clothing Board was

"to determine the lowest prices or rates which may be paid to any person for wholly or partly preparing or manufacturing, either inside or outside a factory or workroom, the following articles of men's and boys' clothing or wearing apparel, mainly coats (including overcoats and cloaks of every description), vests, trousers, jackets and knickerbockers, except india-rubber waterproof garments." (7)

The Board met for the first time in January 1897, under the chairmanship of the Reverend A.R. Edgar and with Miss Margaret Cuthbertson, a factory inspector, as secretary⁸. The task of drawing up the award resulted in months of meetings and the Board's deliberations were not concluded until October 1897, nine months after the first meeting. The effective date of the award was 15 November, more than twelve months after the Board's establishment⁹. The award fixed a minimum wage for

6. Report of the Chief Inspector for Factories, Workrooms, and Shops for the year ended December 31, 1903, VPP, 1904(2), p. 458.

7. Report of the Chief Inspector for Factories, Workrooms and Shops, for the year ended 31 December 1896, VPP, 1897(2), p. 1651.

8. Report of the Chief Inspector for Factories, Workrooms and Shops, for the year ended 31 December 1897, VPP, 1893(3), p. 336.

9. ibid.

adult females of $3/4$ per day¹⁰. For a forty-eight hour week this represented a minimum weekly wage of twenty shillings. However, all adult females, except pressers and seam pressers, were to be paid at the same rate whether they were tailoresses, machinists, button sewers, folders or brushers. Thus, in its very first determination, the Wages Board fixed no margins for skill for women, that is, there was no distinction between skilled and unskilled in the female rates.

For adult males, on the other hand, five levels of skill were distinguished. These were 25 shillings for brushers, 30 shillings for seam pressers, 40 shillings for folders and 45 shillings for tailors, cutters, trimmers, pressers, machinists and examiners. Stock cutters were awarded 50 shillings per week. Adult female pressers and seam pressers were awarded the same rate as adult male seam pressers, that is, 30 shillings per week. If the ratio of female rates to male rates is based on the award for brushers the relativity was 80 per cent. On the other hand, the ratio between tailoresses and tailors was 44 per cent. If the two classes of work which attracted the minimum rates under the eventual Federal award are adopted for comparison, that is female machinists and male seam pressers, the relativity was 67 per cent. Brushers and folders were awarded more than the minimum rate in the eventual Federal award.

10. ibid.

Piece-work rates were also fixed but the Act provided that piece-work rates could only be paid to those working at home¹¹. In an attempt to ensure that piece-workers were able to obtain a reasonable wage without working unduly long hours piece-work rates had been set on a higher basis than the equivalent weekly wage¹². The consequence of this was that manufacturers found that they could make clothing more cheaply by producing it within the factory with weekly waged employees and therefore very little work was sent out to piece-workers working in their own homes¹³. Many former outworkers were forced to seek employment inside the factories but some were unable to do so and had to seek work from other sources, such as dressmaking, shirtmaking or underclothing, which were not yet regulated by a Special Board¹⁴. The piece-work rates were later re-examined by the Board with a consequent reduction in rates from July 1900.

According to the Chief Inspector for Factories, the establishment of an award resulted in a substantial increase in average wages. In 1896 before the determination came into force the average weekly

11. ibid.

12. ibid.

13. ibid.

14. ibid., p. 338.

wage for males aged 16 and over was 36 shillings per week while the average weekly wage for females aged 16 and over was 15/9¹⁵ or 44 per cent of the average male wage. In 1898, after the Determination came into force, the average weekly wage was 40 shillings and 18/7 respectively - a ratio of 46 per cent¹⁶. However, this increase was more likely the result of other factors. Between 1896 and 1898 the number of females employed in the manufacture of men's and boys' clothing increased by 36 per cent and the number of males increased by 20 per cent¹⁷. This would indicate that the demand for labour was improving. Complaints were heard of a "shortage" of skilled labour¹⁸ which suggests that employers would have had to offer higher wages if they were to meet their labour needs. Adult averages were not reported by the Chief Inspector until 1900 and in that year the average wage reported for adult males was 48/6 and 21/3 for adult females - a relativity of 44 per cent¹⁹.

15. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ended December 31, 1898, VPP, 1899-1900, p. 1363.

16. ibid., p. 1364.

17. ibid.

18. ibid.

19. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ended 31 December 1900, VPP, 1901 (2), p. 1210.

Economic conditions were also improving. In 1899, further comments on shortages of competent female employees were being made indicating that demand for clothing had improved. There are also references to the "poaching" of competent hands by other manufacturers who were offering higher wages²⁰. The fact that the Wages Board had awarded no margins for skill for females meant that the payment of 'over-award' wages was inevitable. As Inspector Hall commented:

"It is a fact that a considerable number of women now receive more than the minimum wage of 20/- per week as fixed by the Clothing Board. The wages of many being from 25/6 to 27/6." (21)

Thus, skilled female hands were rewarded by a market which was forced to recognise their skills. Shortages of competent female hands also meant that outworkers were again in demand²².

From 1899 onwards the shortage of competent and skilled females was a constant refrain in the Reports of the Chief Inspector for Factories and Shops. At first employers blamed the Board's restriction on the number of improvers and apprentices who could be employed²³. Under the original determination only one

20. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended 31 December 1899, VPP, 1900 (2), pp. 734-735.

21. ibid.

22. ibid.

23. ibid.

apprentice or improver was allowed for every three females employed at the minimum rate. It was argued that as most women left employment for marriage it was not sufficient to train only one to replace three who might leave. However, the factory inspectors found that many employers were not taking on even the number of apprentices they were allowed preferring to leave the training of hands to other employers²⁴. This problem of the 'free rider', where employers preferred to 'poach' rather than train the labour they required, contributed to the shortage of skilled labour.

During 1900 the Clothing Board increased the proportion of apprentices and improvers to one to every two females earning the minimum wage²⁵, a variation which seemed to satisfy most employers²⁶. Nevertheless, the Factory Inspectors still found that many employers were not taking on apprentices to the extent they were allowed²⁷ arguing that apprentices often left during their apprenticeship or immediately afterwards because of the inducement of a higher wage offered by another employer²⁸. Such complaints and excuses are repeated

24. ibid.

25. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ended December 31, 1900, VPP, 1901(2), p. 1208.

26. ibid., p. 1210.

27. ibid., p. 1211.

28. ibid.

year after year in the Reports of the Chief Inspector.

For example, in 1901 Factory Inspector Miss Tate noted:

"It is no uncommon thing for an employer to say, in answer to a remark on this subject 'that he cannot be bothered with apprentices' and that 'they do not pay', and just after this deploring the fact that he cannot get skilled hands." (29)

As a consequence, the competition for skilled female hands ensured that above award wages were offered even to those who did not have a great deal of experience.

In 1902, in order to satisfy continuing employer demands, the ratio of improvers or apprentices to adult females was increased again to two apprentices to every three adult females earning at least the minimum wage³⁰. The determination was further amended in 1903 to allow an unlimited number of properly indentured apprentices. It was hoped that this change would eventually eliminate the shortage of skilled labour³¹. By 1905 a large increase in the number of apprentices in the clothing trade was noted³². However,

29. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1901, VPP, 1902(2), p. 115.

30. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1902, VPP, 1903(2), p. 185.

31. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1904, VPP, 1905(3), pp. 454-455.

32. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1905, VPP, 1906(2), p. 1112.

the clamour about the shortage of skilled female labour continued unabated. In 1906 it was claimed that Victorian hands were being attracted by higher wages to employers interstate³³ requiring the offer of "good inducements for employment"³⁴ in order to retain them. Most female employees in "order" (that is, made to order) clothing were said to be receiving more than the bare minimum wage³⁵. This was hardly surprising given that the minimum wage was awarded for a relatively low level of skill.

In 1907, it was reported that manufacturers were having difficulty in obtaining a sufficient number of girls to learn the trade even when offered double the legal wage payable to apprentices³⁶. Advertisements for competent workers offering higher wages often received no response³⁷. Employment opportunities for females were broadening. As Inspector Bishop noted:

"I think the fact that a larger number of girls are attending the various business colleges in the city, with a view of entering

33. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1906, VPP, 1907(2), p. 318.

34. ibid.

35. ibid.

36. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended 31 December, 1907, VPP, 1908(1), p. 1054.

37. ibid.

commercial life, must have something to do with the present shortage in the female labour market." (38)

The weekly minimum wage rates in the Clothing Board determination had not been altered since the original award in 1897 although the piece-work rates had been adjusted in 1900 to make them more equivalent to the minimum weekly wage and to enable employers to use this source of labour economically to overcome shortages. In the meantime a large number of new Boards had been established many of which had set higher wage rates, particularly for juveniles, than had been set in the Clothing award³⁹. However, the Factory Inspectors found that even these trades had difficulty in attracting beginners while "there were numerous applications for such positions as junior clerkship"⁴⁰.

In 1908, the Clothing Board revised the minimum weekly wage rates in the determination. Wage rates for apprentices and improvers were increased substantially after the first month's experience. Whereas under the original award the minimum weekly rate of 2/6 applied to apprentices for the whole of the first year under the new award this applied only for the first month after which the wage was increased to 3 shillings

38. ibid.

39. ibid., p. 1058.

40. ibid.

per week. Wage increases then followed every six months instead of annually as previously. Improvers were to be paid the same rates as apprentices. This meant that wages for fifth year apprentices and improvers were two or four shillings above the previous rate of fifteen shillings depending on whether it was the first half of the year or the second half. However, the minimum rate for adult females was raised only one shilling to 21 shillings and there was still no distinction in the female rates for extra grades of skill. For adult males, on the other hand, while the minimum rates remained the same as before, three new levels of skill were distinguished for brushers, seam pressers, folders, machinists and examiners⁴¹. Factory Inspector, Miss Cuthbertson, noted:

"There has been a great deal of disappointment expressed that the increase in the minimum wage for women of 1/- was so small [but] it is accepted as better than nothing." (42)

The new award did nothing to alleviate the shortage of skilled female labour. Instances were cited where wages of up to 35 shillings per week were offered in 1909 but there was little response⁴³. Employers

41. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1908, VPP, 1909(2), Appendix D, p. 333.

42. ibid., p. 265.

43. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 31, 1909, VPP, 1910(2), p. 582.

began to experience considerable difficulty in obtaining sufficient competent female hands to teach the trade to apprentices⁴⁴. Most employers expressed their willingness to pay very good wages "if hands were only available"⁴⁵. In 1910, the Clothing Board amended its determination to provide a higher minimum rate of 22/6 per week for adult females employed in order clothing while leaving the minimum rate in ready made clothing as before, that is, 21 shillings. It was the first time such a distinction had been made⁴⁶ but this award did little more than recognise what was happening in the labour market. As Miss Cuthbertson, now Senior Factory Inspector, noted - the increase would make little difference to average wages because

"all order workers of any capacity were receiving 22/6 a week or more before this increase was made." (47)

However, there was still no distinction in the award between levels of skill in each section of the trade. There was simply one rate for adult females in the ready made trade and one rate for adult females in the order trade.

44. ibid., p. 602.

45. ibid., p. 603.

46. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended December 3, 1910, VPP, 1911(2), p. 1144.

47. ibid.

For adult males, however, the situation was quite different. There were now four levels of skill in order clothing and seven levels of skill in ready made clothing. Brushers, seam pressers, machinists, examiners and trimmers remained on the same wage rate as before but rates for cutters and tailors were increased substantially. The skill differentials were widened significantly as a result⁴⁸. The ratio of the minimum adult female rate to that of male seam pressers remained the same while the relativity of tailoresses to tailors fell to 38 per cent. As a result there was a significant incentive for employers to substitute female labour for male although continuing shortages of skilled female labour forced them to pay over-award rates⁴⁹ so that the difference between male and female skilled workers would not have been as great as it appears from the award itself.

The award was amended again in 1912, 1914, 1916 and 1917. In 1912, the female section of the award was restructured and for the first time, fourteen years after the initial award, different grades of skill were recognised in each section of the industry. Four levels of skill were distinguished in order clothing but only two in ready-made clothing whereas there were seven

48. ibid., Appendix D.

49. ibid., p. 1123.

skill levels for males in ready-made clothing. Adult female folders and brushers remained on 21 shillings per week but the minimum rate for all machinists was now 22/6. Coat hands in order clothing were awarded 26 shillings per week, the highest rate for females apart from seam and underpressers who were awarded the minimum male rate of 36 shillings. The relativity of female trouser and vest hands in ready made clothing to male seam and under pressers was 62.5 per cent⁵⁰.

Amendments to the Clothing award in 1914 were minor. There were no increases in weekly wages for males or for females. The significant change was the introduction of a rate for female cutters who were awarded the same weekly wage as males⁵¹. The 1916 award⁵² provided substantial increases in wage rates for most males. The minimum adult rate was increased from 36 shillings to 48 shillings. Cutters rates were increased from 60 shillings to 75 shillings with female cutters being awarded the same rates. Other skill levels were increased by five shillings per week.

50. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ended December 1912, VPP, 1913-14(2), p. 489.

51. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ended December 31, 1914, VPP, 1915(2), p. 606.

52. Victorian Government Gazette, March 22, 1916, pp. 1256-1257.

Adult females were also awarded significant increases. The minimum adult female rate was fixed at 28 shillings per week including brushers, an increase of 25 per cent over the 1912 award for machinists and a 33 per cent increase for brushers. Coat hands in order clothing were awarded 32/6 per week - also a 25 per cent increase over the 1912 award. For the first time a different rate was struck for female pressers using irons of not more than seven pounds in weight. They were also awarded 32/6 per week. The relativity of the minimum male to the minimum female rate was now 58.3 per cent.

In 1917 the award was amended again⁵³ and this was the award prevailing in Victoria at the time of the Federal award hearing in 1919. The minimum rate for adult males was increased to 50 shillings per week but most of the other rates remained unchanged. Rates for brushers, folders, seam and underpressers on men's coats (as distinct from other seam and underpressers) were the only other changes made. There were no changes in the female rates so the minimum adult rate remained at 28 shillings per week. As a result of this the relativity between the minimum adult male and minimum adult female rate fell to 56 per cent.

Over the period of time from the establishment of the Clothing Board in 1896 to the hearing for a

53. Victorian Government Gazette, April 5, 1917, pp. 1149-1169.

Federal award in 1919 improvements in female wage rates lagged behind improvements in minimum male rates. In the original award the lowest rate for adult males was 25 shillings for brushers while all adult females were awarded a minimum rate of 20 shillings. In 1917 the minimum male rate in the award was 50 shillings, double the original award, while the female rate was 28 shillings, only 40 per cent more than in the original award and most of this increase had occurred since 1912. In addition, there had been no appeals against the Clothing Board determination even though minimum rates awarded by the Clothing Board appeared to be significantly below the prevailing rates for unskilled labour.

A possible explanation for the lack of protest against the award can be found in the evidence that the Reverend E.A. Edgar, Chairman of the Clothing Board, gave to the Royal Commission set up in 1901 to investigate the operation of the Factories and Shops law in Victoria⁵⁴. He explained how the Board interpreted the Act in its deliberations. It was persuaded that the intention of the Act was not

"to fix a standard rate or a maximum rate, but a rate that would fairly compensate the slow or average worker. We understood, and

54. Royal Commission Appointed to Investigate and Report on the Operation of the Factories and Shops Law of Victoria, Minutes of Evidence, VPP, 1902-03(2), pp. 432-436.

it was clearly pointed out again and again to the Board, that the good worker, the young smart worker, could always demand his or her wage, so that we were not fixing the minimum at all for the efficient worker, but rather for the helpless, for those who had been badly dealt with in the past. It was felt that £1 per week was a fair minimum rate to be earned by the slow worker - practically an incompetent hand." (55)

It appears that it was the attitude of the employer representatives on the Board that the purpose of the Act was to protect the slow worker⁵⁶ and while Edgar admitted that the minimum rate fixed was regarded as low he thought it did not seriously inconvenience those who could earn more⁵⁷. An explanation for the Board's acceptance of the employers' point of view can be found in the evidence of H.A. Mitchell to the New South Wales Royal Commission of Inquiry into Industrial Arbitration in New South Wales⁵⁸.

H.A. Mitchell had had considerable experience with the industrial arbitration systems of Victoria, New South Wales and Queensland. In the examination of his knowledge of the Victorian system he stated that it was necessary to be an actual employer or employee to be eligible to sit on the Board (the Act stated that anyone

55. ibid., p. 432.

56. ibid., p. 433.

57. ibid.

58. Royal Commission of Inquiry into Industrial Arbitration in New South Wales, Minutes of Evidence, NSWPP, 1913 (1), pp. 506-510.

who had been more than six months out of the industry was not eligible to be appointed to the Board) which resulted in the Clothing Board being constituted of

"five keen businessmen sitting on one side of the table in the clothing industry and five girls, bona fide employed in the industry, sitting on the other side of the table. I say those girls are not in a position to hold their own ... I say that those girls are not in a position to argue the point with their employers, who are keen businessmen." (59)

This helps to explain why the initial wage rates set by the Clothing Board were low and why there were no appeals. A further statement by Mitchell to the New South Wales inquiry also explains why changes in the award, particularly for males, were more forthcoming in the ten years previous to the claim for a Federal award in the clothing industry. Mitchell stated that

"[t]he wages board system has become more popular in Victoria by the employing class since the unions have been going to the Federal Court. They opposed the wages board system in Victoria previous to 1909 just as keenly as arbitration was opposed here. It is only of late that it has become popular." (60)

Employers evidently felt that by giving their male employees significant wage increases they would avert a Federal award. Further evidence that the determinations of the Clothing Board were below the prevailing rates can be obtained from an examination of

59. ibid., p. 508.

60. ibid.

cases brought before the Victorian Court of Industrial Appeal.

Through its hearings of appeals against determinations of various Boards the Court of Industrial Appeal gradually established a set of principles to guide the Boards in their deliberations. In October 1904, Mr Justice Hood heard an appeal by the employers against the determination of the Artificial Manure Board in which Henry Bournes Higgins appeared on behalf of the employees⁶¹. The employers had appealed against the Artificial Manure Board's decision to fix a minimum rate of 40/6 per week for any adult person employed in the artificial manure industry. Five of the eight grounds of appeal were based on matters of law which were dismissed but the other three grounds were based on whether the award would prejudice the economic well-being of the industry, the interpretation of the phrase "a living wage" (which appeared in the Act) and on what the Board should take into consideration when making a determination.

In his judgement, Mr Justice Hood attempted to clarify the intention of the Factories Act, which he regarded as somewhat vague, and

"to extract ... some definitive methods of determination applicable to all cases." (62)

61. 10 Argus Law Reports (ALR), Re the Artificial Manure Board, pp. 230-234.

62. ibid., p. 231.

In his view:

"It is plain that the primary object of Parliament was to benefit the workers. But there is no indication anywhere that such an object was to be attained by any fanciful or even philanthropic mode, or by doing injustice to others." (63)

However, Parliament had given no clue as to how the expression "a living wage" was to be defined. Hood, therefore, decided that it was necessary to determine that

"[t]he thing to be got at is the lowest wage that should be paid under all the circumstances to the average worker, not to the superior or the inferior." (64)

In order to achieve this, he argued, it was necessary as a starting point to ascertain the current wage and then to determine whether it was a fair wage, which ought not to be changed, or an unfair wage, in which case it should be overturned. He found that the current wage for unskilled male labour was 36 shillings per week and that this rate had prevailed for years⁶⁵.

It was argued on behalf of the employees that the current wage was not enough for the average male unskilled worker and his family to live upon but Hood found that there was no reference in the Statutes that would compel him to take the family situation of the worker into account.

63. ibid.

64. ibid., p. 232.

65. ibid.

"In order to carry to a proper conclusion the argument founded on the evidence of these witnesses I would have to inquire into such matters as the proportion of married men to single, the average number and ages of the children, and the average mode of dressing, feeding and dwelling, and whether or not these witnesses are above or below average." (66)

Hood decided that the only practical course of the Court was to take the current wage and to determine whether it was fair in the circumstances. The determination of the Artificial Manure Board had provided for a male minimum rate of 40/6 but Hood found that there was no reason to depart from the current wage for unskilled male workers of 36 shillings and therefore allowed the appeal. It is interesting to note at this point that Higgins was the losing advocate in this case and that when placed in a similar situation to that of Hood when he was President of the Commonwealth Court of Conciliation and Arbitration Higgins took the opportunity to define the concept of "a living wage" as being a family wage.

If the principles applied in this case were to form the guidelines to be followed by the Special Boards then there were certainly grounds for the employee representatives on the Clothing Board to argue for improved wages. Hood had stated that the lowest wage to be fixed should be that payable to the average worker, not the superior or inferior, whereas the Clothing Board

had fixed the lowest wage as that which was a "fair minimum rate for the slow worker - almost an incompetent hand". Hood also declared that the minimum wage should be based on the current wage which in the case of unskilled male workers was 36 shillings but the minimum male adult rate under the Clothing Board award was 25 shillings. The minimum female rates were not an issue in the appeal against the Manure Board but they were at issue in the case of the Starch Board.

In May and June 1907 Mr Justice Hood was obliged to make a determination on behalf of the Starch Board, which had been unable to come to a decision, in which he further elaborated his principles⁶⁷. In this judgement he reiterated his ruling "that the decision must be arrived at without any feelings of sympathy or benevolence to either side"⁶⁸. Evidence had been brought which suggested that married men with families were unable to live on the wages offered and better employment was scarce. But, Hood replied:

"If the wages are raised to fully meet the requirements of men with families they must be unduly high for bachelors, and a great inducement will be held out to single men to seek employment at this work." (69)

67. 13 ALR, In re the Starch Board, pp. 558-561.

68. ibid., p. 558.

69. ibid.

Furthermore, he argued, the term "living wage", as used in the Act, was used widely and Parliament never intended that it should be defined precisely because then it would be necessary to take into account the circumstances of every class of worker⁷⁰. In addition, he referred to the problem of interstate competition which prevented employers from passing on increased prices to the consumer⁷¹. The Court was required to take into account the impact of a determination on the trade as well as making sure that employees received a living wage⁷².

The employees' representatives on the Starch Board had demanded 48 shillings per week as the minimum rate for males but were willing to accept 36 shillings in default of anything higher. The employers' representatives had initially offered 30 shillings but had improved this to 36 shillings at the appeal hearing. For females 30 shillings, or 62.5 per cent of the male rate, was claimed and 22/6 was offered by the employers which represented 75 per cent of the initial wage offer for males and 62.5 per cent of the revised offer. Hood found that the prevailing rate for unskilled males in most trades was 36 shillings and that 22/6 compared

70. ibid.

71. ibid.

72. ibid.

favourably with female wages in other factories. Although he heard considerable evidence to the effect that the cost of living was increasing, Hood was not convinced that 36 shillings per week was less than a living wage. He therefore adopted 36 shillings as the minimum wage for males and 22/6 for females⁷³.

These two cases, both of which were heard before the Harvester case, suggest that the prevailing wage rates for adult unskilled labour in the first few years of the century were 36 shillings for males and 22/6 for females - a relativity of 62.5 per cent. At that time, the minimum wages under the Clothing award for adult male brushers was 25 shillings and 30 shillings for male seam pressers, while the minimum adult female rate was 20 shillings. Brushers and seam pressers did not achieve a minimum award of 36 shillings per week until 1912. Adult females employed in making clothing to order were awarded 22/6 in 1910 but all other females remained on 21 shillings. In 1912, female machinists and trouser and vest hands in ready made clothing were awarded 22/6. The Clothing Board award, therefore, lagged significantly behind what the Court of Industrial Appeal regarded as prevailing minimum rates for unskilled labour in 1907.

The principles established by Mr Justice Hood provided the guidelines for the Court of Industrial

73. ibid., p. 560.

Appeal in determining appeals against decisions of the Special Boards. Firstly, the term "living wage" was to be regarded as a broad concept rather than a specific rate. Secondly, the current wage rate for unskilled labour was accepted as being a living wage unless it could be proved to be unfair. Hood applied these principles in his judgement of an appeal against the determination of the Bread Board⁷⁴ in August and September 1907 which involved skilled labour. The wages of men employed in the baking trade had been 50 shillings for ordinary workmen and 54 shillings per week for foremen for years. The Bread Board had raised all wages to 54 shillings against which the employers had appealed. The employers' case was that the minimum wage compared favourably with wages in the same trade in other states, and with other trades in Victoria, and therefore there was no ground for increasing the minimum wage⁷⁵. Hood upheld the appeal because he could not see anything to justify a change in the minimum wage rate because the evidence on changes in the cost of living was inadequate and, even if the cost of living had increased, he considered that the existing minimum of 50 shillings per week was not less than a living wage⁷⁶.

74. 13 ALR, In re the Bread Board, pp. 589-593.

75. ibid., p. 591.

76. ibid.

In comparing the minimum wage in the baking trade with wages awarded to males in the clothing trade it is further demonstrated that the rates awarded by the Clothing Board were significantly below rates in other trades. For example, the 50 shillings minimum in the Bread Board award in 1907 was equivalent to the highest rate for skill in the Clothing award at the time - that of stock cutter. Furthermore, in the case of an appeal against the determination of the Ice Board in December 1910, Mr Justice Hodges expressed perplexity

"at the smallness of the wage which the Special Boards have fixed in some cases. Take clothing, £1-5-0 per week of forty-eight hours; aerated waters, £1-15-0 per week of forty-eight to fifty hours." (77)

In this case Hodges awarded 48 shillings for unskilled labour which, although conducted in an unusual temperature requiring additional clothes, was not particularly heavy⁷⁸. A minimum rate of 48 shillings for unskilled male labour was also awarded by Mr Justice Hood as a result of an appeal against the determination of the Boilermakers' Board in August 1912⁷⁹. It was in 1912 that the Clothing Board raised its adult male minimum to 36 shillings for brushers, seam pressers and underpressers.

77. 16 ALR, In re the Ice Board, pp. 46-48.

78. ibid., p. 48.

79. 18 ALR, Re The Boilermakers' Board, pp. 399-402.

Most of the cases brought before the Court of Industrial Appeal involved appeals against the minimum rates awarded to unskilled adult male labour. However, in 1913, Mr Justice Cussens delivered a lengthy judgement in an appeal against the determination of the Commercial Clerks' Board⁸⁰ which established the principles to be observed in fixing female wages. The Board had fixed equal wage rates, 48 shillings per week, for males and females but the award was referred to the Court of Industrial Appeal by the Minister of Labour.

Cussens began his judgement by briefly rehearsing the principles that had so far been established. He then pointed out that it was the first time that the Court had had to deal with an occupation rather than an industry. (The power to create Special Boards to deal with occupations had not existed before 1910.) Clerical workers were spread across a wide range of industries but clerks employed in financial institutions or with barristers and solicitors were excluded from the jurisdiction of the Board. The term "clerk" was broadly defined and included collecting, timekeeping, despatch, store and weighing clerks as well as cashiers, typists, stenographers and bookkeepers⁸¹.

80. 19 ALR, In re The Commercial Clerks' Board, pp. 142-154.

81. ibid., p. 144.

Mr Justice Cussens accepted that male adult clerks should be paid a minimum wage of 48 shillings per week of 48 hours even though in some cases it meant a considerable increase in wages. The Board, however, had fixed a lower rate of 45 shillings per week for typists, stenographers or operators of calculating machines and billing machines. Cussens ruled that they should also be awarded a minimum of 48 shillings per week if they were male even though most of this class of worker was female. He then went on to consider whether females ought to be awarded the same minimum rate as males. The Factories Act listed sex as one of the matters which had to be taken into consideration though Cussens stated that

"I do not say that it must necessarily and in all cases lead to a difference in the wages to be paid to women," (82)

but in Victoria, and elsewhere, in other occupations and trades, wages for females were fixed at a lower rate than for males⁸³. Before the determination of the Clerical Board almost all males were paid wages exceeding forty shillings per week and females were generally paid less than thirty shillings and even as little as twenty shillings⁸⁴. Cussens argued, therefore,

82. ibid., p. 146.

83. ibid.

84. ibid.

that if females were capable of producing equal results to those from male clerks they would have been more widely employed in classes of work where males predominated as a result of the lower wages. Hence, he concluded, if the Board's determination that females be paid the same wage rates as males was allowed to stand many females would lose employment⁸⁵.

In order to justify a lower rate for females Cussens then argued that females were not, with few exceptions, obliged to support a family and therefore thirty shillings would be sufficient to support a single female adult. Thirty shillings represented 62.5 per cent of the male rate. Cussens' line of reasoning is very similar to that of Higgins in the Rural Workers' case (which he had read because he refers to it⁸⁶). Cussens decided to set minimum rate for female clerks at 32 shillings per week of 48 hours, or two-thirds of the male rate, though he did express doubt as to whether 32 shillings might be too high for a minimum rate as it was higher than was generally awarded by the various wages Boards⁸⁷. However, he justified his award by firstly explaining that, in many cases, female clerks did not work 48 hours per week and the rate fixed

85. ibid.

86. ibid. and pp. 150-152.

87. ibid., p. 147.

"will enable an employer to get a female clerk, working say forty-two hours, for twenty-eight shillings per week." (88)

Secondly, he argued that clerical workers were required to undertake more training in preparation for employment than was the case for other female workers. He fixed a lower rate, 28 shillings per week of 48 hours, for cashiers whose work was easier than that of typists⁸⁹. Cussens stressed the fact that these were minimum rates for ordinary workers and that it was possible for exceptional workers to achieve higher rates⁹⁰.

Cussens specifically rejected the argument put by the employees' advocate, based on Higgins' award in the Rural Workers' case, that female and male clerks should be awarded equal rates of pay because females were in competition with males because such an argument could not be supported by the Factories Act which specifically stated that sex should be taken into account in considering the appropriate wage rate for females⁹¹. Cussens further argued that if it was contended that males and females should be paid the same rate of wages in any occupation then it was the responsibility of Parliament to specifically legislate for it because

88. ibid., p. 148.

89. ibid.

90. ibid., p. 150.

91. ibid., pp. 150-152.

"such a vast change in the existing order of things must be brought about by that organ which represents the whole community, and not by a Wages Board or Court." (92)

The judgement of Mr Justice Cussens in the Clerks' Board determination is lengthy and represents the only detailed discussion of the principles to be applied by the Victorian Special Boards in fixing female wages previous to the hearing of the Clothing Trades case by Mr Justice Higgins in the Federal jurisdiction. However, Cussens did not attempt to fix a minimum living wage for females that was to be applied in all trades and occupations. While the Clothing Board award was amended in 1914, a minimum rate of 28 shillings, which Cussens awarded to cashiers in 1913, was not fixed as the minimum for adult females in the clothing trade until 1915 when the award was again amended. At this time female cashiers were being paid a minimum rate of 32 shillings⁹³. The most significant point to be derived from this examination of cases before the Victorian Court of Industrial Appeal is the acceptance of the fact that the prevailing wage rates for females were generally set at 62.5 per cent of the male rate for unskilled workers in trades that were not predominantly female.

92. ibid., p. 152.

93. Report of the Chief Inspector for Factories and Shops for the year ended December 31, 1914, VPP, 1915(2), p. 605.

CHAPTER 5 : CLOTHING INDUSTRY AWARDS IN NEW SOUTH WALES

The development of an industrial arbitration system in New South Wales was much more complex than in Victoria. While Victoria adopted the wages board system in 1896 and maintained it, albeit with modifications, throughout the period up to 1919, New South Wales experimented with several different approaches. Initial attempts to develop industrial arbitration in NSW actually preceded the development of wages boards in Victoria. An Act had been passed in 1892 which was aimed at introducing a system of arbitration but it failed because employers refused to participate. A second attempt was made in 1901 when the NSW Parliament passed the Industrial Arbitration Act which provided for a Court of Industrial Arbitration made up of a President (who was a Supreme Court judge) and two other members: one representing employers and one representing employees¹. The purpose of the Court was to provide an avenue for hearing and determining industrial disputes as well as other matters referred to it². The unions quickly seized the opportunity of using the Court to resolve industrial matters other than industrial

1. Royal Commission of Inquiry on Industrial Arbitration in the State of New South Wales, Final Report, NSWPP, 1913 (1), p. 320 (subsequently cited as RCIIA).

2. ibid., p. 321.

disputes. As a result, the Court became congested with a large number of applications being made, of which only about fourteen per cent were resolved³. Its operations were also hampered by "writs of prohibition" gained from the Supreme Court or the High Court by employers attempting to prevent the Industrial Arbitration Court from hearing a matter⁴. In addition, it was possible for an industry to be covered by several awards which caused conflicts that had to be resolved by the Court of Industrial Arbitration. Such a conflict developed from the awards made for the Tailoresses' Union of NSW in 1902 and the Amalgamated Journeymen Tailors' Association in 1903.

The Tailoresses' Union represented three quarters of the tailoresses employed in NSW and were the first in the clothing industry to obtain an award⁵. The initial award took effect from November 1, 1902 and was to continue until October 31, 1904⁶. The award provided for a minimum wage of £1 per week for tailoresses who had completed a four year apprenticeship⁷, while

3. ibid.

4. ibid.

5. 2 [New South Wales] Arbitration Reports (AR), The Tailoresses' Union of New South Wales v. The Sydney Clothing Manufacturers' Association, p. 50.

6. ibid., p. 53.

7. ibid., p. 54.

similarly qualified coat machinists who were capable of putting in pockets and sleeves were to be paid a minimum rate of 25 shillings per week⁸. Apprentice wages ranged from 2/6 per week in the first six months to 17/6 per week in the fourth year⁹. This award was made a common rule in the clothing industry. However, Parramatta Woollen Mills (Ltd) immediately applied to vary the award with respect to apprenticeship. The award provided for one apprentice to be employed for every two tailoresses and apprentices were to be properly indentured for four years¹⁰. The variation, which was granted, broadened the definition of an apprentice to include any female employed as a learner, whether indentured or not, for a period of four years and the number of apprentices allowed was increased to one apprentice to every tailoress¹¹.

In the following year the Amalgamated Journeymen Tailors' Association succeeded in obtaining an award¹². This award was to apply to all employers who made garments to order, either from personal

8. ibid.

9. ibid., p. 53.

10. ibid., pp. 53-54.

11. ibid., pp. 59-61.

12. 2 [NSW] AR, The Amalgamated Journeymen Tailors' Association v. The Master Tailors' Association, pp. 445 ff.

measurement or from a chart. The minimum wage fixed for journeymen was 50 shillings per week and for journeywomen it was fixed at 27/6, or 55 per cent of the male rate, for a coat hand and 22/6, or 45 per cent of the male rate, for a trouser or vest hand¹³. Journeywomen who were employed on what was regarded as tailors' work were to be paid a higher rate of eight pence per hour which was the equivalent of 32 shillings per week, or 64 per cent of the male rate¹⁴. The proportion of apprentices was set at one for every three journeywomen and the apprenticeship term for females was fixed at four years for coats and three years for trousers and vests¹⁵. Wages for female apprentices ranged from five shillings in the first year to 20 shillings in the fourth year¹⁶. The apprenticeship for males lasted five years but the wage rates were the same as for females during the first four years¹⁷. The award also restricted the employment of tailoresses in coat making to six tailoresses to every tailor but there was no restriction on the number of tailoresses who could be employed making trousers or vests¹⁸.

13. ibid., pp. 449-450.

14. ibid., p. 451.

15. ibid.

16. ibid.

17. ibid., p. 450.

18. ibid.

Trouble arose when The Amalgamated Journeymen Tailors' Association attempted to make their award a common rule¹⁹. They were unable to do so because of the existence of the Tailoresses' award which was already a common rule. Certain provisions of the two awards, particularly the wage rates to be paid to journeywomen and the apprenticeship provisions, were in conflict. The Sydney Clothing Manufacturers' Association (who represented ready made clothing manufacturers) argued that they were already bound by the Tailoresses' award and could not therefore also be bound by the Tailors' award. In addition they argued, in response to the union claim that the two classes of work could be separated, that it was not possible to separate the order trade from the ready made trade because their employees were frequently employed at both²⁰. Furthermore, the manufacturers contended, if they were forced to pay higher rates they would lose business to Victorian and Queensland manufacturers with a consequent loss of employment in New South Wales²¹. As a result of the conflict between the two awards, and of the threatened economic consequences, the application to have the

19. 3 [NSW] AR, Amalgamated Journeymen Tailors' Association v. The Master Tailors' Association, pp. 16 ff.

20. ibid., p. 20.

21. ibid., p. 21.

Tailors' award made a common rule in the industry was dismissed.

The Tailors' and Tailoresses' awards were very different from the award of the Clothing Board in Victoria because the former were awards for an occupation while the Victorian Clothing Board award was for the industry and covered all the occupations in the industry. In New South Wales, different awards were made for other occupations in the industry such as cutters and pressers. In 1903, journeymen pressers (who served a four-year apprenticeship) were awarded a minimum rate of 50 shillings for a 48 hour week²². This was the same minimum that had been awarded to tailors in 1903. There was as yet no distinction in the New South Wales award between seam and underpressers and other pressers. Seam and underpressers were later to form a separate classification and were awarded a lower rate. Journeymen cutters and trimmers were also awarded a minimum rate of 50 shillings for a 48 hour week in 1904²³.

As a result of the structure of awards in New South Wales an employer was usually a respondent to several awards covering the workplace. Such a multiplicity of awards contributed to delays in the

22. NSW Government Gazette, 24 July 1903, pp. 5488-5489.

23. NSW Government Gazette, 16 December 1904, p. 9156.

operation of the Court. The difficulties experienced by the Tailloresses' Union in gaining and renewing their award has been discussed by Edna Ryan²⁴. In 1908, therefore, new legislation was enacted in an attempt to remove the deficiencies of the Court established under the 1902 Act. The 1908 Act provided for the creation of "Boards"²⁵. The intention was that these Boards would operate in a similar fashion to the Special Boards in Victoria but instead became

"so many separate Courts, conducting their proceedings according to the ordinary judicial methods rather than conciliation bodies on the round-table principle ..." (26)

Instead of operating on the basis, similar to that in Victoria, of taking oral evidence and negotiation, the New South Wales Boards began proceedings by taking lengthy formal evidence²⁷.

Under the 1908 Act a Clothing (Tailoring) Board was established for the purpose of providing a means of resolving disputes in order and chart order clothing manufacture. The Board was more industry oriented as it covered both tailors and tailoresses but it did not cover other occupations in the industry. The

24. Edna Ryan, Two-thirds of a Man: Women and Arbitration in New South Wales, 1902-1908, Hale and Iremonger, Sydney, 1984, pp. 51-84.

25. RCIIA, op. cit., p. 323.

26. ibid.

27. ibid.

pressers were covered by their own Board, the Clothing (Male Pressers) Board, which fixed a minimum of 55 shillings in June 1908²⁸. In July 1909 the Clothing (Tailoring) Board published its first award²⁹. The award provided for piece-work rates to be paid to most employees. The award also divided employers into high-class, medium-class and low-class establishments according to the average selling price for "sac"³⁰ suits in the previous twelve months.

In high-class establishments journeywomen were to receive nine pence per hour and journeymen were to receive at least one shilling per hour, a ratio of 75 per cent. In medium-class establishments journeywomen were awarded a minimum of eight pence per hour compared with ten pence per hour for journeymen, whilst in lower-class establishments the respective rates were seven pence and nine pence per hour - a ratio of 78 per cent. For those not paid according to piecework rates the minimum for female machinists was 28 shillings per week and the minimum for journeymen was 55 shillings per week, or 51 per cent. The award also restricted the ratio of journeywomen to journeymen in each of the employer classes.

28. NSW Government Gazette, 8 July 1908, p. 3658.

29. NSW Government Gazette, 14 July 1909, pp. 3857-3858.

30. "Sac" suits had very little shaping, particularly in the coat, and consequently it required a lower level of skill to make them.

The Sydney Clothing Manufacturers' Association and the Master Tailors' Association appealed against this award³¹. The Sydney Clothing Manufacturers, representing the ready-made clothing factories, argued that the clothing factories either should be exempt from the award, or alternatively, that the wages and conditions of employment for employees in clothing factories should be determined by a Board established for the purpose or by the Court. In the factories work was done on the team system where an article of clothing was divided into sections and distributed to a number of machinists who each had a separate task to do in its manufacture. It was further argued that weekly payments and no limitation on the number of journeywomen employed were essential to the efficient operation of the clothing factories and that the terms of the award would reduce the profitability of their operation. If enforced, they argued, the award would disadvantage them in relation to their competitors in other states. Minimum wages in the factories ranged from 20 shillings for female machinists on trousers and vests to 22/6 and 25 shillings for machinists with skill whereas in Melbourne the minimum award rate was 21 shillings. The proposed award would have set a minimum of 28 shillings

31. 9 [NSW] AR, Amalgamated Journeymen Tailors' Association v. Master Tailors' Association, pp. 216-232.

for female machinists. The appeal of the Master Tailors' Association, representing employers with tailoring establishments, was on similar grounds to those of the Sydney Clothing Manufacturers' Association.

The appeal was heard by the President of the Court, Mr. Justice Heydon. In his judgement, Heydon noted that the clothing factories were in competition with the Master Tailors as well as both being subject to interstate competition. It was his view, therefore, that both the clothing manufacturers and the Master Tailors should be covered by the same award. However, wages in tailoring establishments were generally higher than in clothing factories and the question arose as to whether wages in clothing factories should be increased, putting them at further disadvantage with regard to their interstate competitors, or whether wages in tailoring establishments should be reduced, to the detriment of employees in those establishments. Heydon further noted that, although there was only one minimum rate in Melbourne, experienced machinists were in fact being paid above award rates which he verified from wages sheets obtained from two Melbourne employers who were the main competitors of the Sydney manufacturers.

Heydon found that he could not satisfy the claims of both the Sydney Clothing Manufacturers' Association and the Master Tailors' Association. His solution was to include clothing factories under the

terms of the award with the lower class of tailoring establishments, to remove the restrictions on the employment of journeywomen, to allow payment by the week and to raise the minimum weekly rate to be paid to journeywomen in factories to the same level as prevailed in Melbourne, that is, 21 shillings per week. Piecework in factories was to be paid at the rates set by the Tailoresses' award, 1906. This award was to remain in force originally for three years but was extended until May 1913 as new legislation was enacted in 1912, establishing a range of boards to cover the industry.

In 1911, meanwhile, the New South Wales Government had established a Royal Commission to inquire into the "alleged shortage of labour"³². Most of the employer witnesses in the clothing industry were emphatic in their claim that there was a severe shortage of female labour though not of male labour³³. The shortage was caused, it was claimed, by an increase in the demand for clothing together with factors which influenced the supply of female labour. The increase in the demand for labour was attributed firstly, to population growth and secondly, to increased prosperity³⁴.

32. Report of the Royal Commission of Inquiry into the Alleged Shortage of Labour in the State of New South Wales, together with Minutes of Evidence, NSWPP, 1911-12 (2).

33. ibid., Minutes of Evidence, pp. 71, 79.

34. ibid., pp. 80, 107-108.

There were not only more people requiring clothes but also people could afford to spend more money on clothing. Population growth and increasing prosperity also contributed to the growth of other industries. These industries were in competition with the clothing industry for the available labour supply³⁵.

Increasing prosperity also affected the supply of labour. Firstly, it was claimed that the supply of apprentices was reduced as parents were able to provide for their children, particularly females, without sending them to work³⁶. Secondly, prosperity also meant that marriages were more frequent³⁷. As a result, a considerable proportion of young women were able to move from family home to husband's home without participating in the labour force at all. Another factor that influenced the supply of female labour to factories was the perception that factory work was unattractive compared with typing and clerical work³⁸. Young women, therefore, preferred office work to factory work. A wider variety of employment opportunities for women meant that factories had to compete with occupations which offered cleaner and more congenial working

35. ibid., p. 127.

36. ibid., p. 78.

37. ibid., pp. 82, 109.

38. ibid., pp. 66, 72, 79, 153-154.

conditions in their attempts to meet their labour needs.

The "shortage" of labour, particularly of skilled labour, was exacerbated by the reluctance of many employers to take on apprentices³⁹. The main reason given was that apprentices did not stay⁴⁰ but went to other employers who offered higher wages before their time was up. Another factor which contributed to the lack of apprentices was the unwillingness of skilled employees to train them as the apprentice's wage was deducted from that of the employee who was doing the training. This practice was defended because, it was argued, the trainer benefitted from the labour of the apprentice⁴¹. The basis of this argument was that the output of the trainer was greater because of the assistance of the apprentice but it did not take into account the time lost in teaching the apprentice which could have been used making a garment. Consequently, skilled employees could find themselves earning less than they would without the assistance of the apprentice. Thus, in order to meet their labour needs, employers either "poached" employees from each other by offering higher wages and other inducements or sought to persuade the Government to encourage migration of skilled workers from Britain.

39. ibid., pp. 71-72, 74.

40. ibid.

41. ibid., p. 105.

The possibility that the level of wages might have contributed to the "alleged shortage of labour" did not receive much attention. Indeed, it was argued by one witness that the shortage of labour was not due to "poor pay"⁴² and many employers argued that they paid over the award for competent hands. However, it was also a fact that following the lapsing of the 1906 Tailoresses' award many employers had reverted to the 1902 Tailoresses' award as the basis for fixing female wages⁴³. It is not surprising, therefore, that wages for competent hands were "above the award".

In some cases, where clothing manufacturers had advertised that they were offering high wages, those who applied for work were told that they would only be paid a high wage if they earned it⁴⁴, that is, by producing a high enough output. Clothing manufacturers complained of having to pay female hands more than they were "worth"⁴⁵, that is, if their output were calculated at piecework rates they would be paid less than the weekly rates current at the time. However, the piecework rates used in these calculations were those fixed

42. ibid., p. 65.

43. ibid., pp. 75, 120, 152.

44. ibid., pp. 368, 370.

45. ibid., pp. 62, 119.

in the 1902 Tailoresses' award⁴⁶ which would not have reflected the change in the value of money between 1902 and 1911.

Not all employers in the clothing industry, however, were short of labour. The manager of the State Clothing Factory gave evidence that the factory had obtained sufficient labour as a result of an article about the factory in the local press⁴⁷. The success of the Government Clothing Factory was attributed, by other employers, to the fact that it paid for six public holidays per year⁴⁸ and that government employment was regarded as more attractive than private employment⁴⁹. The manager of the clothing factory operated by Anthony Hordern and Sons conceded that his factory was not short of labour but that the company would have liked to expand the factory to take advantage of the increased demand for clothing. It could not do so because of the shortage of labour⁵⁰. In order to retain their existing employees they offered a monthly bonus of one day's pay⁵¹ but were unable to attract more labour despite advertising.

46. ibid., p. 152.

47. ibid., p. 73.

48. ibid.

49. ibid., p. 76.

50. ibid., p. 78.

51. ibid.

The union witnesses, however, contradicted the evidence of the clothing manufacturers and claimed that the alleged shortage was grossly overstated⁵². The Secretary of the Journeymen Tailors' Society claimed that most of the clothing factories were full handed and that because of the introduction of the team system more females were being employed at the expense of tailors⁵³. The Assistant Secretary of the Tailors' and Tailoresses' Union also claimed that many female hands were working short time⁵⁴ and that she had had difficulty in placing females who were looking for work⁵⁵. Three female witnesses, a tailoress and two machinists also gave evidence regarding the difficulty of obtaining work⁵⁶ and where work was obtained the wage paid was less than was advertised⁵⁷.

In the end, the Commissioner concluded that there was a severe shortage of female labour, particularly skilled labour, and was prepared to recommend to the Government that labour be brought out

52. ibid., p. 362.

53. ibid.

54. ibid., p. 365.

55. ibid., p. 366.

56. ibid., p. 364.

57. ibid., pp. 368, 370.

from "Home"⁵⁸ (that is, from England) provided that certain conditions were met. In his report, the Commissioner expressed concern about the vulnerability of immigrant female workers who had no family support to fall back on if "industrial disaster" (that is, unemployment) should occur⁵⁹. He also noted that

"in a great many grades of work done by women in our factories, the wages paid cannot be described as an independent living wage ...". (60)

It was, therefore, recommended that the importation of female labour should only be allowed if employment were guaranteed and the wages offered were sufficient to provide an "independent living wage"⁶¹. However, they did not specify what amount this would be. It was to be another seven years before an independent living wage for women was actually fixed by any industrial tribunal.

The arbitration system established under the 1908 Act had failed to achieve its objective of increasing the amount of "round table" conciliation and thereby reducing the time taken to hear cases⁶². It was found that the conciliation provisions were rarely fully

58. Interim Report of the Royal Commission of Inquiry into the Alleged Shortage of Labour in the State of New South Wales, NSWPP, 1911-12 (2), p. 682.

59. ibid.

60. ibid.

61. ibid., pp. 682-683.

62. Royal Commission .. on Industrial Arbitration, op. cit., p. 324.

utilised before resort to arbitration and therefore cases were prolonged by the hearing of evidence. Another factor which added to the time taken to hear cases was the necessity for the Boards to sit at the convenience of their members who undertook the task in addition to their ordinary employment. Frequent, often lengthy, adjournments meant that evidence often had to be repeated, adding to the delay⁶³. Furthermore, under the 1908 Act, some 270 Boards had been established and employers found that they were under the jurisdiction of several boards causing them great expense and loss of time in protecting their interests when cases were being heard⁶⁴.

In 1912, a new Industrial Arbitration Act was enacted. Under this Act industries were grouped according to common characteristics into 27 statutory divisions. The Boards established for each group of industries had a common chairman who was a permanent appointee. Although the industries were rigidly allocated to groups the new legislation did not reduce the number of Boards as the average number of Boards for each industry group was eight. The chairman appointed for each industry group was required to oversee the deliberations of each Board with the result that delay

63. ibid., p. 325.

64. ibid., p. 326.

in hearing cases was still a severe problem⁶⁵. As a consequence of the continuing problems with the system of arbitration in New South Wales a Royal Commission was appointed in April 1913, to inquire into a range of issues.

Under the 1912 Act, the Clothing Trades group of industries was established. For this group six Boards were appointed. Board No. 1 covered tailors and tailoresses making garments to order for males. The No. 2 Board covered tailors and tailoresses making garments for males according to a chart (the so-called chart order). Board No. 3 covered tailors and tailoresses making ready-made clothing for males, Board No. 4 covered machinists engaged in making male clothing, No. 5 Board covered pressers and No. 6 Board covered cutters and trimmers⁶⁶.

The 1909 award of the Clothing (Tailoring) Board, as amended by the Court, was adopted in July 1912 as the award of Boards No. 1 to 4⁶⁷ for the industries under the jurisdiction of these Boards until such time as the Boards were able to make a determination of their own. Under this award, the minimum rate for adult

65. ibid., p. 327.

66. New South Wales Government Gazette, 1 July 1912, pp. 4460-4461.

67. New South Wales Government Gazette, 24 July 1912, p. 4644.

journeywomen employed as machinists in factories was 21 shillings per week, in lower class tailoring establishments it was 22/6 for trouser and vest hands, and in medium-class and high-class tailoring establishments it was 26 shillings per week for trouser and vest hands⁶⁸. The minimum weekly rate for journeymen was 55 shillings per week in all three establishments. This resulted in a relativity ranging from 38 per cent in factories to 47 per cent in medium and high class tailoring establishments.

In May 1913 the No. 1 Board, which covered order clothing for males, made its first award⁶⁹. The minimum weekly rate for journeywomen trouser and vest hands was fixed at 25 shillings per week while the minimum rate for journeymen was £3, giving a relativity of 42 per cent. In February 1917 the Clothing Trades No. 1 Board made a new determination⁷⁰ in which the minimum weekly rate for journeywomen trouser and vest hands was fixed at 31 shillings and the minimum rate for journeymen was fixed at 65 shillings, a relativity of 48 per cent. This award was current at the time of the Federal case in 1919.

68. ibid., p. 4647.

69. New South Wales Government Gazette, No. 71, 7 May 1913, p. 2803.

70. New South Wales Government Gazette, No. 13, 2 February 1917, p. 709.

The Clothing Trades No. 3 Board, which covered ready made male clothing, did not produce its first award until March 1914⁷¹. This Board set the minimum weekly wage for journeymen at £3, the same rate as was fixed by the No. 1 Board, while the minimum rate for journeywomen trouser and vest hands was fixed at 23 shillings per week, which was two shillings per week less than the minimum fixed by the No. 1 Board, giving a relativity of 38 per cent. A new award was also made in February 1917⁷². In this award the minimum weekly rate for journeywomen trouser and vest hands was fixed at 28 shillings per week while the minimum rate for journeymen was fixed at 67/6 per week, a relativity of 41 per cent. This award was current at the time of the hearing for a Federal award in 1919.

Late in 1911, before the introduction of the new Industrial Arbitration Act, the Clothing (Male Pressers) Board had made a new award for journeymen pressers, fixing the minimum wage at 60 shillings per 48 hour week⁷³, which was to remain in force for three years. This meant that, from the beginning of 1912 until the Clothing Trades No. 1 and No. 3 Boards made

71. New South Wales Government Gazette, 4 March 1914, p. 1401.

72. New South Wales Government Gazette, 16 February 1917, p. 1090.

73. New South Wales Government Gazette, 31 July 1912, p. 599.

new awards in 1913 and 1914 respectively, the minimum award rate for journeymen pressers was higher than the award rate for journeymen tailors. However, when the Clothing Trades No. 5 Board (Pressers) made its award in 1915⁷⁴ the minimum wage for journeymen pressers was maintained at 60 shillings per week, bringing it into line with the minimum rate for journeymen tailors. The No. 5 Board also for the first time made a distinction between pressers and underpressers. Underpressers working on trousers and vests were awarded a minimum rate of 48 shillings per week (which was at that time the statutory minimum for unskilled adult males indicating that underpressers were not journeymen). In 1916, the No. 5 Board fixed the minimum rate for underpressers on trousers and vests at 52/6 per week while journeymen pressers were awarded 64 shillings⁷⁵. This award was also current at the time of the Federal hearing in 1919 except that the rate for underpressers was increased to 60 shillings in 1918 in line with the living wage set by the Board of Trade.

The different form of the awards in New South Wales makes it difficult to compare minimum rates. The Victorian award covered all employees in the section of the clothing industry which came under its jurisdiction,

74. New South Wales Government Gazette, 26 May 1915, p. 3001.

75. New South Wales Government Gazette, 31 March 1916, p. 1940.

both skilled and unskilled. In New South Wales there was a different award for each class of worker in each section of the industry as well as a statutory minimum wage for unskilled adult males.

From 1914, the minimum wage for unskilled male adults was fixed by the New South Wales Board of Trade. The Board was required, under the Industrial Arbitration Act, to make an inquiry into the cost of living and then to declare a living wage. This living wage was then incorporated into all awards as the minimum rate that could be paid to unskilled adult males. In 1914 the living wage was fixed at 48 shillings per week⁷⁶. The minimum rate fixed for females under the award of the clothing industry's No. 3 Board was 23 shillings per week, a relativity of just under 48 per cent. In 1918, when the minimum rate for adult females under the No. 3 Board award was 28 shillings, the living wage for males was fixed at 60 shillings⁷⁷, a relativity of just under 47 per cent.

There was no living wage for females before December 1918. The reason for this was explained by Mr. Justice Edmonds in his judgement on an appeal to the Industrial Arbitration Court by the Tent and Tarpaulin Machinists' Union against the award of the Manufacturing

76. New South Wales Industrial Gazette, Vol. XIV, No. 4, October 1918, p. 391.

77. ibid.

No. 1 Group, No. 13 (Bag and Sack) Board⁷⁸. After conferring with Mr. Justice Heydon, Edmonds concluded that the Court had no jurisdiction to fix a living wage for females because the Act referred only to a male living wage⁷⁹.

However, in December 1918, only a few months before Higgins began hearing evidence in the Clothing Trades case, Mr. Justice Heydon inquired into the average cost of living for females⁸⁰ as President of the Board of Trade. The Board began by stating that the "industrial position of women is very different from that of men"⁸¹. A man, they argued, was brought up to know that he was expected to work throughout his life to support himself, his wife and his children. The situation was otherwise for women for whom work was only an episode in their lives. Even if they did not marry there was little competition for the better class of female employment and a single woman could reasonably expect to obtain a position of responsibility with a wage which exceeded the living wage⁸². In these circum-

78. 15 [NSW] AR, In re Manufacturing (No. 1), No. 13 Award, p. 453.

79. ibid.

80. New South Wales Industrial Gazette, Vol. XV, No. 2, February 1919, pp. 218-221.

81. ibid., p. 218.

82. ibid., p. 219.

stances, therefore, the living wage was to be fixed for the humblest class of adult female workers just as the male living wage was fixed for the humblest class of adult male workers⁸³.

The Board of Trade also concluded that the living wage should be fixed on the basis of the cost of living of females who lived away from home even though these were in the minority. Evidence produced at the hearing showed that, of 591 female employees in thirteen large firms, 82 per cent lived at home, 16 per cent lived in lodgings and the remainder lived in rented rooms⁸⁴. The Board did not think it necessary to cater for those who lived in rented rooms when it fixed the living wage even though it was more expensive to live in rooms than lodgings. Thirteen female witnesses were called to give evidence on behalf of the employees but the Board considered that they did not adequately represent the humblest class of female worker. Consequently, it called further witnesses, whom it considered more representative of those who could earn a minimum wage, to give evidence of their cost of living.

The fact that the male living wage was set at 60 shillings per week formed the basis of the award for females. The Board noted that the wife's share of the

83. ibid., p. 220.

84. ibid.

man's living wage would be about one-third, or £1, but that a woman living alone and having to go to work every day would incur more expenses than would a wife. The Board came to the conclusion that, as a result of these additional necessary expenditures and the increasing cost of female clothing, the living wage for females should be 30 shillings per week⁸⁵. At the time the minimum rate under the Clothing Industry Board No. 3 award was 28 shillings. The amount fixed as the living wage was substituted for the minimum amounts in the existing awards. The Board's method of dividing the male living wage into thirds in order to form the basis of the female living wage was adopted by the employers in the Clothing Trades case to substantiate their offer of 32 shillings as the appropriate minimum wage for adult females.

Throughout the period up to 1919 the minimum rates for adult males in the clothing industry were significantly higher in New South Wales than in Victoria. In 1903 the rate for tailors, pressers and cutters in New South Wales was 50 shillings per week. At this time in Victoria tailors, pressers and cutters were awarded a minimum of 45 shillings per week while seam pressers were awarded 30 shillings per week. In 1918 the minimum rate for all adult males was fixed by

85. ibid.

the Board of Trade in New South Wales at 60 shillings per week while the minimum rate in the Victorian Clothing Award was 50 shillings. On the other hand, there was very little difference between the States regarding the actual minimum rate for adult females in the clothing industry even though relative male/female rates differed. In 1902 the minimum rate for adult females was the same in both States - 20 shillings per week. In 1918 the minimum rate in both States was 28 shillings per week although towards the end of 1918 a female living wage of 30 shillings per week had been declared in New South Wales.

The fact that there was very little difference in the award rates for females between these two States can be explained by the importance given to threatened interstate competition as a factor in the wage fixing process. Female predominance in the industry increased significantly throughout the period as employers in the clothing industry endeavoured to minimise their costs in order to obtain and maintain a competitive edge over their interstate rivals. As a consequence New South Wales employers appealed against any attempt to fix female award rates at levels that were higher than those fixed interstate, particularly victoria. The judges appointed to hear these appeals accepted the employers' arguments with respect to interstate competition and generally granted such appeals. It was the need to

remove the use of the threat of interstate competition as a reason for holding down wages that was one of the motivating factors in seeking a Federal award.

Employers also successfully appealed against any attempt to limit the employment of journeymen particularly in the factories. This provided another motive for seeking a Federal award because journeymen believed that their jobs were under threat from cheaper female labour.

CHAPTER 6 : INDUSTRIAL TRIBUNALS IN SOUTH AUSTRALIA AND FEMALE WAGES

The establishment of industrial tribunals in South Australia proved to have an even more troubled passage than in New South Wales. A Shops and Factories Commission had been established in 1890 and charged with the responsibility for regulating hours of labour, work place conditions and sanitation¹ but not wages. In 1900, a Factories Amendment Act provided for wages boards² but early attempts to establish them and to set minimum wages were disallowed³. As a consequence, a Factories (Further Amendment) Act was passed in 1904. This Act provided for the election of wages boards in the clothing and whitework trades only. Coverage was limited to males under 21 and all females⁴. Two boards, the Clothing Board and the Shirtmaking and Whitework Board, were appointed in 1905⁵.

The membership of the Clothing Board consisted of four employer representatives, elected by registered

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1. Report of the Inspectors of Factories re Sweating in the Clothing Trade, South Australian Parliamentary Papers (SAPP), 1903 (3), Paper No. 89, p. 2.
 2. ibid., p. 1.
 3. ibid., p. 2.
 4. Report of the Chief Inspector of Factories for the 6 months ending December 31, 1904, SAPP, 1905 (2), Paper No. 89, p. 1.
 5. Report of the Chief Inspector of Factories for the year ended December 31, 1905, SAPP, 1906 (2), Paper No. 64, p. 1.

employers in the industry, and four employee representatives, elected by those employees in the industry who were registered as electors for the clothing trade⁶. In framing their first determination the members of the Board used the determination of the Victorian Clothing Board as a guide and, therefore, were able to complete their task in a relatively short time, the award being published in October 1905⁷. To no avail however. A further eight months were to pass before it finally came into operation in June 1906.

The Clothing Board determination covered females and males aged 16 to 21 years who were employed "wholly or partly preparing or manufacturing, either inside or outside a factory or workroom ... coats (including overcoats or cloaks of every description), vests, trousers, jackets, knickerbockers, and all tailor made clothing ..."⁸ The minimum rate to be paid to adult females employed making clothes to order was 3/4 per day or the equivalent of 20 shillings per 48 hour week, while those employed making ready made clothing were awarded 3 shillings per 8 hour day or eighteen shillings per 48 hour week⁹. The award for those

6. ibid.

7. ibid.

8. South Australian Government Gazette, October 19, 1905, p. 828.

9. ibid., pp. 825 and 840.

employed in order clothing was the same as the rate in the Victorian Clothing Board determination. The Victorian award, however, did not distinguish between the order and ready made clothing trade so that those employed in the latter trade in South Australia were paid at a lower rate than in Victoria.

Because the legislation under which the Board was constituted did not provide for a minimum rate to be fixed for adult males there was no such minimum in the determination. However, the employment of male apprentices and improvers was restricted to two to every three males being paid not less than 7/6 per 8 hour day¹⁰ or 45 shillings per 48 hour week in both the order and ready made sections of the trade. This was the same rate as awarded to tailors, cutters, trimmers, pressers, machinists and examiners in the Victorian award. This would suggest a wage relativity for females of 40 per cent in the ready made trade and 44 per cent in the order trade.

The determination of the Clothing Board was thrown into question almost immediately after it became operative. It was challenged on the ground that the enabling Act only provided for minimum wages to be fixed whereas the Board had fixed a graduated scale according to experience for those under 21 years. The award was

10. ibid., p. 828.

therefore declared invalid¹¹. An amended award came into operation in June 1906¹². Further problems arose because the Board itself had sole power to enforce the provisions of the award¹³. Employers threatened with prosecution often approached one or more Board members with the intention of influencing them to overlook the matter¹⁴.

As a result of the fact that the provisions for enforcing the award were ineffectual a further Factories Act was passed in 1906¹⁵. A new Clothing Board was appointed to replace the existing one but it was found that the new Act was also defective, forcing the annulment of the appointments to this Board¹⁶. In 1907, a further Factories Act was passed which consolidated existing legislation¹⁷. Nineteen wages boards were appointed under this Act and the Clothing

11. Report of the Chief Inspector for Factories for the year ended December 31, 1905, SAPP, 1906 (2), Paper No. 64, p. 1.

12. ibid.

13. ibid., p. 2.

14. ibid.

15. Report of the Chief Inspector of Factories for the year ended December 31, 1906, SAPP, 1907 (3), Paper No. 120, p. 1.

16. ibid., p. 2.

17. Report of the Chief Inspector of Factories for the year ended December 31, 1907, SAPP, 1908 (3), Paper No. 97, p. 1.

Board was one of the first to be established¹⁸. A separate Board was also appointed for ready made clothing but difficulties arose when the employer representatives objected that two of the employee representatives were not bona fide employed in the ready made clothing trade and subsequently resigned¹⁹. A stalemate ensued when newly appointed employer representatives also resigned in objection to the two "unqualified" employee representatives²⁰. It was noted by the Chief Inspector of Factories that, while most employers continued to observe the determination made in 1906, this probably owed more to the fact that there was a severe shortage of female labour than to any commitment to the determination itself²¹.

In his report for 1909, the Chief Inspector made further reference to the fact that neither of the Boards appointed under the 1907 Act, to fix minimum wages in the Clothing trade, had yet made a valid determination²². He remarked that

18. ibid.

19. Report on the Working of the Factories and Early Closing Acts for the year ended December 31, 1908, SAPP, 1909 (3), Paper No. 97, p. 2.

20. ibid.

21. ibid., p. 9.

22. Report on the Working of the Factories, etc. Act for the year ended 31 December 1909, SAPP, 1910 (3), Report No. 124, p. 7.

"[i]t seems a melancholy circumstance that, while large bodies of well organized men are able and careful to enforce their claims in the particular trade or calling to which they belong, the thousands of women who work equally hard in their calling of making the clothes that men wear are today without any statutory determination of the wages they are entitled to receive ...". (23)

The Tailors' Board had made a brief determination but this had been quashed almost immediately by the Court of Industrial Appeal²⁴ and the Board made no further attempt to arrive at a determination. Despite this, however, scarcity of female labour meant that the actual wages being paid in the clothing industry were generally high and employees had made no complaints regarding wage rates²⁵.

Under the ill-fated Tailors' Board determination²⁶ the minimum rate for adult females was fixed at 23 shillings per 48 hour week. For adult machinists the rate was 25 shillings per week. These rates were higher than those under the 1910 determination of the Victorian Clothing Board which had awarded a minimum of 22/6 per week for adult females employed in the manufacture of clothing to order. The

23. ibid.

24. ibid.

25. ibid.

26. South Australian Government Gazette, January 20, 1910, p. 95.

minimum rate for adult males under the SA Tailors' Board was 42 shillings for assistant cutters. Pressers were awarded 50 shillings per week. There was no classification of "assistant cutter" in the Victorian determination but pressers were awarded the same rate as in the Tailors' Board determination. The relativity of the minimum wage for tailoresses to that of the assistant cutter was 55 per cent, and to that of the presser it was 46 per cent.

The terms of both the Ready-made Clothing Board and the Tailors' Board expired in 1911 without either Board having made a determination²⁷. New Boards were appointed in 1912. A determination by the Tailors' Board was published in the South Australian Government Gazette in September 1913²⁸ but the Ready-made Clothing Board did not make a determination until June 1917²⁹.

However, the fact that there was no effective minimum set by an award for the ready made clothing industry or for employees in tailors' establishments appears not to have had any effect on the level of

27. Report of the Chief Inspector of Factories for the year ended December 31, 1911, SAPP 1912 (3), Paper No. 115, p. 2.

28. South Australian Government Gazette, September 18, 1913, pp. 669-670.

29. South Australian Government Gazette, June 14, 1917, pp. 1035-1036.

wages. As in Victoria and New South Wales, the main factor affecting female wages in the clothing trade was the general shortage of female labour. In 1912, the South Australian government established a Royal Commission on the shortage of labour in the clothing and boot trades³⁰. Most of the evidence presented to the Commission came from employer witnesses. The Secretary of the Federated Clothing Trades [union], Richard Millington, gave evidence on behalf of the employees explaining that the absence of employee witnesses resulted from fear of losing their employment if they gave evidence themselves³¹.

The Commissioners concluded that the shortage of female labour resulted from a decline in the supply of girls and young women to the labour force and an increase in the demand for female labour. The decrease in supply, they claimed, was the consequence of several factors. Firstly, prosperous economic conditions meant that fewer girls and young women were required to supplement the family income by undertaking paid employment and, secondly, that more young women were able to marry than was the case when economic conditions

30. Parliament of South Australia, "First Progress Report of the Royal Commission on the Shortage of Labour in the Clothing and Boot Trades together with Minutes of Evidence", SAPP, 1912 (2), Paper No. 12.

31. ibid., Minutes of Evidence, p. 31.

were less favourable³². A third factor, which they claimed affected supply, was the fact that, during the ten years between 1901 and 1911, the proportion of the population under twenty years had declined by five per cent³³. While this was true, it should be noted that the absolute size of the main supply cohort, females aged fifteen and under twenty, actually increased by five per cent during the decade while the cohort aged twenty and under twenty-five increased by nearly eighteen per cent³⁴. It would have been at least another five years before the lower birth rate after 1901 would have had a significant effect on the size of the age cohort fifteen to under twenty. It would appear, therefore, that alternatives to working in clothing factories and workrooms, such as marriage or alternative employment, had a greater effect on the female labour supply in the period under investigation than reduction in absolute numbers.

In its report the Commission concluded that the preferred alternatives for females were to stay at home or to get married. However, there was substantial evidence to suggest that preference for other employment was also a factor contributing to the shortage. Firstly, there was increasing competition from other occupations which

32. ibid., Report, p. vi.

33. ibid.

34. ibid.

offered cleaner working conditions such as whitework, millinery and straw hat making³⁵, and shops³⁶.

Secondly, young girls and women were averse to working in factories and being known as "factory girls"³⁷.

Thirdly, it was claimed that climatic conditions, especially in the summer, made working conditions in the factories particularly trying³⁸.

The increase in the demand for female labour was attributed by the Commissioners to an increase in the demand for locally produced goods. The total population of South Australia had increased by some thirteen per cent between 1901 and 1911. Most of the increase occurred in the population aged 25 and upwards which had grown by 26 per cent during the decade³⁹. Thus population was one factor which had contributed to growth in demand for clothing. Another contributing factor was the imposition of a Federal tariff of 35 per cent on ready made clothing and whitework imported from Britain and 40 per cent on the same type of goods imported from foreign countries⁴⁰. As a result of the

35. ibid., Minutes of Evidence, pp. 22, 30.

36. ibid., p. 27.

37. ibid., pp. 26, 40.

38. ibid., p. 39.

39. ibid., Report, p. vi.

40. ibid.

tariff locally produced goods were relatively cheaper and manufacturers attempted to expand production to meet the increasing demand for locally produced goods. They were frustrated in this by the shortage of female labour, that is, the supply of female labour at the wages offered was inadequate for their needs. There appeared to be no shortage of male labour, however. Several employer witnesses before the Commission stated that they had little difficulty in obtaining the required male labour⁴¹.

The Commissioners questioned the witnesses closely about whether they thought that higher wages would reduce the shortage of labour by increasing supply. Most witnesses claimed that offering higher wages merely increased turnover as employers competed with each other to satisfy their labour needs⁴². Some argued that they were already paying rates higher than the minimum fixed by the Wages Board in 1906 (the only determination that had been legally valid), "in many cases up to 50 per cent more"⁴³, but were still unable to obtain sufficient labour. The Secretary of the Federated Clothing Trades [union] responded that in most cases money wages were not significantly above the

41. ibid., Minutes of Evidence, pp. 10, 13, 25.

42. ibid., pp. 12, 16, 17, 21.

43. ibid., p. 26.

minimum fixed in the 1906 award and were lower than the minimum then fixed in the Victorian award (22 shillings)⁴⁴. Real wages, he argued, had fallen considerably and therefore an increase in the minimum wage would result in an increased supply of labour⁴⁵. One employer witness agreed that the offer of higher wages and better working conditions could induce more females to work in factories⁴⁶.

The Commissioners also showed interest in the question of whether adult females were being paid an independent living wage and asked several of the witnesses this question. Most employers declined to answer on the ground that it was "a question of political economy"⁴⁷. One witness who "could not say" whether £1 per week was sufficient to keep a girl independently had no hesitation in saying that it would not be sufficient to keep a man⁴⁸. Two witnesses thought that it would be a "hard struggle"⁴⁹ for a girl to keep herself independently on £1 per week. Another agreed that £1 per week would be insufficient for a

44. ibid., p. 29.

45. ibid.

46. ibid., pp. 40-41.

47. ibid., p. 26.

48. ibid., p. 36.

49. ibid., pp. 42, 50.

person to live on independently but argued that a particular employee may not be worth more⁵⁰, that is, the employees output, valued at piecework rates, would not be worth her wage. Several employer witnesses argued that higher wages could not be paid if an employee was not worth more than £1⁵¹. In its report, the Commission noted that there was a wide variety of opinion on what constituted an independent living wage for a young woman and concluded:

"Subject to any modification which subsequent evidence may justify, the Commission is of the opinion that no young woman factory operative, not being a member of an immigrant family group, should be brought overseas unless she is guaranteed a weekly remuneration of at least 27s. 6d." (52)

However, four of the eight Commissioners dissented from the inclusion of this paragraph

"on the ground that no evidence had been placed before the Commission to justify it in stating what constitutes a living wage for an independent worker." (53)

On the other hand, one Commissioner, in a Minority Report, argued that

"[t]he bona fide evidence which we have on this point [the level of wages] only extends to the end of 1910 - 15 months ago - and for the

50. ibid., p. 44.

51. ibid., pp. 15, 18.

52. ibid., Report, p. vii.

53. ibid., p. x.

three years 1907-10 there is no support for the contention that for women even nominal money wages - the number of shillings per week - has increased to any appreciable extent; and if they have, the amount is still so small that, generally, it is not sufficient to keep a woman independently of other sources of income." (54)

The Commissioners, however, proved to be ahead of their time in suggesting that 27/6 per week should be guaranteed as a minimum for a female who had to support herself independently as is shown in the outcome of the Printing Trades case discussed below.

In June 1917, the Ready-made Clothing Board published a further determination which covered employees concerned with the manufacture of men's and boys' ready made clothing⁵⁵. In this award the minimum wage rate fixed for adult females was 24/6 per 48 hour week. This rate was for female brushers or folders. The rate for trouser or vest hands was 25 shillings per week. The adult male minimum rate was 55 shillings per 48 hour week, which applied to brushers, folders and seam or under pressers. This represented a relativity between female and male wages of just under 45 per cent. The male minimum rate was five shillings higher than that fixed by the Victorian Clothing Board for those working in the ready made section of the industry but

54. ibid., p. xi.

55. South Australian Government Gazette, June 14, 1917, p. 1035.

the female rate was 3/6 lower. This award was still in force at the time of the Federal hearing of the Clothing Trades case.

The Tailors' Board failed to make any further determination. A new Tailors' Board had been appointed in August 1916, and was required, under the Act, to make a determination within six months⁵⁶. In January 1918, the Minister for Industry referred the matter to the Industrial Court which then made a determination on behalf of the Tailors' Board⁵⁷. The minimum wage fixed for adult females was 27 shillings per 48 hour week for button sewing or buttonhole machinists. Trouser or vest hands were awarded 30/6 per week. In the Victorian award buttonhole finishers and button sewers were awarded 28 shillings per week and 30/6 was the rate fixed for trouser and vest hands. The adult male minimum rate was 55 shillings per week, the same as in the determination of the Ready-made Clothing Board and five shillings higher than the adult male minimum in the Victorian award. The female to male relativity in the Tailors' Board was therefore 49 per cent. This award was also in force at the time of the hearing of the Clothing Trades case. Meanwhile, the South Australian Industrial Court, in two separate cases, had made

56. South Australian Government Gazette, April 25, 1918, p. 859.

57. ibid., pp. 859-860.

determinations with respect to the living wage for males and females.

In March 1916, following the failure of the Tinsmiths, Sheetmetal and Galvanized Iron Workers' Board to make an award within six months of its appointment, the South Australian Minister of Industry referred the matter to the Industrial Court⁵⁸. In this case, generally referred to as the Tinsmiths' case, Mr President Brown made a determination fixing the living wage for males in South Australia. No determination was made for females because there were no females employed in the industry. The female living wage in South Australia was not determined until 1918 in the Printing Trades case (see below).

In his judgement in the Tinsmiths' case, handed down on September 5, 1916, Mr President Brown decided that the male living wage in South Australia should be nine shillings per day or 54 shillings per week⁵⁹. The claim by the employees was for 11/4 per day while the employers had offered eight shillings per day which was the amount fixed as the minimum wage in August 1913, by the Industrial Court and reaffirmed by the

58. 1 South Australian Industrial Reports (SAIR), In the matter of Tinsmiths, Sheetmetal and Galvanized Iron Workers' Board, pp. 55-56.

59. ibid., p. 85.

Court in 1915⁶⁰. Brown justified his award partly by referring to the increases in the cost of living since the beginning of the war⁶¹ and partly by arguing that a lower rate would discourage couples from having children⁶². However, in his judgement he went to great lengths to refute the claims of both the employers and the employees.

The employees had based their claim on an award, by Mr Justice Higgins in the Commonwealth Court, of 11 shillings per day for unskilled workers at Port Pirie in April 1916⁶³. Brown was not prepared to accept this award as a basis for the living wage in South Australia because, he argued, it was only "applicable to particular conditions and particular parties"⁶⁴. Brown also questioned the use of the Commonwealth Statistician's figures for determining the change in the cost of living when conditions were abnormal⁶⁵. The cost of living index prepared by the Commonwealth Statistician was based on a regimen that had not been changed since its inception in 1911. War conditions had

60. ibid.

61. ibid.

62. ibid., p. 82.

63. ibid., p. 58.

64. ibid., p. 59.

65. ibid., p. 60.

influenced the prices of some commodities more than others and, as both the Statistician and Mr President Brown pointed out, people adjusted their patterns of consumption in times of rising prices by substituting cheaper items so that the regime did not accurately reflect people's expenditure nor, therefore, the change in the cost of living⁶⁶.

Evidence of actual expenditure was also presented to the Court in the form of written family budgets⁶⁷. The employers argued that evidence of actual expenditure was not an indication of the cost of living and brought expert evidence to show that a family could live cheaply and healthily, at much less cost than was shown in the budgets, if the relative food values of cheaper foods were taken into account⁶⁸. However, as Brown pointed out, this would have required a greater amount of food knowledge than could be expected of the average housewife⁶⁹ and that "the Court should not endeavour to impose a too rigid standard of economy"⁷⁰.

On the basis of the evidence, Mr President Brown conceded that the Court could not "adhere to the

66. ibid., p. 62.

67. ibid., pp. 65-67.

68. ibid., pp. 69-70.

69. ibid., p. 75.

70. ibid., p. 76.

pre-existing rate of 8 shillings"⁷¹ but he was not prepared to grant more than nine shillings per day as a living wage for unskilled male workers for several reasons. Firstly, he argued, any substantial increase would result in inflation which would leave employees worse off than if he had granted no increase⁷².

Secondly, if the living wage were set too high it would result in unemployment and be of no benefit to those who lost their jobs⁷³. Thirdly, if the living wage were to be set at a level that was higher than the prevailing rates in Sydney and Melbourne many factories would not be able to compete with their interstate rivals and would close down, thereby reducing employment opportunities for South Australian workers, which would also leave employees in a worse position⁷⁴. This award of nine shillings per day as a living wage for unskilled males prevailed until the Printing Trades case in 1918 in which a living wage for females was also fixed.

In 1916, the Printing Trades Wages Board made a determination which was published in June⁷⁵. The

71. ibid., p. 83.

72. ibid., p. 77.

73. ibid., pp. 78-79.

74. ibid.

75. South Australian Government Gazette, June 15, 1916, pp. 1257-1261.

determination was suspended by Order-in-Council in March 1917, and the Board directed to re-examine the matter⁷⁶. An amended determination was published in October 1917, which awarded higher rates than had been fixed in the 1916 determination⁷⁷. Both the employers and the employees appealed against this determination. The Industrial Court heard the matter in 1918 and the President delivered his judgement in September 1918. The determination of a living wage for females in this case was the first in Australia, preceding the New South Wales Board of Trade declaration by some three months.

In his judgement on the Printing Trades case, Mr President Brown noted that the case involved "some principles of vital importance"⁷⁸ although he considered that the question of the appropriate rates of wages for women were relatively unimportant⁷⁹. Yet he felt constrained to deal in detail with the issue of female wages, because

"[u]nder the circumstances of the case, and with a view to future cases, and also with a view to the prevention of industrial

76. South Australian Government Gazette, March 1, 1917, p. 369.

77. South Australian Government Gazette, October 18, 1917, pp. 950-955.

78. 2 SAIR, In the matter of an Appeal by a majority of the representatives of the Employees on the Printing Trades Wages Board Against the determination of the said Board, etc., p. 33.

79. ibid.

disputes in the future relative to the wage for women, I feel I ought to explain what appear to me to be the fundamental principles which should govern the Court in dealing with the subject." (80)

The issue of the appropriate minimum wage for women in the printing industry had arisen because it was a male dominated industry. The employees advocate, citing Mr Justice Higgins' judgement in the Rural Workers' case as the precedent, had argued for equal minimum rates for women working in the printing industry. Mr President Brown, however, took issue with this line of argument.

In the first place, he regarded Higgins' principle that, where men and women were employed in an occupation that was "men's work", the minimum adult wage should be the same for both males and females as

"merely a rule of expediency designed to protect men from unfair competition in the labour market." (81)

In addition, such a principle

"suggests a partial recognition of the alluring doctrine of equal pay for equal work." (82) (emphasis in original)

This, he argued, had not generally been adopted by Industrial Courts. The reason for this, he suggested, was because

80. ibid.

81. ibid., p. 34.

82. ibid.

"it was practically impossible for a mere human being to fix wages by reference to the value of work done." (83)

Therefore

"[a]s far as unskilled labour is concerned, an Industrial Judge is naturally driven to adopt the standard of the needs of the worker - a standard which leads to different results as regards men and women. The man, and not the woman, is typically the breadwinner of a family." (84) (Emphasis in original)

Consequently, in South Australia

"it has long been settled that the minimum (living wage) should not be less than that of a married man with a family to support." (85)

Furthermore, he claimed, it was probable that

"a larger proportion of single men than of single women have to support parents or other relatives." (86)

While he recognised that men might lose employment if subject to competition from cheap female labour, he did not think that applying Higgins' principle was the answer because, he contended, it would lead to an increase in the cost of living⁸⁷. He further argued that

"[m]en cannot complain if they are driven out of a field that has really become women's employment ... There is a danger

83. ibid.

84. ibid., p. 35.

85. ibid.

86. ibid.

87. ibid., p. 37.

of retaining men in work for which they have ceased to be in demand, and in which they can be retained only by payment of artificial wages to the injury of many women and the public..." (88)

To pay women the same rate as men in some occupations, he claimed, would not only be "out of proportion to their needs"⁸⁹ but also encourage women to desert occupations which would better fit them for their "life duties" such as domestic service⁹⁰.

"It is an unpopular thing to state nowadays, but it is nevertheless broadly true, that a woman's true apprenticeship for her future career is to be found, not in the workshop or the salesroom, but in some form of training or apprenticeship directly related to wifehood or motherhood." (91)

Protection of male employment from the competition of cheaper female labour could, he believed, be just as easily achieved "by limiting the proportion of women to men"⁹².

Having demolished, to his satisfaction, the argument that women should be paid the same minimum rate as men in a man's industry, Mr President Brown went on to explain why, in his opinion, women should not be paid too high a wage. Firstly, he argued that the "right" of

88. ibid., pp. 37-38.

89. ibid., p. 38.

90. ibid., p. 39.

91. ibid.

92. ibid.

women to freedom of choice of employment and a fair wage could not be "justly interpreted without reference to the good of the community"⁹³. It was traditional that men and not women had the moral responsibility for providing a home and this fact

"should be recognised by the Industrial Courts as a ground for differentiation in wages between men and women workers." (94)

Furthermore, it was undesirable

"that women should be encouraged to indulge in a standard of expenditure so high that marriage may appear to them an intolerable sacrifice." (95)

In addition, women "as a class"⁹⁶ were not as useful to employers as men because they were "potentially less efficient"⁹⁷. Thus fixing too high a wage for women would have the effect

"of excluding them from employments for which they are quite adapted, but not quite so efficient, as men ..." (98)

For all of these reasons, Mr President Brown concluded, the "good of the community as a whole"⁹⁹ required that

93. ibid., p. 40.

94. ibid.

95. ibid.

96. ibid., p. 41.

97. ibid., p. 42.

98. ibid., p. 46.

99. ibid., p. 47.

women should be paid less than men. He then turned to the question of what the minimum wage for women should be.

In the South Australian Industrial Arbitration Act, 1912, the living wage was specifically defined in terms similar to those expressed by Mr Justice Higgins in the Harvester case, viz.

"a sum sufficient for the normal and reasonable needs of the average employee living in the locality where the work under consideration is done or to be done." (100)

So Mr President Brown had not to determine what was meant by the term "living wage". He was still left with the problem of deciding at what level it should be set, that is, what amount would provide for the normal and reasonable needs of the average female employee.

Evidence had been presented to the Court that the average earnings of females in the printing industry were 23/1 per week whereas the average for the metropolitan area as a whole was 26/9 per week¹⁰⁴. Expenditure budgets were also presented by female witnesses¹⁰². Mr President Brown concluded

"that the bedrock living wage for women should be 27/6 per week. I refrain from giving precise details as to the way in which this amount was arrived at ... I

100. ibid., p. 48.

101. ibid., p. 50.

102. ibid.

will only say that my conclusion has been arrived at after most careful analysis of available sources of information, and more especially the evidence submitted in the course of the present proceedings." (103)

The minimum appears to have been based on evidence that the cost of board and lodging was about 15 shillings to 17/6 per week and an "average" of 11 shillings to 12 shillings per week for all additional expenses (derived from the budgets of the female witnesses)¹⁰⁴. This gave a possible range of from 26 shillings to 29/6 per week. Why he specifically chose 27/6 as the "bedrock living wage" is difficult to ascertain. On the basis of the living wage of 54 shillings awarded to males in the Tinsmiths' case it was 51 per cent. However, having determined the female living wage, Mr President Brown decided to review the male living wage.

In the Printing Trades case, the employees had not asked for an increase in the living wage but had made a claim for a minimum wage of 58 shillings per week¹⁰⁵. The reason for this apparent contradiction was the clear distinction between the living wage and the minimum wage that Mr President Brown had drawn in previous cases¹⁰⁶. Brown had argued that

103. ibid., p. 51.

104. ibid.

105. ibid., pp. 55-56.

106. 1 SAIR, The Tinsmiths' case, p. 56.

"[w]hile the living wage has an application to industries in general, the minimum wage is limited to a particular industry." (107)

Hence, the claim for a minimum wage of 58 shillings per week in the printing industry. However, in order to determine whether the minimum wage claim should be granted Brown decided to examine the grounds put forward in support of the claim.

Firstly, it was claimed that a minimum wage of 58 shillings per week was justified on the grounds that the work in the printing industry was arduous and unhealthy¹⁰⁸. This was dismissed by Brown who argued that there was no evidence that work in the printing industry was more arduous or unhealthy than other similar industries. The second ground, on which the claim was based, was that the industry was profitable and could afford to pay a higher minimum wage¹⁰⁹ but Brown felt that the data produced was not adequate to justify a conclusion regarding the relative prosperity of the printing industry. Thirdly, it was claimed that the minimum wage in the printing industry in South Australia was lower than in other States and there was a consequent loss of workers to these States in search of

107. ibid.

108. 2 SAIR, pp. 56-57.

109. ibid., p. 57.

better paid employment¹¹⁰. The employers argued that the competent employees generally received wages above the minimum which would compensate them for the difference in minimum wages between States¹¹¹. Having dismissed these grounds, Brown proceeded to examine the argument that the minimum wage should be increased to 58 shillings on the basis of the increased cost of living.

On the evidence presented, Brown concluded that there had been a marked increase in the cost of living, particularly as a result of increases in the cost of items that were not included in the Commonwealth Statistician's cost of living index, such as clothing, boots and kitchen utensils¹¹². On the basis of this increase, Brown, therefore, decided to award a minimum wage of 57/6 per week to unskilled males in the printing industry¹¹³, just six pence per week less than was claimed. How he decided on this amount is not clear, nor is it clear whether this amount constituted a new living wage (to be applied to industry generally) or merely the minimum wage for the printing industry alone. What is clear is that the award of 57/6 for unskilled males in the printing industry reduced the relativity of

110. ibid., pp. 60-61.

111. ibid., p. 63.

112. ibid., p. 64.

113. ibid., p. 65.

the female living wage to 48 per cent of the male minimum.

Mr Justice Brown went to great lengths to justify the award of a lower minimum wage for women than for men but he failed to recognise that a much lower wage for women would provide an incentive for employers to substitute female for male labour and that men would "complain" about being driven out of employment by cheaper female labour. This issue was a fundamental factor in the increasing tendency of unions to seek Federal awards.

CHAPTER 7 : THE CLAIM FOR A FEDERAL AWARD

The question of what the living wage for women should be was one of the central issues in the Federated Clothing Trades of the Commonwealth of Australia v. J.A. Archer and others¹. This case was initiated by the union in September 1918, when a log of claims was served on 485 employers covering all states except Western Australia. The union filed the claim in order to invoke a Federal award for the industry because it felt that its members were disadvantaged under state awards². With reference to the Victorian Wages Board system, Herbert Carter, Federal secretary of the claimant union, declared that:

"It has been found by experience that the female representatives on the board are at a disadvantage through inexperience in dealing with such matters in effectually placing their case to advantage before the Board with the result that it is believed by members that the Boards do not deal out full justice according to the merits of employee claims ... and were ... not able to effectively combat the superior experience and tactics of the employers." (3)

In its application for a compulsory conference the union claimed that, as a result of employer pressure, wages in the industry were below the living

1. 12 CAR, pp. 657-658 and 13 CAR, pp. 647-803.

2. 12 CAR, p. 657.

3. Declaration of Herbert Carter, pp. 5-6, in the file of the case, No. 66 of 1918, held at the Australian Conciliation and Arbitration Commission archive.

wage and conditions were made even more difficult for its members because of the considerable amount of lost time experienced during the year⁴. A conference was called in November 1918, but no agreement was achieved and the matter was referred for arbitration⁵.

When the case commenced in December 1918, there was considerable legal argument as to whether a dispute existed. The respondent employers had all filed affidavits swearing that they were not in dispute with their employees⁶ - a common tactic during the early years of Federal arbitration. Higgins determined that a dispute did exist but by this time it was close to Christmas and the matter was adjourned to the following year. The case was further delayed by the restrictions brought about by the influenza epidemic. As a result the hearing did not commence until April 1919. Even then there was considerable debate as to whether the case should be further delayed to enable interstate respondents and witnesses to be present as the quarantine restrictions had only just been lifted and some people were still reluctant to travel. However, the union was anxious to begin and Higgins was sympathetic to their

4. 12 CAR, p. 657.

5. ibid., p. 658.

6. Affidavits in file of case, No. 66 of 1918, held at the Australian Conciliation and Arbitration Commission archive.

stand⁷.

The "union" was a federation of State organisations which in turn were amalgamations of existing State unions. The Victorian Branch of the Federated Clothing Trades of Australia appears to have been the most well-established and cohesive. The Victorian Clothing Trades Union was formed in 1906 as a result of the amalgamation of the Tailors' Union and the Tailoresses' Union⁸. Herbert Carter was elected Secretary of the Victorian Clothing Trades Union in September 1907⁹. He was later to hold the positions of President and then Secretary of the Federated Clothing Trades of Australia and was the union's advocate at the hearing of the Clothing Trades case.

In September 1907, a federal conference of clothing unions was held. At this meeting a decision was made to seek registration under the Commonwealth Conciliation and Arbitration Act as the Federated Clothing Trades of Australia¹⁰. The union membership was to be open to all workers engaged in the clothing

7. Transcript of the Hearing in the papers of Herbert Carter, Archives of Business and Labour (ABL), E 138/18/5, April 10, 1919, pp. 1-6.

8. H. Carter, A History of the Clothing Trades Unions of Melbourne, 1866-1922, ABL, E 138/15, p.14(?). (This manuscript is in draft form and the pagination varies).

9. ibid., p. 16(?).

10. ibid., p. 18(?).

and tailoring industry¹¹. However, there is little information available on the actual membership of the union. Data collected by the Commonwealth Statistician, and published in the Labour Reports from 1912 onwards, was aggregated into industry groups and there was no breakdown into male and female members¹². However, at the Third Annual Conference of the Federated Clothing Trades of Australia, held in Adelaide in February 1911, several State branches reported that they had had difficulty in recruiting female members¹³.

Items for a Federal log of claims were considered at meetings of the Federal Council of the union. Delegates to Federal Council meetings consisted of the executive officers of the State branches who were always male. At the Federal Council meeting held in Sydney in January 1910, an item submitted by the Victorian Branch proposing "equal pay for equal work for male and female" was defeated¹⁴. The debate was not recorded in the Minutes but this issue was to take up several days of evidence before the Federal Court in

11. ibid.

12. Commonwealth Bureau of Census and Statistics, Labour Reports, 1912-1919, chapter entitled "Labour Organisations".

13. Minutes of the Third Annual Conference of the Federated Clothing Trades of Australia, Adelaide, February 1911, ABL, E 138/12/1, p. 4.

14. Minutes of the Federated Clothing Trades Council, Sydney, January 1910, ABL, E 138/12/1, p. 1.

1919, particularly with regard to occupations which were regarded as men's work.

The "industry" which was covered in the claim by the Federated Clothing Trades union was men's order tailoring, ladies tailoring and ready-made clothing for men, boys and youths¹⁵. Thus only a small section of women's clothing manufacture was included under the claim and that was the making of what were known as "costumes", that is, a tailored skirt and jacket, and overcoats. This distinction is very important because very few men were, or had ever been, employed in the manufacture of women's clothing other than in the making of tailored skirts, jackets and coats. Hence, the manufacture of women's clothing was regarded as a separate industry. However, the distinction made in the claim was not always exactly duplicated in the State awards. In Victoria, for example, the Clothing Board covered men's and boys' clothing only and the Dressmakers' Board covered women's clothing including the making of coats, jackets and skirts. In New South Wales there were six different Boards in the clothing industry which covered different sections of the trade. Throughout the case, therefore, the main comparison is with State awards which encompassed employees engaged in

15. Transcript, op. cit., p. 15.

the manufacture of men's and boys' clothing either ready made or to order.

The industry was divided into ready made and order tailoring sections in all states except that in New South Wales order tailoring was also divided into two sections, the so-called "chart order" section and order tailoring. A "chart order" was a request for a garment sent to a manufacturer on a form setting out the person's measurements. The measuring was done by anyone asked to do so by the customer, according to the instructions on the form, and not necessarily by a tailor as was the case in order tailoring. The result was a higher quality garment than was produced in the ready made factory but was cheaper than a garment made by an order tailor because the method of production was similar to the mass production techniques of the factory. Indeed, chart orders were accepted by both order tailors and ready made manufacturers as a supplement to their other activities. However, no allowance for chart orders was made in the claim because only in New South Wales were they under a separate award from order tailoring. Chart orders were defined as orders and this was accepted by the employer representatives except those from New South Wales¹⁶. Order

16. ibid., pp. 34-35.

tailoring was also divided into men's tailoring and women's tailoring but most of the respondent employers were engaged in both¹⁷.

The plaint, or log of claims, was extensive as it was derived by combining all the existing state awards into one. The result was 1065 individual claims but most of these related to piece-work. At the appearances hearing on April 10, 1919, the conduct of the case was discussed¹⁸ and it was proposed to Higgins that if he would decide the minimum wage for males and females and the hours of work it would be possible for the parties to come to an agreement on piece-work rates in private conference. Higgins was at first concerned that if he made an award about minimum wages and hours he might then be obliged to have a second full hearing and re-hear evidence if the parties could not agree on one or more of the other issues. His solution was to proceed with the hearing of evidence related to the minimum wages and hours then to indicate what his decision would be without making an official award. This would enable the fixing of piece-work rates based on the weekly minimum wages. When these issues were resolved, as well as other conditions of work, they could then be incorporated into an official award

17. ibid., p. 22.

18. ibid., pp. 4-14.

together with the minimum rates and hours. In reality, the hearing was spread over eight months with the decision on minimum wages being handed down in early May and the final award being made in November.

It was evident from the beginning of the hearing that the union was particularly concerned about competition between females and males in certain classes of work. On the first day of the hearing, Herbert Carter, as advocate for the union, declared that the three fundamental issues to be resolved in the case were the minimum wages to be paid to males and females, the hours of employment and

"the vexed question of the relative labour value of the sexes where male and female are in direct competition." (19)

Thus the plaint was divided into two sections according to whether the claim applied to classes of work which were exclusively done by women or to classes of work where males and females were in competition, particularly in the making of coats to order. In framing its claim, the union appears to have taken into account Higgins' decision in the Rural Workers' case in which a distinction was made between females in "women's jobs" and females in "men's jobs". Lower rates were claimed for classes of work which were entirely "women's

19. ibid., p. 4.

work"²⁰ and equal rates were claimed for classes of work where males and females were in competition. On the question of differentiation between different groups of women, however, the union also asserted that it took into account the "custom of the trade in many of our claims where we differentiate between the sexes"²¹.

The minimum claim, or the living wage, was 65 shillings per week for males and for females the union claimed £2 per week. The claim appears to have been based on Mr Justice Powers' award in the Theatrical Employees' case in 1917 although there is no reference to it. In that case the male minimum had been set at £3 per week and the female minimum at 35 shillings. The claim for males in the clothing trades was 65 shillings, an increase of five shillings a week based on the increased cost of living since June 1917. The union has assumed the same money increase in the cost of living for females and claimed £2. The union's claim for females in the clothing trades represented 61.5 per cent of the male rate.

The employers, on the other hand, offered 32 shillings per week as the minimum for females which was exactly half of their offer for males. This implies that they thought that the increased cost of living for

20. ibid., p. 10.

21. ibid., p. 26.

females was only half that for males. However, their calculation of the appropriate amount for females was somewhat circuitous. Their offer of 32 shillings was derived by dividing the offer of 64 shillings for males into thirds: one third for the man, one third for his wife and one third for the children. The single rate for a female was therefore obtained by taking the wife's third, that is $21\frac{1}{4}$, and adding to it 50 per cent, that is $10\frac{1}{8}$ "because she has to live alone"²². On the other hand, the implication that the increase in the cost of living for females was half that for males did have a precedent because Powers, in the second Telephonists' case in 1918, in which there was a claim for the variation of the 1917 award on account of the increased cost of living, granted a cost of living increase of £6 per year to female telephonists in the Public Service which was exactly half that awarded to males in the Public Service.

For classes of work where males and females were in direct competition with each other, that is, in cutting, trimming and fitting, which were the highest skilled tasks, and in pressing, which required some strength, but where males were still the majority of employees, equal rates of payment for males and females were claimed. For other classes of work where some

22. Transcript, op. cit., 15 April 1919, p. 306.

skill was required but females predominated lower rates were claimed. For example, the rate claimed for male machinists in order tailoring was £3-15-0 and the same rate was claimed for female coat machinists in order tailoring who were employed machining in sleeves and pockets without tacking, but £2-16-0 was claimed for all other female coat machinists in order tailoring. The same rate as male machinists was claimed for female coat machinists putting in sleeves and pockets without tacking because

"these people are more skilled than ordinary machinists and we can bring evidence to prove where women are taking men's places." (23)

The claim for other female coat machinists represented three quarters of the claim for male coat machinists.

It was in the making coats to order where the competition between males and females was most evident. Coats were divided into two types: "sac" coats which had very little shaping or padding and "body" or dress coats which included military officers jackets, dinner jackets, frock coats and livery. Body coats were more likely to be made to order because of their nature and required a high level of skill whereas sac coats were much more simple to make and could be made under the factory system as well as to order. The union claimed

23. ibid., April 10, 1919, p. 17.

equal pay with males for females working on body coats because it was in this section of the industry particularly where male tailors were most under threat. The making of body coats was regarded as a "man's job".

The secretary of the New South Wales branch of the Federated Clothing Trades, John Crombie, gave evidence based on his twenty seven years' experience in the industry, to support the claim that women were replacing men in the making of dress and body coats²⁴. When asked to what he attributed this trend, he stated: "The only way I can account for it is owing to the employment of persons at lower wages"²⁵. Females employed in making body coats did not receive equal pay under the Victorian, South Australian or New South Wales awards but they did under the Queensland award²⁶. Under the Tasmanian award females employed in this class of work received 2/6 per week less than males²⁷.

In the making of sac coats to order and ready-made, however, the union did not claim equal pay. For coat hands and coat machinists in the order trade, other than those working on body coats the claim was for £2-16-0 per week which was three-quarters of the male rate.

24. ibid., 16 September 1919, pp. 175-183.

25. ibid., p. 183.

26. ibid., 10 April 1919, p. 18.

27. ibid.

This claim was based on what the union regarded as "the relative value of the work"²⁸. In the making of trousers and vests to order the union conceded that "practically all females are employed in that section of the industry" because "it was one of the first sections that women encroached upon in the industry"²⁹. There were few males employed in making ready made coats so in the claim for the ready made section of the industry the union did not ask for equal pay for female coat hands and coat machinists³⁰. However, equal pay was still claimed for females employed as cutters, trimmers, fitters and pressers all of which were regarded as "men's jobs". The minimum rate of £2 per week was claimed for female vest and trouser hands employed in the ready made clothing section of the industry.

The extent to which females had penetrated the clothing trade can be illustrated by data from the New South Wales Statistical Register. From 1896 onwards data was published separately for ready made clothing (which included both female and male clothing) and tailoring³¹. This data, therefore, gives a fair

28. ibid., p. 20.

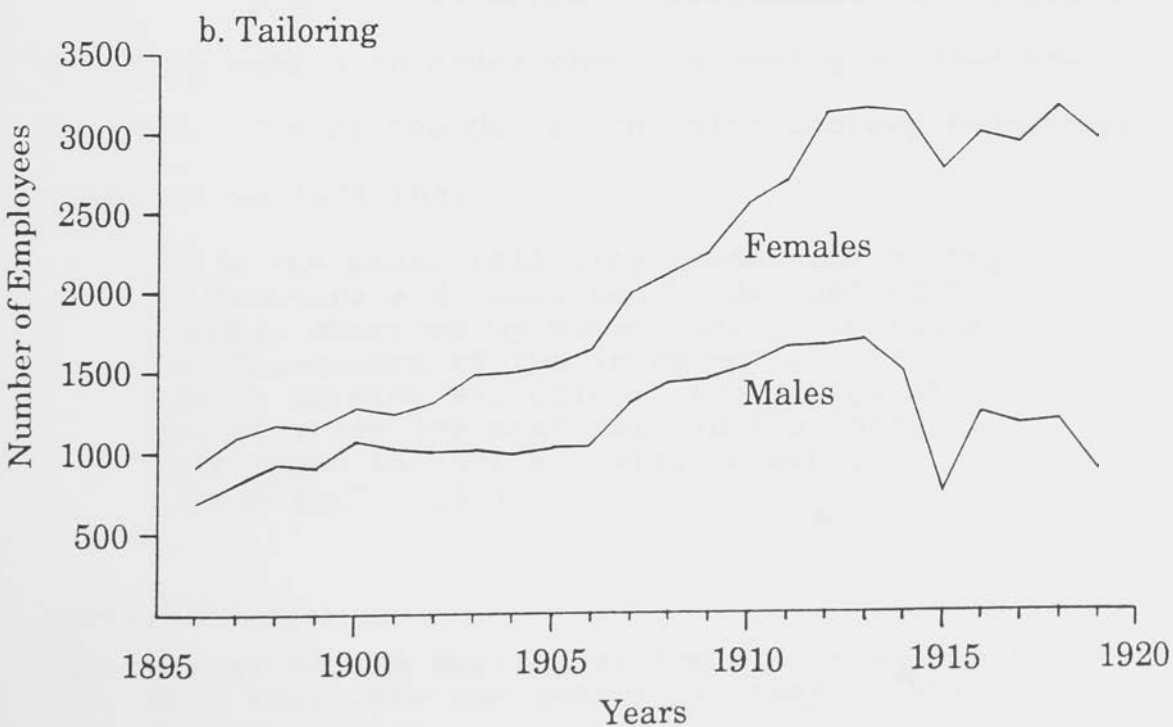
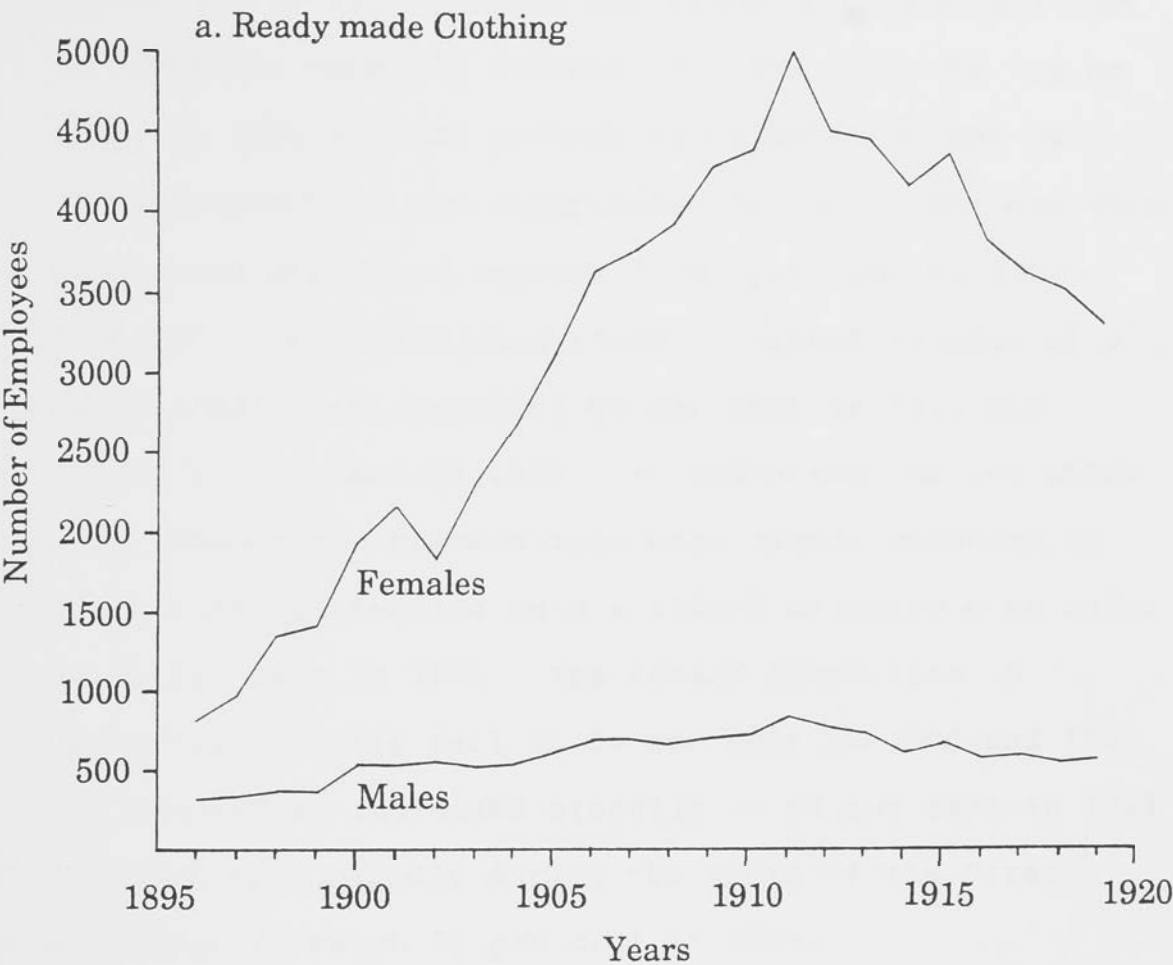
29. ibid.

30. ibid., p. 25.

31. Statistical Register of New South Wales, 1896 to 1919-20, Chapter headed 'Manufacture and Works', Table entitled 'Number of Manufacturers and Works, Hands Employed, Power used and Value of Plant in the Various Industries'.

Figure 1:

EMPLOYMENT IN READY MADE CLOTHING AND TAILORING,
NEW SOUTH WALES 1896 to 1919



Source: New South Wales Statistical Register, 1896 to 1920.

reflection of the industry for which the claim was made. The data are shown in Figures 1(a) and (b). As can be seen, in 1896 females already represented 70 per cent of the employment in the ready-made clothing trade and this proportion increased rapidly to 80 per cent by 1902. From 1902 the female proportion continued to grow at a significant pace, reaching 85 per cent in 1911 and almost 87 per cent in 1919. In tailoring, on the other hand, employment numbers were more evenly balanced at first although females held a slight majority over males at 58 per cent in 1896. The female proportion in tailoring actually fell to 54 per cent in 1900 and 1901 but thereafter increased steadily to 65 per cent in 1913 and then more rapidly during the years of the First World War to reach 70 per cent in 1919.

Women first began to predominate in trouser and vest making to order when the sewing machine was adopted. One of the New South Wales factory inspectors reported in 1903 that

"[i]n the order tailoring trade, the making of trousers and vests has by degrees been largely absorbed by women, chiefly perhaps in consequence of the introduction of sewing machine stitching: the making of coats is for the most part in the hands of journeymen tailors and will probably remain so." (32)

32. Report of the Working of the Factories and Shops Act, etc., for the year 1903, NSWPP, 1904 (4), p. 769.

She believed this would be the case because the heavier cloth and padding of men's coats required greater strength in stitching parts together³³.

However, machine stitching was gradually adopted in the making of coats to order so that, by 1919, Herbert Carter was able to claim that very few tailors' shops in Melbourne made a coat wholly by hand³⁴. Almost all garments had some machine work.

Technological change, therefore, facilitated increased employment opportunities for women in the clothing trades. As already mentioned, the advent of the sewing machine replaced hand sewing in the manufacture of trousers and vests and was increasingly used in the making of coats. Indeed, the employers' advocate, who was also one of the respondents to the plaint, claimed "that machining from time immemorial has been a woman's work" and that "it is more instinctive for a woman to drive a sewing machine than a man" (!)³⁵. Herbert Carter pointed out that in America all machining was done by male labour in men's clothing³⁶.

Techniques of production also changed. Instead of the practice whereby one person made a

33. ibid.

34. Transcript, op. cit., April 10, 1919, p. 24.

35. ibid., p. 58.

36. ibid.

garment from start to finish by hand, the "sectional system" was introduced where the manufacture of a garment was subdivided into a number of smaller tasks and machined. This meant that a machinist became very skilled at that small task and output was increased. Subdivision of garments, and therefore of labour, was widespread in the ready made clothing trade since being adopted in the 1890's³⁷ but this method of production had also been adopted in the made to order trade³⁸. Higgins expressed his concern that the increased production brought about by the introduction of machinery had not been reflected in increased wages or lower hours³⁹ and he pursued this point in particular with regard to the claim for shorter hours.

The replacement of males by female labour was claimed by the union to be more advanced in Melbourne than elsewhere in Australia⁴⁰. Data can be obtained from the Reports of the Chief Inspector for Factories and Shops in Victoria to show employment levels in the industry but these are not as useful as those from the New South Wales Statistical Registers because order

37. Report of the Chief Inspector of Factories, Work-rooms and Shops for the year ended 31 December 1898, VPP 1899-1900, p. 1365.

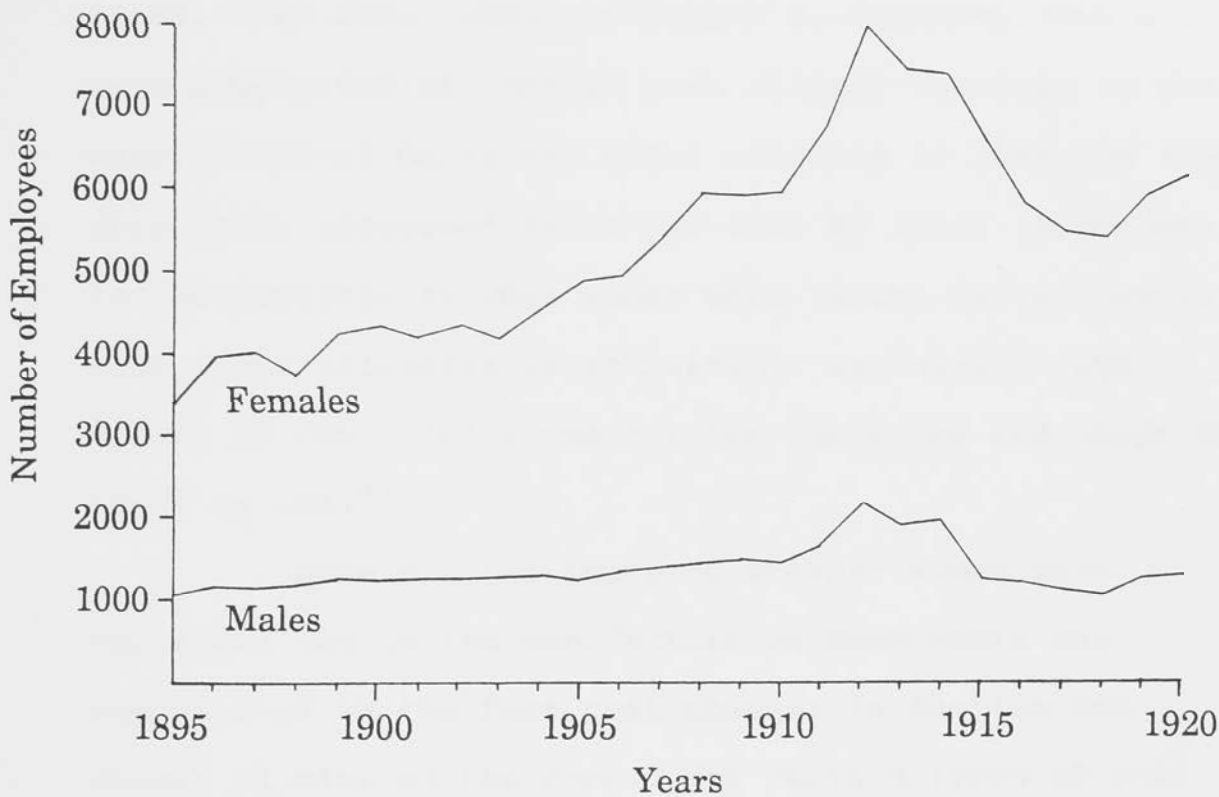
38. ibid., p. 27.

39. Transcript, op. cit., 10 April 1919, p. 44.

40. ibid., 16 September 1919, p. 178.

Figure 2:

EMPLOYMENT UNDER THE CLOTHING BOARD AWARD,
VICTORIA, 1895 to 1920



Source: Reports of the Chief Inspector of Factories Workrooms and Shops,
Victorian Parliamentary Papers, 1896-1920

tailoring is not separated from ready made clothing and both ladies' tailoring and female ready made clothing are included in data collected under the Dressmakers' Board. The data, shown in Figure 2, indicate that a high proportion of females were already employed in the manufacture of men's and boys' clothing in 1895 and this proportion increased to 82 per cent by 1919. Reference to the possibility that women were taking men's jobs in high class tailoring establishments appeared in the Report of the Chief Inspector for Factories and Shops as early as 1901⁴¹.

However, the issue of whether women were replacing men in the manufacture of body coats was complicated by the fact that changes in fashion had almost eliminated the demand for certain types of body coats. Evidence was given that in the fifteen years previous to the case demand for "Beaufort" coats had all but disappeared⁴² and that frock coats were very rarely made⁴³. One witness stated that his firm had not made any dress coats at all during the period of the war⁴⁴. It was the contention of the employers that the

41. Report of the Chief Inspector For Factories, Workrooms and Shops for the year ended 31 December 1901, VPP, 1902 (2), p. 114.

42. op. cit., 17 September 1919, p. 228.

43. ibid.

44. ibid.

reduction in the number of males making body coats was due more to the change in fashion which meant that fewer body coats were being made⁴⁵. It was also claimed that the few frock coats still being produced were made by the sectional system⁴⁶ which meant that they were made by women working as a team under the supervision of a male tailor. There was, however, still a considerable demand for dress coats and it was this area of the trade, in particular, that the union was attempting to preserve for the male tailors still remaining in the industry.

By 1919, therefore, the only area of the trade where males were still the majority of employees was in the manufacture of body coats but demand for body coats was diminishing. An attempt had been made in about 1909 or 1910⁴⁷ by the union to obtain equal pay for males and females engaged in making body coats under the Victorian Clothing Board award but this had been unsuccessful because the employer representatives on the Board were only prepared to grant equal pay in those cases where a body coat was wholly made by a female. The reason for this restriction was that many employers were making coats by "the sectional system" and thus few females

45. ibid.

46. ibid.

47. ibid., 16 September 1919, p. 195 - the actual date of this attempt is unclear.

made a whole coat. The failure to restrict female entry to employment in the making of body coats was the impetus for organising employees in the clothing trades into a Federal union with the object of obtaining a Federal award⁴⁸. Thus, the claim for equal pay for males and females employed in the making of body coats was the "last stand" as far as the male members of the union were concerned and this was likely to succeed only if a Federal award was invoked.

It was intended that the matter of the relative wages for males and females, in those areas of the clothing industry where they were in competition, be resolved in conference after Higgins had made his decision on the minimum rates. However, Herbert Carter sought Higgins' reassurance that the principles applied in the Rural Workers' case would also be applied in this case if agreement could not be reached with employers on this issue⁴⁹. Higgins replied that "[u]ntil I am shown to be wrong I am going to follow the Mildura case about competition"⁵⁰. Carter evidently felt the need to seek this reassurance in order to bolster his bargaining position with the employers, that if they did not agree to equal pay for females in certain classes of work then

48. ibid., pp. 195-196.

49. ibid., 14 April 1919, p. 211.

50. ibid., p. 212.

it would be imposed on them by Higgins. Consequently, in conference, the union refused to negotiate on the question⁵¹ and the employers refused to concede, preferring to argue the matter in Court.

The employers questioned the competence of females in the making of body coats and in cutting, trimming and pressing⁵². They claimed that women were less skilled at these tasks and, therefore, should be paid at a lesser rate. The union's response was to argue that women were rarely taught these skills but where they were taught, they were equally capable of doing the work and should be paid the same rate⁵³. From the union's point of view, it was evident that if a lower rate was awarded for women in these occupations then there would be a substantial incentive for employers to have women taught these skills and thereby contribute to the displacement of men in the remaining areas of the clothing industry where they were still dominant.

Another objective of the Federated Clothing and Allied Trades in seeking a Federal award was to gain access to the higher wage rates awarded by the Commonwealth Court of Conciliation and Arbitration. In the declaration

51. ibid., 15 September 1919, p. 89.

52. ibid., pp. 89-96, 106-110.

53. ibid., pp. 117-120, 124-125, 141, 190-191, 234, 241-251.

made in support of the union's request for a compulsory conference Herbert Carter stated that "the Boards do not do full justice to the merits of employee claims". In the most recent cases, State tribunals had awarded lower minimum rates for males and females. The minimum clothing award rates for females in 1918 was 28 shillings for 48 hours in all states covered by the claim except Tasmania where it was 23/6 for a 42 hour week⁵⁴. This was less than had been awarded as the minimum in 1913 by Mr Justice Powers in the Felt Hatters' case (30 shillings) and considerably less than he had awarded in the Theatrical Employees' case in 1917 (35 shillings). Male minimum rates in the State clothing awards varied more widely than did female rates. The minimum rate for males was lowest in Melbourne at 50 shillings and highest in Brisbane at 60 shillings both for a 48 hour week⁵⁵. In Sydney, the minimum rate was 54 shillings and 55 shillings in Adelaide and Hobart. The minimum rate for males in Federal awards in 1918 was 60 shillings so that only the Queensland award had an equivalent rate. Thus the union had much to gain for its members in obtaining a Federal award but the greatest benefits accrued to the male members of the

54. Commonwealth Bureau of Census and Statistics, Labour Report, 1918, Appendix VII, p. 266.

55. ibid., p. 253.

union who were increasingly the lesser proportion of employees in the industry.

With respect to the protection of men's jobs from female competition and the minimum male wage the union achieved what it set out to do. The claim for 65 shillings was granted as was the claim for equal rates of pay for males and females employed as cutters, trimmers, fitters, pressers and body coat hands. With the exception of under pressers, who were awarded the minimum rate, these were all highly skilled classes of work which attracted the highest skill margins. On the other hand, with respect to the female wages claim the union achieved much less than was claimed in the plaint, in both the minimum rate and the margin for skill. Because of the predominance of female employees in the industry it was in the employers' interest to achieve as low a rate as possible and they succeeded. The only claim on behalf of females that was achieved was fewer hours but males were also awarded fewer hours.

A third factor which contributed to the claim for a Federal award was the effects of interstate competition. Higgins noted in his judgement that the employers' defense for offering low wages was that they were subject to keen interstate competition⁵⁶. During the hearing of evidence in the male minimum wage Higgins

56. 12 CAR, p. 657.

asked the employers' advocate, Alex Scovell, whether the employers wanted to differentiate towns on the basis of difference in the cost of living. Scovell replied that if a single rate were fixed, then

"all places would pay the same and there would be no competition of any sort in regard to the States." (57)

In 1901, two of the Victorian factory inspectors reported the general opinion that Victoria's manufacturing industry would benefit from Federation and that some firms had enlarged their operations in anticipation of increased interstate trade⁵⁸. Interstate markets became an important source of business for the clothing trade among others in the early years of the century according to the reports of the Chief Inspector for Factories and Shops. However, manufacturing in the other States eventually developed sufficient capacity to satisfy their own demands and, in fact, attracted skilled Victorian operatives by the offer of higher wages⁵⁹. By 1908, the Inspectors were reporting keen interstate competition particularly in the ready made clothing and boot industries, where the

57. Transcript, op. cit., 10 April, p. 65.

58. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ending 31 December 1901, VPP, 1902 (2), p. 109.

59. Report of the Chief Inspector for Factories, Workrooms and Shops for the year ending 31 December 1907, VPP, 1908 (1), p. 1058.

Victorian market was being penetrated by interstate goods, resulting in a reduction of manufacturing activity and lower prices for goods in Victoria⁶⁰.

Victoria's trade with other states in clothing improved in 1909 and 1910 but competition with interstate manufacturers remained keen⁶¹.

The New South Wales Reports of the Working of the Factories and Shops Act are not so informative on the question of interstate competition as the Victorian Reports of the Chief Inspector but they do indicate a considerable increase in employment in the clothing industry in the period up to 1908, when the Victorian reports began to indicate more intense competition from interstate. Interstate trade was a central issue of an appeal by the Sydney Clothing Manufacturers' Association against the Tailors' award of July 1909⁶². The Master Tailors also appealed against the award. Among other things the award prescribed that piecework rates be paid to almost all journeymen and attempted to restrict the employment of journeywomen by imposing ratios according

60. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ending 31 December 1908, VPP, 1909 (2), pp. 243, 248, 264.

61. Report of the Chief Inspector for Factories, Work-rooms and Shops for the year ended 31 December 1910, VPP, 1911 (1), p. 1117.

62. 9 New South Wales Industrial Reports (NSW AR) Amalgamated Journeymen Tailors' Association v. Master Tailors' Association, pp. 216-234.

to whether the employer's business was high-class, medium-class or low-class. The Sydney Clothing Manufacturers' Association argued that, because work in factories was organised on the team system, it was impractical to pay piecework rates and also that the limitations on the employment of journeywomen would make the team system unworkable. It was claimed that the outcome would be lost business to other states where employers would not be subject to these restrictions⁶³. The Master Tailors also claimed that they were subject to considerable interstate competition particularly from Victoria and Queensland⁶⁴.

Mr Justice Heydon, who heard the appeal, accepted that Melbourne factories had a considerable advantage over Sydney factories with regard to wages and the lack of a limitation on the employment of journeywomen and therefore adjusted the award so that factory employers could employ journeywomen without restriction and they were to receive the same minimum rate as applied in Melbourne when employed as machinists on trousers, vests or coats. The amended award remained in force until 1913 when a new award structure came into effect as a result of the operation of the Industrial Arbitration Act, 1912.

63. ibid., pp. 216-217.

64. ibid., p. 218.

In the hearing for the Federal Clothing award, Higgins indicated quite clearly that he preferred uniform wage rates "in the interests of peace" even though it would not be "ideal justice"⁶⁵, that is, employers with factories in those places with a lower cost of living would have to pay the same rates as employers in those places with a higher cost of living. In his judgement, Higgins adopted uniform rates based on the capital cities' cost of living index because the industry was essentially a city industry⁶⁶.

The union asserted that the "claim is mostly a women's claim"⁶⁷ and, indeed, most of the evidence presented at the hearing was related to the claims for females particularly regarding the living wage, equal pay in jobs where they were in competition with males and shorter hours. The claims for females were more tenaciously contested than were those for males with the result that the male wage claims were granted almost in their entirety while the women were awarded much less than was claimed except in those jobs for which equal pay was asked. Admittedly, the claim for shorter hours was to the benefit of female employees, particularly in the factories, but it was also awarded to males so they obtained equal benefit on this issue.

65. Transcript, op. cit., April 10, 1919, p. 71.

66. 13 CAR, p. 691.

67. Transcript, op. cit., 31 March 1919, p. 1.

CHAPTER 8 : THE EVIDENCE FOR THE FEMALE LIVING WAGE

The hearing of evidence regarding the adult male minimum occupies just twelve pages of the transcript¹. Only one witness was called and that was an officer of the Commonwealth Bureau of Census and Statistics, James Sutcliffe, who gave evidence on the change in the cost of living index between 1907 and 1919². The statistical evidence relied on by the union was the weighted cost of living index for the six capital cities. On the basis of this index, the Harvester equivalent in 1919 was 10/11 per day or £3-5-6 per week³. However, the union had only claimed 65 shillings as the minimum.

The employers' advocate, Alex Scovell, questioned Sutcliffe regarding the weighted index for the thirty major towns (which included the capital cities) and the minimum wage outcome if this index were used instead of that for the six capital cities alone. It transpired that if the thirty major towns index were used the outcome would have been 10/8 per day or £3-4-0 per week⁴ which was the amount that the employers had offered. Scovell argued that, since the clothing

1. Transcript, op. cit., April 10, 1919, pp. 62-74.

2. ibid., pp. 62-63.

3. ibid., p. 63.

4. ibid.

industry was also carried on in many of the major towns, it was more appropriate to use the thirty towns index.

Higgins questioned Scovell as to whether the employers wanted different wage rates to be awarded for the capital cities and the country towns. Scovell suggested that basing the minimum wage on the cost of living in the six capital cities would be unfair to employers in the country towns who would have to pay wages related to the higher cost of living in the cities. If, he argued, an award should be made on the basis of the six capital cities then the employers would argue that a separate award should be made for the country towns. Higgins' response was that if the index for the thirty towns were applied it would be unfair to employees who lived in the cities where most of the industry was located and where the cost of living was higher. He also argued that differentiation between the country and the city on the basis of differences in the cost of living implied that he should also differentiate between capital cities. This would have meant a male minimum wage of 65/6 in Melbourne but 68/6 in Sydney and would have exacerbated the problem of interstate competition which the employers wished to avoid⁵.

Most of the respondents were, in fact, located in the major cities. Herbert Carter produced evidence

5. ibid., p. 65.

to show that only 66, or 13 per cent, of the respondents were located in country towns, that all were very small firms with few employees and that none were engaged in the manufacture of ready made clothing⁶. He therefore argued that if the minimum wage were based on the lower thirty towns index it would disadvantage the majority of employees covered by the claim. The employers' advocate persisted in supporting the thirty towns index but Higgins indicated that his preference was to use the six capital cities index for determining the minimum wage because this had been the basis for previous cost of living adjustments. In addition, a single wage rate for all employers, regardless of where they were located, would be in the interests of industrial peace⁷.

With respect to the female living wage the union called seven female witnesses to testify regarding their income and expenditure for the year 1918. However, it soon became apparent that Higgins thought the union had not adequately prepared its case. He expressed his dissatisfaction about the quality of the evidence and made suggestions as to the kind of evidence that the union should be bringing in support of their claim⁸. The cause of Higgins' dissatisfaction was similar to that described by Powers in 1918: that

6. ibid., pp. 69-70.

7. ibid., pp. 71-73.

8. ibid., p. 124.

the witnesses were not typical of the women they were supposed to represent and that no attempt had been made to take into account the fact that some expenditure should be attributed to more than one year.

Of the seven female witnesses called⁹ only one represented the level of skill which was awarded the rate of 28 shillings under existing awards, and for which £2 was claimed under the claim, that is a trouser or vest hand in ready made clothing manufacture. However, she was receiving an over-award payment of two shillings per week at the time of the hearing. All of the other witnesses (except one who was not in the clothing industry and therefore not covered by the claim) were coat hands or coat machinists, three in order clothing for whom £2-16-0 was claimed and two in ready made clothing for whom £2-10-0 was claimed if they put in sleeves and pockets without tacking and £2-5-0 for other machining. The only other witness covered by the claim who received over-award wages was one of the coat machinists in the ready made clothing trade. She was paid 35 shillings per week, an over award payment of 5/6 per week based on the prevailing Victorian award. Details of the seven witnesses are shown on the following table.

9. Details of the witnesses taken from the transcript of evidence, 10 and 11 April 1919, pp. 74-159.

Table 8.1

Schedule of Witnesses Called by the Federated
Clothing and Allied Trades, 10 and 11 April 1919

Order of Appearance	Witness's Occupation	Current Weekly Wage	Award Wage*
1	Coat machinist (ready made clothing)	35/-	29/6
2	Coat hand (order clothing)	32/6	32/6
3	Trouser hand (ready made clothing)	30/-	28/-
4	Supervisor - shirt factory (not covered by claim)	28/-	27/6
5	Coat machinist (ready made clothing)	29/6	29/6
6	Coat hand (order clothing)	32/6	32/6
7	Coat hand (order clothing)	Piece-worker £70 p.a. (= 43 weeks work at weekly rate)	32/6

* Relevant Victorian Wages Boards: Clothing Board and Shirt Board in the case of Witness No. 4.

The living arrangements of the witnesses also varied considerably - two witnesses lived at home, two lived in lodgings, one rented an unfurnished room and another a furnished room. The other witness was allowed to stand down soon after she began giving evidence and her living arrangements are not able to be determined

from the transcript. The two witnesses who boarded paid 15 shillings and 18/6 per week but both had to do their own laundry. In addition, the witness who paid 15 shillings per week for board had to provide her own firewood in winter, soap for her own use and sometimes her own lunches. The other witness who boarded received additional money from her sister. Several of the witnesses did sewing at home to supplement their earnings.

With regard to total earnings, all witnesses testified to the fact that they lost time during the year, particularly at Christmas, for which they were not paid. It was standard practice for firms to close down for at least two weeks at Christmas time and sometimes longer¹⁰. Also some firms chose not to work Saturday mornings and did not require their employees to make up the time during the week. One of the witnesses worked in such a factory and testified to the fact that they were not paid the full rate in these circumstances¹¹. Higgins expressed considerable concern at this situation, querying the interpretation of the Factory Act which allowed this to happen¹². It was his contention that

10. ibid., p. 94.

11. ibid., p. 100.

12. ibid.

"[i]f an employee is hired by the week she must get a full week's pay whether the employer requires her for the full week or not." (13)

After hearing the evidence of the fourth witness, Higgins expressed dissatisfaction with the quality of the evidence on the cost of board and lodgings. He indicated that he wanted evidence on the "ordinary rate" for working girls who had a separate furnished room all found including lunches provided and not the situation where they paid a low rate but were required to assist in the house, do their own laundry and provide their own lunches. Carter, the union advocate, suggested an investigation, authorised by Higgins himself, which would provide the evidence required but Higgins suggested that it was up to the claimant organisation to find the evidence. Carter indicated that he was prepared to obtain the evidence required but was unsure of the best method of obtaining it. Higgins suggested that he subpoena a number of landladies who were willing to give evidence at the hearing itself¹⁴.

When the seventh witness was called, Higgins again expressed dissatisfaction with the evidence particularly with regard to the variation in the items

13. ibid., p. 101.

14. ibid., pp. 124-125.

included. Earlier, he had commented that it would be useful to have statements of receipts and expenditure for a series of years, either three or five, in order to overcome the problem of expenditure on items which would last more than one year¹⁵, an issue which the employers' advocate pursued in his cross-examination of the witnesses. Then there was the problem of items that were not included because "according to their own statements ... they cannot afford them"¹⁶. This, Higgins argued, gave a false impression of what expenditure was necessary to live in reasonable comfort. He pointed out that he had often indicated the kind of evidence that was required in these cases and that care was needed in sifting the evidence but that no effort had been made to heed this advice¹⁷.

At the beginning of the third day of the hearing Higgins returned to this issue.

"I have been thinking over this case and I am more and more convinced that not sufficient care has been taken in the advising in evidence in the case." (18)

He pointed out that it was not the role of the Court to suggest what evidence should be called because it was required to maintain an impartial attitude but he was

15. ibid., pp. 116-117.

16. ibid., p. 154.

17. ibid., p. 155.

18. Transcript, op. cit., 14 April 1919, p. 160.

very critical of the union's selection of witnesses.

"How on earth you came to select those cases to put before me I cannot understand." (19)

Forced to defend his case, Carter blamed the influenza epidemic for his inability to obtain appropriate witnesses, but argued that most females working in the clothing trade had no alternative but to find board and lodging on the best terms they could obtain²⁰. Higgins' response was that

"I have got to consider what the usual case is and among other things what is the board and lodging for a girl who does nothing for her landlady, and I have to find how the wage given in the factory or workshop compares with the cost of living of a girl who does not take in private sewing." (21)

He suggested that one of the female factory inspectors might be able to provide evidence regarding the general situation because of her wide experience of girls working in different industries. Higgins emphasised the fact that it was up to the parties to present sufficient evidence in Court to enable him to draw conclusions. At this point, Alex Scovell, the employers' advocate, suggested that a committee of five women, consisting of two members nominated by the employers, two nominated by employees and one of the female factory inspectors as

19. ibid., p. 161.

20. ibid., p. 162.

21. ibid.

chairwoman, to provide advice on the cost of living for females, particularly the cost of dress which he considered varied so widely that it "was largely a matter for each young lady's mind"²².

Higgins, however, preferred to have the witnesses called to give evidence at the hearing itself on the question of board and lodging as he regarded it the most important issue but

"the matter of the reasonable amount for dress ... would be a matter of subsidiary importance that I would be willing to leave to a small committee." (23)

Whether such a committee was, in fact, formed is not clear but the transcript does not indicate that it was because no further reference is made to it.

The union appears to have used some initiative because they called Brenda Sutherland, superintendent of the Domestic Arts Hostel, to give evidence particularly with regard to the minimum cost of food and other groceries required for reasonable comfort. The Domestic Arts Hostel was attached to the Teachers' College in Parkville and was thus under the jurisdiction of the Victorian Minister for Public Instruction²⁴.

22. ibid., p. 163.

23. ibid., p. 164.

24. The following information is derived from the Reports of the Minister for Public Instruction, for the years 1914-1915 and 1917-1918, VPP, 1915 (2) and 1919 (2).

Studentships were awarded to young women who wished to train as Domestic Arts teachers. The studentship allowance was £50 per year for the first two years and £70 for the third year. The students spent the first two years of their training at the Hostel. The students performed all the required domestic work at the hostel, as no servants were employed, and took it in turns to act in the role of housekeeper who had the task of keeping accounts and overseeing the work of the hostel. The actual cost of keeping the hostel running was taken out of the girls' studentship allowance and the remainder was theirs to do with as they pleased so that there was a substantial incentive for them to practice economy.

The evidence provided by Brenda Sutherland²⁵ proved to be more substantial than that provided by the female operatives. She stated that when she was a student in 1913 and 1914 it cost her £23-24 per year for clothing or about nine shillings per week. She made some clothes herself which enabled her to reduce costs. However, clothing costs had risen substantially by about 30 to 40 per cent in the intervening period. She estimated that the current 1919 cost of her expenditure on clothing would have been about 12/6 per week or £32-10-0 per year. In her evidence she also stated that one

25. Transcript, op. cit., 14 April 1919, pp. 182-191.

of the resident teachers at the hostel, who did not need to go out to her work, spent £22 or about 8/6 per week in 1918 on her clothing. This Sutherland regarded as the minimum amount required to dress decently and comfortably because a person who lived separately from her place of work would incur additional expenditure on hats, gloves, boots and a winter coat which were all expensive items.

On the question of the cost of food, heating, lighting and cleaning materials Sutherland stated that it cost each of the girls in the hostel about 11/6 per week for these items. The cost of rent was effectively met by the Department of Education because it owned the building. Higgins commented that those living in the hostel would be able to obtain economies of scale by bulk buying that would not be available to a single girl living on her own. When asked by Higgins what she considered would be the minimum amount that would be required, taking into account an appropriate amount for rent, to provide a girl with a reasonable standard of board and lodging she replied that it would be about 23/6 or 22/6 at the absolute minimum. She also claimed that it would be cheaper for the girl if she paid a higher amount for board and lodging and had the laundry done for her. During the cross-examination of Brenda Sutherland as to whether 11/6 was really the minimum weekly cost of food, heat, lighting and cleaning,

Higgins interjected with

"I may say that in the case of shearers, it costs them more than that - much higher. It costs over £1 on average after pooling it." (26)

This is the first indication in the transcript that Higgins was not impressed by the direction that the cross-examination of the employers' advocate was taking.

In his cross-examination of the female employee witnesses called by the union, Scovell tried to draw out evidence to prove that the witnesses were either inaccurate or extravagant in their statements of expenditure. He made much of the fact that the schedules were not actual records of expenditure but rather recollections of what the women thought they had spent over the twelve month period and that it would have required prodigious feats of memory in order to accurately recall expenditure recorded in this way²⁷. While Higgins agreed that the statements were not representative he was not inclined to consider them extravagant overall although he did think that one witness spent more than she could afford on clothing. Scovell also tried to obtain an admission that the union, rather than the girls themselves, drew up the schedules that were tendered as evidence²⁸. He

26. ibid., p. 187.

27. ibid., pp. 87-90, 106-107, 111-112, 115-117, 127-133, 140-144, 156-158.

28. ibid., pp. 88, 115, 131, 141.

effectively drew out the evidence that many items included in the statements would not need to be purchased every year, a point with which Higgins agreed. On the other hand, he also tried to prove that the witness who paid 18/6 per week for board and lodging was extravagant. This witness actually slept on a balcony which she claimed she preferred but Scovell implied that this "special room" was the reason that she paid such a "high" rate. Higgins' questioning elicited the fact that if she had a proper room she would have had to pay more than 18/6 per week. The witness indicated that "other girls say that they have to pay about £1 where they board"²⁹ but Scovell claimed that his inquiries had shown that the rates were considerably lower than £1 per week.

In his cross-examination of the seventh witness, who lived at home and paid 17 shillings per week which she considered to be cheaper than could be obtained in lodgings, Scovell claimed that it had been "sworn in evidence here this morning that 15/- is a fair rate"³⁰. Carter objected and Higgins supported him, pointing out that it was not sworn as to whether 15 shillings was a "fair" rate. The basis of Scovell's claim that 15 shillings was a fair amount became evident

29. ibid., 11 April 1919, p. 129.

30. ibid., p. 157.

in his cross-examination of Brenda Sutherland where he stated that the hostel run by the Young Women's Christian Association charged 15 shillings per week as the minimum rate for board and lodging although some rooms cost more. The employers' case, therefore, was that since board and lodging could be obtained at 15 shillings per week then that amount was all it was necessary to allow in estimating the cost of living for a single female. The fact that only a small proportion of females employed in the clothing industry would have been able to obtain accommodation at the YWCA hostel, and that the rest would have to pay prevailing commercial rates elsewhere, was not considered relevant to the minimum wage by the employers. Scovell also implied, during his cross-examination of Brenda Sutherland, that girls working in a factory would not need to dress as well as a trainee teacher but she maintained that

"I dressed plainly and comfortably. I do not see any reason why any factory girl should not be justified in getting what I had." (31)

The evidence of the boarding house keepers³² plainly demonstrated that the employers were quite mean spirited in their attempt to show that the appropriate amount to

31. ibid., p. 188.

32. Details from boarding house keepers based on evidence in transcript 14 April 1919, pp. 191-230.

allow for board and lodging for an adult woman was 15 shillings per week. Seven boarding house keepers were called to give evidence - three had boarding houses in Fitzroy, three in Parkville and one in Carlton. Two of the boarding house keepers did not usually take female boarders as they claimed that the girls could not afford to pay the rates asked which were 22 shillings and 22/6 for a shared room and 25 shillings for a single room. Those who did take female boarders charged £1 for two girls sharing a room and 15 shillings to 18 shillings if three girls were prepared to share. Thus to obtain board at the rate the employers advocate claimed was adequate they had to be prepared to share a room with at least two other girls. In all cases they had to do their own laundry but those charged the lower rates had to supply their own firewood and lighting for their rooms as well.

In his cross-examination of the boarding house keepers, Alex Scovell took the line that these boarding houses were each in a "good" locality and hence the reason for the "high" rates charged. He questioned each of the witnesses on whether they knew of boarding houses where rates of 15 shillings or 16 shillings per week were charged. Most had "heard" of such places but were unable to give any details. They indicated that in boarding houses where lower rates were charged the boarders could not be provided with good quality food or

other comforts such as a single room³². Scovell also suggested that their houses were not of the class at which "factory girls" would be likely to live. On the other hand, Higgins questioned the boarding house keepers very closely on what they would charge a female who had a room to herself, with all meals provided, did not have to provide anything herself such as firewood or lighting fuel, nor do their own laundry. They all claimed that for this they would charge at least 22 shillings per week and preferably 25 shillings per week if they were to make a reasonable profit.

Higgins had suggested that a lady factory inspector be called and Margaret Cuthbertson, Senior Inspector of Factories and Shops under the Victorian factory legislation, gave evidence based on her wide experience. She had been an inspector of factories and shops since the establishment of the Factories and Shops Act in 1896. Most of her evidence related to working conditions in the factories and the claim for a forty-four hour week. However, she was closely questioned by Higgins³³ on the appropriate standard of board and lodging for

"a normal healthy girl, [who] has to work for her living, and she has no parents or people to help her, and she has to find

32. ibid., pp. 197, 203, 226-227.

33. ibid., 15 April 1919, pp. 257-266.

her board and lodgings, and laundry and so on." (34)

Cuthbertson's response was that it would not be possible for a factory girl to afford a separate room at the current wage rates. Higgins was very insistent on the necessity of considering a separate room and what it would cost. He argued that factory girls should not be forced by economic necessity to share a room and that it was within his power to fix a minimum wage which would enable them to obtain a separate room³⁵. She considered that

"decent board for a girl would cost 25 shillings per week, that is, with a decently furnished room to herself." (36)

Scovell, however, questioned her on her statement that shared accommodation could not be obtained at less than 17/6 per week if a girl wanted to live decently.

Higgins also questioned Cuthbertson on what she considered to be "a fair sum" to allow for clothing without allowing for the fact

"that tailloresses can do much more for themselves in the way of clothes without spending very much but assuming for my purpose that they do not put in a stitch in their own clothes - assume that they had to buy their own clothes: what would be a fair sum?" (37)

34. ibid., p. 258.

35. ibid.

36. ibid., p. 259.

37. ibid., p. 262.

but she was not prepared to provide such an estimate. There followed a cross-examination by the employers' advocate in which he attempted to show that certain expenditures of the witnesses were extravagant. The expenditure of one of the witnesses on clothing was £34-11-6 which Scovell considered excessive. However, as Higgins pointed out, this witness did not spend anything on amusements, magazines, church fees or newspapers, nor on fruit, powder or perfume which were given to her³⁸. In defence of this witness Herbert Carter argued that if Brenda Sutherland's figure of £23-24 per year six years earlier was adjusted for the estimated increase in the cost of clothing, that is 30 to 40 per cent, then in 1919 the current cost would have been £34 per year or 13 shillings per week whereas the expenditure of the witness who was claimed to be extravagant averaged 13/3 per week. His point was that, while expenditure on some items of clothing might seem extravagant (Scovell had laid great stress on this witness's purchase of twelve blouses) the total expenditure was not out of line with estimates based on Brenda Sutherland's evidence. Cuthbertson was able to confirm that the cost of clothing had risen substantially since before the war³⁹. Carter then argued that a woman working in the clothing

38. ibid., p. 263.

39. ibid., p. 265.

trade should not be penalised in her wages because she had the ability to reduce her expenditure by making her own clothes⁴⁰. This concluded the union's case with regard to the cost of living for females.

The employers' case on the cost of living was relatively brief⁴¹. Scovell claimed that the minimum rate would apply to only about ten per cent of the female employees in the clothing industry⁴². In support of their case they submitted as evidence the Report of the New South Wales Board of Trade in which the President, Mr Justice Heydon, fixed the living wage for women at 30 shillings per week in December 1918 and the Report of the South Australian Arbitration Court judgement in September 1918, by Mr President Brown in the Printing Trades case where he fixed a bedrock living wage for females of 27/6 per week⁴³. These two awards have been discussed more fully in Chapter 6.

To briefly restate the main points of these awards, Heydon based his judgements on the needs of the humblest class of adult female worker who lived away from home (even though those who lived away from home

40. ibid.

41. ibid., pp. 304-307.

42. ibid., p. 306.

43. ibid., pp. 304-305.

appeared to be a small minority of female workers)⁴⁴. However, he did not think it necessary to make allowance for those who chose to live in a rented room rather than a boarding house⁴⁵. In the South Australian case, the bedrock living wage was assessed to be 27/6 based on evidence that the cost of board and residence was from 15 shillings to 17/6 per week⁴⁶. Two witnesses gave evidence as to their expenditure on clothing from which was obtained a weekly average of nine shillings for one and 7/9 for the other. In both cases they made their own clothes⁴⁷. Brown did not consider the question of whether the allowance for clothing should or should not be based on females making at least some of their own clothes.

Higgins noted that Mr President Brown had effectively allowed ten shillings for everything beyond the cost of board and lodgings. He then commented further

"His Honor: If £1-2-6 is the proper board and lodging rate for a single woman and if 10 shillings were added it would be 32/6.

44. New South Wales Industrial Gazette, Vol XV, No. 2, February 1919, p. 220.

45. ibid.

46. 2 SAIR, p. 51.

47. ibid.

Mr Scovell: Yes, on those figures.

His Honor : And if I thought the margin should be bigger it would be beyond that again." (48)

With this comment Higgins appears to be indicating to Scovell that he considers the employers' evidence regarding the cost of board and lodging to be too low and that he is thinking of awarding a wage in excess of 32/6. At this point Scovell explained the basis of the employers' offer of 32 shillings for females, that is, the wife's third of the male wage plus 50 per cent. The employers did not bring any further evidence of their own regarding the cost of living for females simply relying on the arguments laid out in the two judgements submitted to support their case, as they considered that the issue had already been adequately covered. They were more concerned with the claim for 44 hours⁴⁹.

In summary, the evidence presented to Higgins on the cost of living for females was as follows:

- (1) The average weekly wage of the seven female operatives called to give evidence was 31/5 but the average weekly earnings from employment were 28/5. The difference was due to the fact that all were stood down without

48. Transcript, op. cit., April 15 1919, p. 305.

49. ibid., p. 307.

payment over the period of the Christmas factory shutdown and some lost pay at other times of the year when work was slack.

- (2) The average total weekly expenditure for the seven witnesses was just over 32 shillings. All of the witnesses had supplementary sources of funds - either by sewing at home or donations from relatives.
- (3) The evidence from the boarding house keepers suggested that the minimum rate that they would charge a female for a single room and board would be 22/6 but some suggested 25 shillings. Brenda Sutherland suggested that the absolute minimum would be 22/6. Margaret Cuthbertson suggested that the rate for decent board and lodgings was 25 shillings.
- (4) The average expenditure of the witnesses on clothing was about £25-13-4 per year or 9/10½ per week. However, the range of expenditure was quite wide as one witness spent only £4-10-0 for the year or less than two shillings per week while another spent about £34-10-0 or just over thirteen shillings per week. The evidence of Brenda Sutherland suggested that the 1919 cost of her expenditure on clothing as a student six years previously would be about £32-10-0 per year or 12/6 per week.

Margaret Cuthbertson indicated that, in her opinion, an expenditure of £34-10-0 was extravagant.

- (5) The judgement of Mr President Brown of the South Australian Arbitration Court in the Printing Trades case suggested that he allowed 10 shillings to 12/6 per week for all things in addition to the cost of board and lodging (which he estimated at 15 shillings to 17/6 per week).

- (6) The New South Wales Board of Trade set the female living wage at 30 shillings but there was no indication as to how this amount was allocated between board and lodging and other expenditure.

It is interesting to note that the union did not present Mr Justice Powers 1917 award in the Theatrical Employees' case to support their claim of £2 per week nor did Higgins refer to it. Powers awarded 35 shillings per week in 1917 which was based on an examination of the cost of living for females. His award was based on an estimate of not less than 17 shillings per week for reasonably comfortable board and lodging, three shillings per week for fares to and from work and 15 shillings per week for clothing, laundry expenses and other expenses. Powers apparently did not

allow for a single room in his estimate of the cost of board and lodging.

In his preliminary judgement⁵⁰ on the female living wage which was made on 6 May 1919, Higgins canvassed the evidence presented to him on the cost of living for females. On the basis that a furnished separate room with board would cost at least 22/6 per week he estimated the annual expenditure on this item alone would be £58-10-0. If he added to this the average annual expenditure on clothing of the seven witnesses, that is, £25-13-4 per year, the total expenditure on these two items would be £84-13-4 or 32/6½ per week. However,

"[t]his total expenditure is reached without allowing to the girl anything to 'come and go on' - nothing for train or tram fares, nothing for provision for sickness and old age, nothing for union or lodge, nothing for amusements or church, nothing for stamps or journals or books, nothing for giving assistance to others. The average for these sundries, according to the seven schedules, is £12-6-4 per annum." (51)

This implied an additional expenditure of about 4/9 per week. Adding the three items together gives a total annual expenditure of £96-19-8 or about 37/4 per week. But this is not what Higgins awarded.

50. 12 CAR, pp. 691-695.

51. ibid., p. 694.

He then referred to the evidence contained in the report of the South Australian Printing Trades case in which two budgets were published. The average annual expenditure on clothing in these two budgets was £21-18-9 and for sundries it was £8-4-8. Adding these amounts to the £58-10-0 estimated for board and lodging gave a total annual expenditure of £88-13-5 or approximately 34/1½ per week.

A further calculation was based on the ratio of his minimum award for males, that is, 65 shillings to the minimum awarded by the Victorian Clothing Board for males, that is, 50 shillings. This implied a 30 per cent increase in the minimum wage for females if the same proportionate increase was to be awarded. On this basis the minimum female rate should be 36/4 per week. To further complicate the issue Higgins also based a calculation on the minimum rates that Seebohm Rowntree had estimated for males and females before the war. These were 25 shillings for females and 44 shillings for males. Adopting the same ratio would give a minimum of approximately 36/11 per week.

According to the evidence of Brenda Sutherland the amount to allow for board and lodging and clothing would have been £58-10-0 plus £32-10-0 which totalled £91 per year or 35 shillings per week but this figure did not include any estimate of expenditure on sundries. The union claimed that the total necessary expenditure

was £2-6-6 per week although they had only claimed £2 but Higgins did not think that allowing 15 shillings per week "for all that a girl may fancy"⁵² on clothing was fair to the employers.

As a consequence of all this calculation, there were five possible wage rates based by one method or another on the evidence submitted. They were:

- (1) An amount of 35 shillings per week based on Brenda Sutherland's estimate for board and lodging and clothing but which did not include an allowance for sundries.
- (2) An amount of 36/11 per week based on the application of the ratio derived from Seebohm Rowntree's estimates.
- (3) An amount of 36/4 obtained by increasing the female minimum wage by the same proportionate amount as the male minimum wage had been increased (based on the Victorian award).
- (4) An amount of 34/1½ based on the evidence of expenditure on clothing and sundries in the South Australian Printing Trades case and a minimum of 22/6 per week for board and lodging.
- (5) An amount of 37/4 per week based on the average expenditure of the seven witnesses who gave evidence at the hearing.

52. ibid., p. 695.

In addition, there was the claim by the union of £2 per week and the offer by the employers of 32 shillings per week.

Higgins, in his wisdom, awarded 35 shillings per week⁵³. There is no explanation to show how he reached this amount rather than one of those listed above despite his emphatic directions to the parties to produce sufficient evidence in Court on which he could base conclusions. In addition, it was the same as the amount awarded by Powers in 1917. His judgement implies that he allowed 22/6 per week for board and lodging, 10 shillings per week for clothing based on the average expenditure of the seven witnesses (strictly speaking this averaged 9/10½ per week) and 2/6 per week for sundries. It was this latter amount, in particular, that was not based on any reading of the evidence. Admittedly, Brenda Sutherland's estimate was exactly 35 shillings per week but this was based on 22/6 for board and lodging and 12/6 for clothing with no allowance for other expenditure. Even an average of the five different wage rates would have resulted in a wage of nearly 36 shillings per week.

It has been suggested that Higgins based his award on the "going rate" for unskilled female labour but there is no indication in the transcript of the

53. ibid.

hearing that evidence on what wages employees were paying to unskilled female labour was submitted to Higgins nor did he make any comment to this effect in his judgement (in contrast to the Harvester judgement). Only one of the witnesses, who was a trouser hand in ready made clothing, represented the minimum award rate of 28 shillings and she was receiving 30 shillings per week. The only witness who was receiving 35 shillings per week was a coat machinist in ready-made clothing. Her award wage under the Victorian award was 29/6. Under the Federal award coat hands and coat machinists in ready made clothing received 40 shillings per week.

The fact that Powers' 1917 award in the Theatrical Employees' case was neither submitted in evidence by the union nor mentioned by Higgins is somewhat puzzling. Even if he did not agree with Powers' basis for awarding 35 shillings, effectively 17 shillings for board and lodging and 18 shillings for clothing and sundries, he could have got around it by arguing that there were differences in needs between females employed in theatres in 1917 and unskilled female clothing workers in 1919. On the other hand, Higgins frequently ignored Powers' decisions, an attitude which appears to have rankled with Powers⁵⁴.

54. Colin Forster, "Indexation and the Commonwealth Basic Wage, 1907-22", Australian Economic History Review, Vol. XX, No. 2, 1980, footnote 34, p. 108.

The failure of the union to refer to the amount awarded in this case, however, or indeed to any of the other Federal cases other than Higgins' own judgement in the Rural Workers' case, to support their claim for a minimum of £2 per week is quite surprising. Even in its references to the Rural Workers' case the union was more interested in that part of the judgement which awarded equal pay to females employed in "men's jobs" than in the wage awarded to females in the "women's jobs".

CHAPTER 9 : PREVAILING WAGE RATES

During the hearing of the Clothing Trades case Mr Justice Higgins had insisted on adequate evidence regarding the cost of living for single adult women being presented to the Court. With respect to wages, however, he did not indicate that he required more detailed evidence than was produced which was, in fact, quite limited. He could have requested that a number of employers produce, in confidence, their wages books in order to obtain more detailed evidence on actual wages being paid to different classes of employee in the clothing industry. This he did not do. Nor did he request any evidence on wage rates actually being paid in other industries where women were employed in large numbers. It is difficult, therefore, to determine what knowledge he had about the "going rate" for unskilled adult females in the early months of 1919.

Higgins did have detailed evidence on existing award rates. The union had produced a matrix table which showed the existing award rates in each of the States covered by the claim. From this table Higgins would have been able to see that the minimum was about 28 shillings. However, because there was a severe shortage of female labour it is likely that the "going rate" for various classes of skill was higher than those prescribed in the awards. The evidence¹ indicates that

1. Discussed in Chapters 3, 4 and 5.

over-award wages were being paid but there is little evidence to indicate by how much actual wages exceeded award rates or for which classes of work.

Some evidence on actual wages was presented to the Court by the female witnesses at the hearing² but only two (of those who would have been covered by the Clothing Board award) were receiving over-award wages. Of these one, a coat machinist, was receiving 35 shillings per week, 5/6 (19 per cent) over the existing award rate in Victoria. However, machining coats, particularly pockets and sleeves, was a class of work which required a high level of skill and the females with the best skills were very highly sought after. Hence the high over-award payment. Those with lesser skills were less likely to attract large over-award payments, if any at all. Four of the other witnesses, who were coat hands/machinists, did not receive any over-award payment. The only other witness to receive over-award wages, a trouser hand, was paid only two shillings or seven per cent over the award rate for trouser hands. This limited evidence could not have been sufficient to indicate to Higgins that the "going rate" for unskilled adult females was 35 shillings per week.

2. See Table 8.1, Schedule of Witnesses, p. 201 above.

The determination of the "going rate" of wages for an unskilled adult female is extremely difficult. It is easier to argue what it could not be rather than state confidently what it actually was. There were two main sources of officially collected wages data available. The first of these was published by the Commonwealth Bureau of Census and Statistics (CBCS) and the second by the Chief Inspector for Factories in Victoria and South Australia. Both sources have their limitations and do not necessarily indicate the "going rates".

Beginning in 1913, the CBCS published "the current rate of wage payable in different callings and in occupations in various industries"³. The data collection was limited to the rates payable to adult workers because of difficulties in obtaining reliable data for apprentices, improvers and other juvenile workers⁴. However, it is important to note that the data referred to wages payable and not wages paid, that is, it was based on official rates as specified in awards, determinations or agreements in force at 31 December of the relevant year. Where official awards, determinations or agreements were not in existence then

3. Commonwealth Bureau of Census and Statistics, Labour Report, No. 8, 1917, p. 66.

4. ibid.

"the ruling union or predominant rate of wage being paid was ascertained from employers and secretaries of trade unions"⁵. The latter data could have given some information on "going rates" in those industries or occupations which were not covered by awards but this data is "hidden" in the averages as they were published.

The average wage rates published by the CBCS "represented the arithmetic average of the rate of wages payable in all classified occupations"⁶. The averages were "weighted" but because there was not sufficient data available to determine occupational "weights" they used industry "weights", that is, rates were weighted by the relative importance of an industry group as an employer⁷. The resulting statistics were termed "the weighted average nominal weekly rate of wages payable to adult workers"⁸. The "averages" published by the CBCS were, therefore, a statistical construct based largely on prevailing award rates. Keeping all of these qualifications in mind, the data for female workers in 1917 and 1918 are shown in Table 9.1⁹.

5. ibid.

6. ibid.

7. ibid., p. 67.

8. ibid., p. 69.

9. CBCS, Labour Reports, No. 8, 1917, p.70 and No. 9, 1918, p. 84.

Table 9.1: WEIGHTED AVERAGE NOMINAL WEEKLY RATE OF WAGES PAYABLE TO ADULT FEMALE WORKERS FOR A FULL WEEK'S WORK, IN INDUSTRY GROUPS, 31 DECEMBER 1917 and 1918.

INDUSTRY GROUP	1917	1918
Food, Drink, Tobacco, etc.	26/4	29/3
Clothing, Hats, Boots, etc.	29/7	30/9
All Other Manufacturing	30/4	32/-
Domestic, Hotels, etc.	33/5*	34/1*
Shop Assistants, Clerks etc.	30/6	32/4
All Groups	30/5	31/9

* Includes value of board and lodging where supplied.

Source: CBCS Labour Reports

These averages include all levels of skill as well as the value of board and lodging where supplied as in the Industry Group Domestic, Hotels, etc. It is interesting to note that the CBCS valued board and lodging at 15 to 19 shillings per week in Sydney, 14 shillings in Melbourne, 15 shillings in Brisbane, Adelaide and Hobart, and 22 shillings in Perth¹⁰. These values were the same for 1917 and 1918. Since Table 9.1 shows only nominal average wages in broad

10. ibid.

industry groups it does not provide any basis for drawing conclusions about the "going rate" for unskilled adult females.

The other source of officially collected data available was in the Reports of the Chief Inspector for Factories in Victoria and South Australia which were published in each State's Parliamentary Papers. The Report of the Victorian Chief Inspector for Factories and Shops for 1917¹¹ was presented as evidence to the Court but, as Higgins himself noted¹², this source also had its limitations. Firstly, the data represented wages paid for only one week of the year. For all except shop employees, it was the first week in December when industry, particularly the clothing trade, was usually busy. For shop employees, the "sample" week was the second week in March, some nine months earlier, so this data was not comparable with the data for factory employees.

Secondly, details of wages paid would have included overtime earnings, that is, total earnings in that week. This would have been of particular importance for factory trades where the data was collected in a "good" week. Hence, the average weekly

11. Report of the Chief Inspector for Factories and Shops for the year ended 31 December 1917, VPP, 1918 (2), Appendix B, pp. 180-185.

12. Transcript, op. cit., pp. 167-169.

wage derived from this data would give an overestimate of the average ordinary time wage for a full year particularly in industries, such as clothing, where a substantial amount of time was lost. Thirdly, the data included wages for all levels of skill. Thus, an "average" wage derived from this source would have produced a "high" average, that is, it would have been biased upwards by the inclusion of overtime earnings and margins for skill. For these reasons the reported average wage in "trades" in which a high proportion of women were employed do not suggest that the "going rate" for unskilled adult females (the base of Higgins' award) was 35 shillings per week in early 1919. The averages are shown in Table 9.2¹³.

If it were the case that the going rate for unskilled female labour was in the vicinity of 35 shillings per week, then the reported averages should have been higher than those recorded here. Table 9.2 shows how wide was the range of "average" wages for adult women in 1917 and 1918. Only two "trades", Boots and Shoes and Millinery, had averages over 35 shillings per week in December 1918. Taking into account the fact that these "averages" included overtime and margins for

13. Reports of the Chief Inspector for Factories and Shops for the Years ended 31 December 1917 and 1918, Appendix B, VPP, 1918 (2) and 1919 (2). Note: this data relates to the first week in December in each year.

Table 9.2: AVERAGE WEEKLY WAGE FOR ADULT FEMALES IN
SELECTED TRADES
VICTORIA, 1917 AND 1918

TRADE	1917	1918
Bagmakers	28/5	30/4
Biscuits	25/3	30/3
Boots and Shoes	32/11	36/-
Clothing	31/6	32/4
Cardboard Box Making	27/-	33/4
Confectioners	24/9	30/1
Dresses, Mantles	32/7	33/3
Cordage, Rope	27/1	28/5
Hotel Employees	25/1	26/-
Jams, Pickles, Sauces	26/6	27/10
Knitting, Hosiery, etc.	31/-	32/3
Millinery (Headwear)	33/1	35/5
Office Cleaners	27/5	27/11
Printing - Bookbinding (Metropolitan)	29/5	33/11
Shirt Making	32/-	31/8
Underclothing	31/2	32/-
Woollen Trade	27/11	29/9

Source: Reports of the Chief Inspector of Factories and Shops.

skill it is unlikely that the unskilled in these two industries were receiving 35 shillings per week. Nor is it likely that wages for the unskilled would have risen to 35 shillings by the time of the Clothing Trades case which began to be heard in April 1919.

In South Australia wages data were also officially collected by the Chief Inspector of Factories and Shops and published in an annual Report to Parliament. Average earnings per week were compiled

from wages records supplied by employers¹⁴. As in Victoria this data would also have included overtime earnings where it occurred and the calculated average would have included all skill levels. On the other hand, it appears that the wages records supplied information for the whole twelve months rather than for a "sample" week as was the case in Victoria. As a result, therefore, the average is not influenced by seasonality factors as was the data for "sample" weeks. Table 9.3¹⁵ shows average weekly earnings for selected trades in South Australia for 1917 and 1918.

Table 9.3 : AVERAGE WEEKLY EARNINGS FOR ADULT FEMALES
IN SELECTED TRADES, SOUTH AUSTRALIA,
1917 AND 1918

TRADE	1917	1918
Biscuits	20/3	23/2
Boots and Shoes	31/-	33/10
Clothing (Readymade)	27/11	29/10
Confectionery	22/-	22/2
Dressmaking	29/10	29/5
Hotels	n.a.	24/11
Fruit Preserving	25/-	27/8
Millinery	28/8	31/-
Paper Bags, etc.	24/1	24/5
Printing, etc.	26/3	28/5
Restaurants	22/8	22/4
Shirtmaking	26/9	29/7
Tailors	28/11	32/9

Source: Reports of the Chief Inspector of Factories.

14. Report of the Chief Inspector of Factories, year ended 31 December 1917, SAPP, 1918 (2). Paper No. 28, Appendix D, and 1918, SAPP, 1919 (3), Paper No. 31, Appendix D.

15. ibid.

Although comparisons are difficult because the averages for South Australia were based, in many cases, on small numbers of employees it can be clearly seen that average earnings tended to be lower than in Victoria. This would reflect the fact that the averages were based on full year data so that higher earnings in "good" seasons are balanced by the lower earnings of "bad" seasons when short time was often worked. It should be noted that, while trades in which shortages of female labour were significant, namely the manufacture of boots and shoes and clothing, had the highest averages at the end of 1918 all were less than 35 shillings per week.

Another source which can give an indication of the level of wages being offered is newspaper advertisements. An examination of the "Situations Vacant" columns of The Age newspaper for the period 1 January to 30 April 1919 revealed sufficient information on which to base reasonable conclusions about the "going rates" for the various occupations in which females were mainly employed. It was also noticed that, during the period examined, many advertisements were repeated week after week, indicating the difficulty that some employers experienced in obtaining labour and in many instances the actual wage offered was not indicated, merely the promise of "good wages". Non-wage inducements included "morning tea supplied" and "Saturdays free".

The "Situations Vacant" advertisements relevant to the clothing industry revealed that the overwhelming majority of vacancies were for coat hands or coat machinists. The wages offered for coat hands ranged from 32/6 (the Victorian award rate for coats made to order) up to 40 shillings per week. Under the Federal award coat hands and coat machinists were awarded 44 shillings in order tailoring and 40 shillings in the manufacture of ready made clothing. The highly skilled "pocket" machinists were being offered up to 50 shillings per week but there was no separate classification in the Federal award for this skill.

There were fewer advertisements for trouser and/or vest hands and the wages offered ranged from 30 shillings per week (machining boys' knickers) to 35 shillings per week. The award rate for trouser/vest hands was 28 shillings per week in Victoria and under the Federal Award they were granted 35 shillings. This would appear to suggest that the award of 35 shillings was fixed at the leading edge of the "going rate" offered for trouser/vest hands in early 1919.

In occupations outside the clothing industry, however, the wages offered in advertisements were not as high. While for cooks the wage rate ranged from 25 to 35 shillings per week (with 30 shillings the most common rate) the rates for kitchenmaids ranged from 20 shillings to 27/6 per week for those with experience.

Wages offered for pantrymaids were 20 shillings to 22/6 per week while waitresses could obtain 20 to 25 shillings per week. House and parlour maids and "generals" were also offered 20 to 25 shillings per week. The range for laundresses was from 20 to 30 shillings per week.

Advertisements for female clerks and typists were relatively few for it appears that the commercial colleges operated placement services as well as teaching the skills of shorthand, typing and bookkeeping thus making it unnecessary for employers to advertise. One advertisement offered an 18 or 19 year old shorthand-typist/bookkeeper 30 shillings per week to start while "thoroughly competent experienced" typist-stenographers were offered 45 to 50 shillings per week. In contrast, the rates for nurses ranged from 15 shillings for probationers up to 42 shillings per week for fully qualified nurses.

The available evidence, therefore, suggests that while some trouser and vest hands were already receiving 35 shillings per week when Higgins made his award in the Clothing Trades case it is by no means certain that this was the "going rate" for unskilled adult female labour. On the other hand, evidence suggests that prevailing wage rates for females rose rapidly during 1919 and 1920. An examination of the average weekly wage data obtained from the Reports of the Victorian Chief Inspector for Factories and Shops

for 1919 and 1920¹⁶ (see Table 9.4) shows a significant increase in female average earnings in the clothing industry compared with December 1918 (keeping in mind that the data refers to total earnings and to a particular week). Between December 1917 and December 1918 average earnings for females in the clothing trade

Table 9.4: AVERAGE WEEKLY WAGE FOR ADULT FEMALES IN SELECTED TRADES, VICTORIA, 1919 AND 1920

TRADE	1917	1918
Bagmakers	30/4	40/10
Biscuits	33/8	41/5
Boots and Shoes	41/6	41/5
Clothing	42/4	47/8
Cardboard Box Making	35/1	43/8
Confectioners	35/11	42/11
Dresses, Mantles	37/8	45/4
Cordage, Rope	33/5	41/3
Hotel Employees (Restaurant)	28/3	50/1 (33/11)*
Jams, Pickles, Sauces	34/2	37/10
Knitting, Hosiery, etc.	35/7	43/7
Headwear	36/8	44/9
Office Cleaners	30/-	n.a.
Printing - Bookbinding (Metropolitan)	33/10	44/2
Shirt Making	37/2	44/8
Underclothing	36/2	42/9
Woollen Trade	37/7	50/1

* In 1920 Hotel employees were split into two groups
Hotel Employees and Restaurant with 114 and
2,162 female employees respectively.

16. Report of the Chief Inspector for Factories and Shops for the year ended 31 December 1919, and 31 December 1920, Appendix B, VPP, 1920 and 1921 (second session).

had risen from 31/6 to 32/4, an increase of ten pence or 2.6 per cent. The increase between December 1918 and December 1919 was ten shillings or 23.6 per cent.

For males in the clothing industry average earnings increased from 69/5 in December 1917 to 71/3 in December 1918 - an increase of 1/10 or 2.6 per cent, the same relative increase as for females. Between December 1918 and December 1919, however, male average earnings increased by 9/3 to 80/6, a proportional increase of 13 per cent. Thus between December 1918 and December 1919 females working in the clothing industry experienced a relatively greater increase in their average earnings than did males. This resulted in an increase in the relativity of female average earnings to male average earnings from just over 45 per cent in December 1917 to almost 53 per cent in December 1919 before falling back to just over 50 per cent in 1920 (see Table 9.5¹⁷).

It is evident that the increases in average earnings in the clothing industry cannot be attributed to the Federal award. Indeed, as Table 9.4 shows, there were significant wage increases in other industries as well. Average earnings in the Woollen Trade, for example, rose 1/10 between December 1917 and December 1918 (6.5 per cent) and 7/10 between December 1918 and December

17. Derived from the Reports of the Chief Inspector for Factories and Shops for 1917, 1918, 1919 and 1920, op. cit.

Table 9.5: RELATIVITY OF FEMALE AVERAGE WEEKLY EARNINGS TO MALE AVERAGE WEEKLY EARNINGS, SELECTED TRADES, VICTORIA, 1917 TO 1920 (%)

TRADE	1917	1918	1919	1920
Bagmakers	48.7	48.3	44.7	53.6
Biscuits	42.8	51.4	48.0	52.7
Boots and Shoes	46.7	46.7	47.5	47.7
Clothing	45.3	45.4	52.6	50.2
Cardboard Box Making	39.3	46.7	48.4	49.5
Confectioners	42.4	44.4	49.4	49.1
Dresses, Mantles*	43.1	40.2	44.4	44.7
Cordage, Rope	47.9	46.2	49.0	46.7
Hotel Employees	53.6	54.5	51.1	-
Jams, Pickles, Sauces	44.7	42.1	49.5	46.6
Knitting, Hosiery, etc. *	44.1	41.7	43.1	46.4
Office Cleaners	50.1	47.8	47.2	n.a.
Printing - Bookbinding (M)	39.9	43.5	43.2	45.2
Shirtmaking*	42.0	40.3	45.8	46.1
Underclothing*	44.2	45.7	51.6	48.9
Woollen Trade	43.2	44.8	51.2	57.3

* Relatively few men employed in these trades.

Source: Reports of the Chief Inspector of Factories and Shops.

1919, an increase of 26.3 per cent, almost the same proportional increase as in the Clothing trade. There were also other industries where female employees made substantial relative gains in average earnings compared with male average earnings (see Table 9.4) especially in Biscuits, Cardboard Box Making and the Woollen Trade.

The explanation for these increases lies in the response of employers to prevailing economic conditions. In 1919, employers of female labour were faced with a reduction in labour supply. At the end of

the war the marriage rate increased¹⁸ as marriages delayed by the war took place and the new wives withdrew from the labour force. At the same time demand for female labour was increasing. Relative freedom from import competition, due to the dislocation of international trade during and immediately after the war, encouraged employers to expand production to satisfy the demand for goods generated by a growing population and buoyant economic conditions. The clothing industry, in particular, benefited from the increased level of consumer demand. In order to satisfy their requirements for female labour employers were forced to offer "wages considerably in excess of legal rates"¹⁹. In these circumstances award rates quickly became irrelevant as employers competed with each other to attract labour.

While the evidence suggests that prevailing wage rates for females increased significantly during 1919, it does not support the claim that Higgins based his award on prevailing rates. Even if it were the case that the "going rate" for unskilled female labour was around 35 shillings per week at the beginning of May,

18. Commonwealth Bureau of Census and Statistics, Commonwealth Year Book, 1920, p. 98.

19. Report of the Chief Inspector for Factories and Shops for the year ended 31 December 1920, VPP, 1921 (Second Session), p. 839.

when Higgins made his interim award, the rate would only have been prevailing for a very short time. To argue, therefore, that Higgins based his decision on prevailing rates implies a high degree of knowledge, on Higgins' part, about wage movements and wage rates up to April 1919. No evidence on the matter was presented at the hearing and there is no evidence that he obtained the information from any other source. At the hearing, Higgins showed much more concern with the problem of establishing what it cost to meet the basic living requirements of a single adult female who had only herself to support than with establishing what unskilled females employed in the clothing industry, or in any other industry, were actually being paid.

Whatever were Higgins' reasons for fixing 35 shillings in 1919 as the living wage for a single adult female, it was not the amount but rather the relativity to the male minimum wage that was to form the basis of future wage increases for women. The relativity of the living wage for females to the male minimum rate fixed in the Clothing Trades case was approximately 54 per cent (53.8 per cent to be precise). Rather than investigate changes in the cost of board and lodging and clothing for females, as had been the practice previously, the method of maintaining the relativity of the female minimum wage to the male minimum wage was adopted. For example in March 1921 the Clothing Trades

Award was varied by agreement between the parties²⁰. It was agreed that the male minimum rate should be increased to 77 shillings per week, which was the current Federal minimum wage, and the female minimum should be increased to 42 shillings per week, a relativity of 54.5 per cent. (Indeed, if the agreement had kept strictly to the relativity of the 1919 award the amount for females would have been fixed at 41/6).

When presenting this agreement to the Court for ratification, the parties argued that the increases were justified

"because of the increased cost of living since the [original] claim was lodged, and since the award was made, affects the justice of the terms of the original award." (21)

Mr Justice Powers, who heard the claim, agreed that circumstances had changed and granted the award variation. There was, however, no presentation of evidence regarding the changes in the female cost of living. The male minimum had been adjusted according to the established method of looking at the changes in the cost of living index published by the Commonwealth Statistician and then an amount was set for females which maintained the relativity of the existing award.

20. 15 CAR, In the matter of The Federated Clothing Trades of Australia and J.A. Archer and others, pp. 187 ff.

21. ibid., p. 188.

CHAPTER 10 : CONCLUSIONS

Much has been written about the "Harvester judgement" and its significance for wages policy in Australia. There have also been many explanations for Higgins' seven shillings per day award in that case¹. Some, like Sawkins², argued that Higgins chose this amount from "the range of such actual ruling daily wage rates (viz. from 6/- to 7/6 per day)"³ but Sawkins did not explain why Higgins "selected one of the ruling wage rates of the time"⁴ rather than another. Anderson claimed that Higgins was influenced by the rates being paid by government instrumentalities and municipal councils as well as the capacity of the industry to pay seven shillings per week⁵ but Hancock⁶ rejects this explanation on the ground that

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1. See P.G. McCarthy, "Justice Higgins and the Harvester Judgement", op. cit., p. 25, footnote 34 for a bibliography.
 2. D.T. Sawkins, The Living Wage in Australia, Melbourne University Press, Melbourne, 1933, p.14.
 3. ibid.
 4. ibid.
 5. George Anderson, "Industrial Tribunals and Standards of Living" in F.W. Eggleston (ed), Australian Standards of Living, Melbourne University Press, Melbourne, 1939, p. 68.
 6. K.J. Hancock, "The First Half Century of Australian Wage Policy - Part 2", Journal of Industrial Relations, Vol. 21, No. 2, June 1979, p. 131.

"Higgins repudiated the 'reputable employers' criterion ... denied that he could discharge his statutory duty 'by accepting the average rates which employers think fit to give on individual bargaining with men seeking work' ... [and] ... rejected the notion that his decision might be affected by the employers' profits." (7)

McCarthy analysed the "Harvester" decision using the Transcript of Proceedings of the hearing as a major source⁸. He concluded that Higgins'

"prime purpose was to try and safeguard the living standards of those who, for a variety of reasons, might periodically slip below that level which society thought adequate for a reasonable living." (9)

McCarthy argued that "two main streams of thought induced Higgins to choose 7s. per day"¹⁰. Firstly, seven shillings per day was regarded as an ideal which had been in existence since the 1890s¹¹. Secondly, seven shillings per day was regarded as the "collective bargaining equivalent"¹², that is, the amount that would be agreed if employers and employees were able to negotiate on equal terms¹³. Hancock takes McCarthy's

7. ibid.

8. McCarthy, "Mr Justice Higgins and the Harvester Judgement", op. cit., p. 26.

9. ibid., p. 31.

10. ibid., p. 33.

11. ibid.

12. ibid., p. 34.

13. ibid., p. 35.

analysis a step further and argues "that Higgins was disposed from the outset to prescribe 42 shillings and that nothing in the case shifted his view"¹⁴.

While these arguments are persuasive, the case for any particular explanation is largely conjectural. In the end we cannot be sure what motivated Higgins. This uncertainty as to Higgins' motivation applies also to the female living wage. The Transcript of Proceedings in the Clothing Trades case does not provide us with a clear idea of Higgins' thinking nor does it provide conclusive evidence to explain Higgins' choice of 35 shillings per week as the minimum amount that would provide an adequate living wage for a single adult female with only herself to support.

As with the Harvester case quantitative evidence of the living costs of single adult females was presented at the hearing of the Clothing Trades case. There were seven employee witnesses who testified as to their expenditure in the previous twelve months. However, Higgins considered that "these schedules of a few girls ... are very unsatisfactory as a guide"¹⁵. He suggested that the union call evidence from boarding house keepers, regarding the cost of board, and from the Superintendent of the Domestic Arts Hostel regarding the cost of clothing. In his written judgement, Higgins

14. Hancock, op. cit., p. 131.

15. 13 CAR, p. 693.

provided a detailed calculation of the cost of living based on this evidence which indicated a minimum wage of approximately 37 shillings but he did not adopt this rate for his minimum. In the Harvester case also the "quantitative" evidence pointed to a higher living wage than Higgins actually awarded¹⁶.

In the Harvester case, Higgins was presented with evidence on the cost of living in Melbourne in the form of eleven family budgets¹⁷. The evidence relating to the cost of living in the Clothing Trades case was also all obtained from Melbourne witnesses. In 1919, however, Higgins had available to him a cost of living index, published by the Commonwealth Statistician which enabled him to compare the relative cost of living in a number of major towns and cities. When adjusting the male living wage Higgins referred to this index to help him decide by what amount to increase the wage¹⁸.

From the data, given in evidence by a representative of the Statistician, it is apparent that the cost of living in Sydney was considerably higher than in Melbourne, and both were higher than the other capital cities. The weighted average cost of living index for the six capital cities was higher than for

16. McCarthy, "Mr Justice Higgins and the Harvester Wage", op. cit., p. 32.

17. ibid.

18. Transcript, op. cit., p. 65.

Melbourne but lower than for Sydney¹⁹. It was the latter measure that Higgins used to adjust the male living wage in 1919. However, there was no consideration given to whether the living wage for females, based on Melbourne evidence, would provide an adequate living wage in Sydney for a single adult female with only herself to support.

While there was difficulty in obtaining witnesses from Sydney in April 1919, because of the recent influenza epidemic, evidence of the cost of board and lodging could have been obtained by other means if Higgins had insisted on having it. The only indication of the cost of living for females in Sydney was that provided by the employers, which was the declaration of the female living wage in December 1918, by the New South Wales Board of Trade. Higgins, in his judgement, merely mentioned it in passing as if it had no influence on his decision. He paid more attention to the judgement of the President of the South Australian Industrial Court. The latter judgement contained further evidence of the cost of living in the form of personal budgets which the New South Wales declaration did not²⁰.

19. ibid.

20. 13 CAR, p. 695.

In the Harvester case Higgins looked at wage rates ruling elsewhere²¹. In the Clothing Trades case the only evidence Higgins heard relating to actual rates being paid was that presented by the seven female witnesses. Evidence of average earnings from the report of the Victorian Chief Inspector of Factories and Shops for 1917 was presented at the hearing but Higgins rejected this because of its shortcomings. The only other evidence about wage rates that Higgins is known to have received related to award rates in the clothing industry in all of the States covered by the plaint and the "living wage" awards in New South Wales and Victoria. Hence there is no evidence to support the view that Higgins based his decision on ruling rates.

Nor was there a consensus view, equivalent to the seven shillings per day "ideal" for unskilled males, about either the appropriate amount that would provide an adequate living wage for a single adult woman or the appropriate relativity to the male living wage that should be applied. Indeed, award relativities varied considerably from State to State. While Higgins insisted on obtaining adequate evidence regarding the cost of living for a single adult female he made no attempt to obtain more detailed evidence on the "going rates" for unskilled female labour either in the

21. 2 CAR, p. 6.

clothing industry or any other industry where large numbers of females were employed. In his judgement, where he summarised the evidence, he makes no mention of actual wages being paid by employers as he did in the Harvester case. Higgins used the lowest rate of the Victorian Clothing Board determination (28 shillings) to demonstrate that an "adult girl"²² would not be receiving a wage sufficient to meet "the reasonably necessary requirements of a woman living in a civilised community"²³.

Hancock and McCarthy both suggest that, in the Harvester case, Higgins already had in his mind before the hearing an idea of what the minimum wage should be²⁴. However, there is no evidence that would support such a view with regard to the Clothing Trades case. In the Rural Workers' case, Higgins clearly regarded female labour as a "problem"²⁵ but it was a problem because there was

"a tendency to substitute women for men in industries, even in occupations which are more suited for men ... the result of women being paid lower wages than men." (26)

22. 13 CAR, p. 693.

23. ibid., p. 691.

24. Hancock, op. cit., p. 131, McCarthy, "Mr Justice Higgins and the Harvester Judgement", op. cit., p. 30.

25. 6 CAR, p. 70.

26. ibid., p. 72.

The answer to the problem, however, was not to set a rate for the job and to pay that rate to the person doing the job, whether male or female. Instead the problem was to be resolved by designating certain jobs as "men's jobs" and requiring that women be paid the male rate if they were employed in them. Where jobs were usually performed by women only the needs of a single woman with only herself to support were to be considered in fixing the wage. In the Clothing Trades case Higgins reaffirmed the principles laid down in the Rural Workers' case, citing the work of Seebohm Rowntree to support his position²⁷.

Rowntree had, in 1918, published a "scientific" study of the needs of the labouring classes²⁸. Based on the population of York, England, the study drew conclusions about the average number of dependants that the average male and female worker supported. Higgins quoted Rowntree's conclusions that the majority of female workers did not have any dependants to support as well as his view that a woman's minimum wage should not be at a family rate as supporting evidence for his own conclusions in the Rural

27. 13 CAR, p. 700.

28. B. Seebohm Rowntree, The Human Needs of Labour, Thomas Nelson and Sons Ltd, Edinburgh, 1918.

Workers' case²⁹. However, the link between Higgins' views and those of Rowntree may have been closer than Higgins implies in his judgement. It is interesting to note that Rowntree's book is prefaced by a quotation from Higgins³⁰ and McCarthy indicates that Higgins corresponded with Rowntree³¹. It appears that Rowntree provided the "scientific" study that Higgins and Powers had urged the Commonwealth Statistician to do³². Higgins' biographer indicates that they met in England while Higgins was on furlough in 1914³³. It is likely, therefore, that Higgins' ideas had influenced Rowntree. Higgins converted Rowntree's suggested minimum rates for males and females into Australian equivalents. The result indicated a female living wage of just under 37 shillings per week³⁴. Here, then, was independent evidence supporting the evidence obtained from the seven female witnesses which also pointed to a minimum wage of 37 shillings per week. Yet Higgins decided otherwise.

29. 13 CAR, p. 672.

30. Rowntree, op. cit., p. 7.

31. McCarthy, "Mr Justice Higgins and the Harvester Judgement", op. cit., p. 29, footnote 50.

32. 13 CAR, p. 693.

33. Ricard, op. cit., p. 211.

34. ibid., p. 692.

In this context, it is important to note that, during the negotiations between the parties to fix the piecework rates and the margins for skill, the agreed minimum wage for adult females was increased to 37 shillings per week³⁵. The reason given for this increase was that there was a considerable amount of lost time in the clothing industry and the extra two shillings was added to compensate for this. However, the fact that the employers were willing to agree to paying a minimum wage of 37 shillings per week suggests that, at the time the negotiations took place, that is, between Higgins' interim award in May and the final award in October, employers may have been already paying this amount. The minimum rate of 37 shillings per week was incorporated into the award making it the legal minimum in the clothing industry. This meant that the relativity of the female minimum rate to the male minimum rate in the final award was 56.9 per cent, only slightly more than the relativity set in the Victorian Clothing Board award (56 per cent).

The fact that the parties to the Clothing Trades award agreed to a higher minimum wage for adult females than had been awarded by Higgins raises the question of whether his decision to fix the female living wage at a lower level than for males was as

35. ibid., p. 700.

detrimental to women as the decision to limit female employment by requiring that they be paid the same rate as men in certain jobs. It was always open to employers to pay more than the minimum rate where necessary but few were willing to pay men's rates to women in those occupations where they were legally bound to do so. Thus women were concentrated in those areas of employment where wages rates for women were set at a lower rate than for men.

In economic terms, the fixing of a low minimum wage is not a problem. As Riach points out³⁶, if the wage rate is lower than the marginal productivity of a particular class of labour then the economically "rational employer, interested in minimising his costs of production"³⁷ will be induced to substitute the cheaper labour (females) for the more expensive labour (males) provided that there is nothing to prevent him from doing so. However, according to economic theory at low wage rates the quantity of labour supplied will be less than the quantity demanded. This is because at higher wage rates more people are willing to enter the labour market than when wage rates are low. On the other hand, the quantity of labour demanded is greater when wage rates are relatively low than when they are

36. Riach, op. cit., p. 100.

37. ibid.

high. Consequently, at low wage rates competition between employers to satisfy their demand for cheaper labour will force them to pay more to obtain the labour they require. As the wage rate offered increases, in theory, so will the quantity of labour supplied. The level of wages will continue to rise until the quantity of labour supplied is sufficient to satisfy demand. This process should ensure that the going wage rate is greater than the minimum if the minimum is set at too low a level.

Indeed, during the period leading up to the Clothing Trades case, employers had continually complained about the "shortage" of female labour, that is, the wage rates offered were not high enough to induce an adequate supply of female labour to enter the market. Employers were, therefore, forced to increase the wages that they offered to females in an attempt to overcome the shortage. However, many employers found that, instead of increasing the supply of labour, the higher wages merely encouraged existing employees to change jobs. This was because other, non-economic, institutional and societal factors were operating to reduce the supply of female labour. The general expectation that married women would not enter the paid labour market severely reduced the supply of female labour so that at any wage level female labour supply was less than if married as well as unmarried females

freely entered the labour market. At this time the level of wages had little effect on the decision of married women to stay out of the labour market.

Although we do not know why Higgins decided to award 35 shillings per week as the female living wage in 1919, the fact that he awarded a lower living wage for females than for males was not out of step with the decisions of other industrial tribunals in Australia up to that time. Award rates for females were always significantly lower than for males. In instances where Wages Boards had fixed equal rates of pay for males and females these were overturned on appeal, usually by the employers, as in the case of the Victorian Commercial Clerks' Board determination in 1913³⁸.

To argue that Higgins could have awarded equal minimum wages for males and females in the Clothing Trades case is to ignore contemporary beliefs that to do so would have been economically and socially disastrous as Mr President Brown of the South Australian Industrial Court argued in the Printing Trades case³⁹. Where Higgins did depart from the usual practices of industrial tribunals in fixing wages was in his decision to award equal rates of pay to females in occupations which were regarded as men's work. In the long term,

38. 19 ALR, pp. 142-154.

39. 2 SAIR, pp. 40-43.

this decision was to have a more far reaching impact on women's wages than the decision to award a lower living wage for females.

The long term consequence of the decision to distinguish between "women's jobs" and "men's jobs" was to limit employment opportunities for women to a narrow range of occupations regarded as being suitable for them. The concentration of female employment in a few occupations affected wage rates by "reducing the relative scarcity of females in occupations where they are acceptable"⁴⁰. That is, women were largely competing with each other, rather than with men, for relatively scarce job opportunities resulting in lower wage rates. Further evidence that the decision to limit female employment in men's jobs adversely affected female wages can be found in the statistics which show that average female ordinary time earnings for full-time employment is still significantly below the level for males despite the fact that equal pay has been formally achieved⁴².

40. Riach, op. cit., p. 100. Emphasis in original.

41. ibid., p. 101.

42. R.G. Gregory and R.C. Duncan, "Segmented labor market theories and the Australian experience of equal pay for women", Journal of Post Keynesian Economics, Vol. III, No. 3, 1981.

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