

IN THE COMMONWEALTH CONCILIATION AND ARBITRATION
COMMISSION.

In the matter of the *Conciliation and Arbitration Act 1904-1961*
and of

applications for variations of awards and determinations made and agree-
ments certified under the said Act re the basic wage prescribed thereby
for adult male employees.

BASIC WAGE INQUIRY, 1964.

*Variations of awards, determinations and agreements—Basic wage for adult
male employees—Restoration of automatic adjustment provisions—
Economic capacity to sustain increase—Balance of payments—Condi-
tion of the rural industry—Competitive position of secondary industry
—Investment—Employment—Company income—Money and banking
—Personal consumption expenditure—Restrictive trade practices—
Conciliation and Arbitration Act 1904-1961 ss. 33 (1)(a) and (b),
33 (4), 36 (1), 44A, 68—Judgments delivered and awards, determina-
tions and agreements varied.*

Notification of a dispute (C No. 821 of 1964) concerning employees
covered by the award dated 16th January, 1952, and known as the Metal
Trades Award, 1952, as re-printed on 15th August, 1953⁽¹⁾ was given
pursuant to section 28 of the *Conciliation and Arbitration Act 1904-1961*
by the Amalgamated Engineering Union (Australian Section) and others.

The dispute was listed before the Commonwealth Conciliation and
Arbitration Commission (Commissioner Winter), in Melbourne, on 5th
February, 1964.

R. J. Hawke for The Sheet Metal Working, Agricultural Implement
and Stovemaking Industrial Union of Australia.

A. E. Horsburgh and *J. Hutson* for The Amalgamated Engineering
Union (Australian Section).

T. J. Murphy for the Australasian Society of Engineers.

J. W. Bevan for The Boilermakers Society of Australia and another.

D. L. McBride for the Electrical Trades Union of Australia.

O. O'Reilly for the Metal Trades Employers' Association.

I. Little for The Victorian Chamber of Manufactures and others.

L. J. Eggington for The Victorian Employers Federation.

On the same day the claimants, pursuant to section 33 (4) of the said
Act, raised the question of whether the Commission as constituted by a
Commissioner was empowered to deal with the matter. The Commissioner
thereupon referred the question to the President whose opinion was that
the Commission in Presidential Session was empowered to deal with the
matter.

On 14th January, 1964, an application (C No. 10 of 1964) was filed on
behalf of The Australian Workers' Union for an order varying the award,
dated 3rd December, 1956 and known as the Pastoral Industry Award,
1956.⁽²⁾

1964.
MELBOURNE,
Feb. 6, 7.

Commr.
Winter.
Feb. 19-21.

Kirby C.J.,
Gallagher,
Moore and
Nimmo JJ.,
Commr.
Winter.

MELBOURNE,
Feb. 25-28;
March 3, 10-13,
17-19;
April 2, 3,
7-10;

SYDNEY,
May 6, 13, 14;
MELBOURNE,
June 9.

Kirby C.J.,
Gallagher,
Moore and
Nimmo JJ.

(¹) 103 C.A.R. 463

(²) 86 C.A.R. 645

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Kirby C.J., Gallagher, Moore and Nimmo JJ.]

The matters, together with a dispute (C No. 834 of 1964) concerning the deletion of the basic wage and margin provisions in Federal awards and the insertion of a "total wage" in lieu thereof, were listed before the Commission (Kirby C.J., President, Gallagher, Moore and Nimmo JJ., Deputy Presidents and Commissioner Winter), in Melbourne, on 19th February, 1964, for the purpose of taking appearances and the hearing of submissions on matters of procedure.

At the commencement of proceedings the following statement was made by the Commission:—

All the members of the Commission concerned in the three matters listed today have at this stage assembled for the purpose only of considering the order in which the matters listed should proceed. I have already announced that the first two matters will be heard and determined by a bench comprising Mr. Justice Gallagher, Mr. Justice Moore, Mr. Justice Nimmo and myself, and that the third matter will be heard and determined by a bench comprising those members of the Commission and Mr. Commissioner Winter. We are all of the view that it would be of advantage to the parties, might shorten the hearing of all these matters and considerably reduce the cost of the proceedings if, assembled as we now are, we indicated to the parties the *prima facie* view which we have all come to as to the order of hearing.

In all the circumstances it seems to us that *prima facie* the Commission should deal with the cases now before it in order of filing. We assume that there would be no objection to the first two cases, namely, the claims by the metal trades unions and The Australian Workers Union being dealt with concurrently. If this course were adopted it would be necessary for the parties to be ready to proceed with the hearing of the third case, namely, the application of the employers immediately after the conclusion of the hearing of the unions' applications or so soon thereafter as may be convenient to the Commission.

If the course proposed by us is adopted, Mr. Commissioner Winter is prepared to be present during the hearing of the first two cases so that he will be better informed for the purposes of the third case in which he will be a member of the bench. Unless there were opposition to this course, it is our suggestion that he might have a seat on the bench during the hearing of the unions' applications, although he would not be participating in the hearing nor would there be in any sense a joint hearing of the unions' applications and the employers' application. Mr. Commissioner Winter would not participate in any discussions concerning the Basic Wage applications either on or off the bench and he has asked me to indicate to the parties that if he desired to ask any questions relevant to the later case which might occur to him during the hearing of the Basic Wage cases he would delay asking them until the hearing of the subsequent case. It is our view that if the parties agreed to this course there could ultimately be a considerable saving of time and expense because when the Commission commenced hearing the third case Mr. Commissioner Winter would be fully informed on all material in the first two cases relevant to the third case.

We make this announcement in an attempt to assist the parties and to expedite the hearing of all these matters.

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[Kirby C.J., Gallagher, Moore and Nimmo JJ.]

On the same day, pursuant to section 36 (1) of the said Act the Attorney-General, on behalf of the Commonwealth of Australia, announced his intervention in the public interest.

On the same day employer respondents to application C No. 10 of 1964 pursuant to section 33 (1)(b) of the said Act raised the question whether the Commission in Presidential Session was empowered to deal with the application and the Commission recorded the opinion that as so constituted it was empowered to deal with the matter.

Having heard the submissions of the parties on matters of procedure, the Commission, on 21st February, 1964, made the following statement:—

We have given consideration to the various submissions put to us on behalf of the parties and the Commonwealth and particularly the submission made by Mr. Robinson that too much weight should not be given to the fact that the applications of the unions were filed at a time earlier than that of the employers. Nevertheless in the circumstances of these cases we think that that fact is sufficient to tip the balance in favour of the cases of the unions coming first. Indeed such a priority is in substance confirmed by Mr. Robinson's submission that in essence the application made by his clients is a counterclaim to the claim made by the unions. We consider that if it were possible it would lead to the most expeditious and convenient handling of all the issues before us if all three matters could be heard together. However, it is our view that we are precluded from taking this course because of the insertion in the Act of section 44A in 1959. We see no reason, however, why the Commission constituted by the same members cannot at the same time deal with the two matters falling within section 33.

In the result and subject to what will be said in a minute we propose to give effect to our earlier proposals. Mr. Commissioner Winter will be seated on the dais but separately from members of the Commission during the hearing of the Basic Wage cases and will not as was said earlier in any sense participate in those cases.

Having considered all that was put by Mr. Robinson and by Mr. Hawke we think that all three matters are so nearly equally entitled to priority of treatment that, although the applications of the unions should be heard first and before the application of the employers, it would be unfair in all the circumstances not to proceed with the latter at the conclusion of the hearing of the former and without the delay caused by a reservation of judgment. We therefore say in the exceptional circumstances confronting us that at the conclusion of the hearing of the first two cases the hearing of the third case should proceed and conclude before decisions in the first two cases have been reached. We wish to make this clear now so that the parties may give consideration to their attitude towards material attempted to be used in the first two cases. We hope that this intimation may temper the desire of Mr. Robinson to intrude into the first two cases material more appropriate to the third and the fear of Mr. Hawke that Mr. Robinson would be gaining some real advantage if he should manage to do so.

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We do not think it appropriate to refer any questions to the Commonwealth Industrial Court.

We think the Commonwealth should make its submission immediately after the applicants in the various cases.

The matters thereupon came on for hearing before the Commission in Presidential Session (Kirby *C.J.* President, Gallagher, Moore and Nimmo *JJ.* Deputy Presidents), in Melbourne, on 25th February, 1964.

- R. J. Hawke* for The Sheet Metal Working, Agricultural Implement and Stovemaking Industrial Union of Australia.
- A. E. Horsburgh* and *J. Hutson* for The Amalgamated Engineering Union (Australian Section).
- B. H. Reis* for The Amalgamated Society of Carpenters and Joiners of Australia.
- T. J. Murphy* for the Australasian Society of Engineers.
- G. B. Atkins* for the Blacksmiths Society of Australia.
- R. T. Scott* for The Boilermakers Society of Australia.
- D. L. McBride* for The Electrical Trades Union of Australia.
- R. Gietzelt* for the Federated Miscellaneous Workers Union of Australia.
- A. McLagan* for the Federated Moulders' (Metals) Union of Australia.
- D. B. McKenzie*, of counsel, for The Australian Workers' Union.
- J. Robinson*, of counsel, for the Metal Trades Employers Association and others and for respondents members of the Australian Wool Growers and Graziers Council.
- J. R. Kerr Q.C.* and *A. E. Woodward*, of counsel, for the Attorney-General of the Commonwealth of Australia (intervening).
- E. N. West* for Her Majesty the Queen in Right of the State of Tasmania (intervening).
- J. Paterson* and *K. H. McLeod* for employee organizations affiliated with the Australian Council of Salaried and Professional Associations (intervening).
- V. B. McMullen*, *E. G. Deverall* and *C. L. Glover* for employee organizations affiliated with the High Council of Commonwealth Public Service Organizations (intervening).

The hearing of the matters proceeded accordingly until 14th May, 1964, when the Commission reserved its decision.

On 6th May, 1964, the following statement concerning the joining of applications to vary basic wage provisions in other awards, determinations and agreements was made by the Commission.

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[*Kirby C.J., Gallagher, Moore and Nimmo JJ.*]

We have been advised that it is the general intention of unions parties to the Commission's awards to request the Commission to decide applications for a variation similar to that made in application C No. 821 of 1964, that is the Metal Trades case, of the basic wage clauses in their respective awards on the evidence, material and submissions presented in the Metal Trades case C No. 821 of 1964 and the Pastoral Industry case C No. 10 of 1964 from the commencement of the hearing of those cases.

A number of such applications has already been made to the Commission and these will be listed on Tuesday, 26th May, 1964, at 11 o'clock in Melbourne when consideration will be given to ordering that they be joined with cases C Nos. 10 and 821 of 1964 for consideration and decision. There are, however, some of the awards of the Commission in respect of which no such application has yet been made. Unions are notified that similar applications lodged on or before 13th May next will also be listed on the 26th May when the question of similar joinder with the main cases will be considered. Unions are also notified that strict proof of service must be given by affidavit lodged prior to 26th May, 1964. Unions are also notified that when serving their application upon the respondents they may also serve a written notification in the following terms:

"Upon the calling on of the attached application the applicant will ask the Commission to hear the matter with the similar applications at present before it by organizations of employees for variation of the Metal Trades Award (C No. 821 of 1964) and of the Pastoral Industry Award (C No. 10 of 1964) re the basic wages prescribed thereby. The latter applications may be inspected at the Principal Registry or any District Registry of the Commission.

The Commission has been advised that the above request will be made by the applicant and has intimated that any party agreeing to the request need not be represented on the date mentioned and its non-representation will be regarded by the Commission as consent to the request to be made by the applicant.

This intimation is given by the applicant at the request of the Commission which desires to avoid the necessity of persons attending merely to formally consent to the request, that is to formally consent to the joinder of the hearing of the within application with the Metal Trades and Pastoral Industry applications at present before the Commission. This standard consent by employers does not imply that the employers consent to the applications of the unions in any of the cases. On the contrary they merely consent to the joinder and still oppose the union's application as in the main cases.

The procedure described is similar to that followed in basic wage inquiries for the convenience of all parties to federal awards. The effect of the joining together of the various applications will be that each application so joined will be decided upon the evidence, material and submissions presented in the Metal Trades and Pastoral Industry cases from the commencement of the hearing of those cases.

The Registrar and Deputy Registrar in Melbourne and the Deputy Registrars in the various capital cities are available to give additional information on this subject on request."

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Following the listing of the above matters applications were filed by parties to the awards, determinations and agreements listed in the schedule to the Judgment hereunder for variation thereof in so far as they concern the basic wage prescribed therein.

These applications came on for hearing before the Commission in Presidential Session (Kirby C.J. President, Gallagher and Nimmo JJ. Deputy Presidents), in Melbourne, on 26th May, 1964, when the Commission, after hearing the parties to these applications, directed that the said applications be joined with the hearing of matters C Nos. 821 and 10 of 1964.

On 9th June, 1964, the President, on behalf of the Commission, announced the following decisions.

Decisions:

- 1 Unanimous decision that the unions' claim for the restoration of automatic quarterly adjustments be refused.
- 2 Unanimous decision that the application of The Australian Workers Union for the deletion from the Pastoral Industry Award of the basic wage for station hands be granted. This means abolition of the disparity of 1s. per week in respect of station hands.
- 3 Unanimous decision that the basic wages of adult male employees covered by Federal awards be increased. The Commission is equally divided in opinion on the amount of the increase, the President and Mr. Justice Moore being of the opinion that it should be 20s. and Mr. Justice Gallagher and Mr. Justice Nimmo that it should be 10s. The Act (section 68) provides that if the Commission is equally divided in opinion the question shall be decided according to the opinion of the President. The decision of the Commission is therefore that the basic wages of adult male employees covered by Federal awards shall be increased by a uniform weekly amount of 20s.
- 4 The new rates will come into operation from the beginning of the first pay period to commence on or after 19th June, 1964, subject to special cases.
- 5 The basic wages which shall be increased by 20s. per week shall be those prescribed for adult males in the Pastoral Industry Award, as varied by Decision No. 2 above, and those basic wages as at present prescribed for adult males in the Metal Trades Award and all the awards respectively the subject of the applications and disputes which have been ordered by the Commission to be joined for hearing and decision with the applications concerning the Pastoral Industry Award and the Metal Trades Award. The awards concerned are set out in the schedule to the Judgment of the President and Mr. Justice Moore.

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Rulings and Guidance:

- 6 Applications already filed but not filed in time for joinder before the judgment, and applications filed after that date and which will be filed up to and including Monday, 15th June next, will be dealt with in Melbourne at 10.30 a.m. on Friday, 19th June next. Subject to submissions and any special cases it is proposed that in the case of applications filed before the delivery of the Judgment the Orders will provide for the same commencing date of the new rates as in the original cases. In other cases the parties are commended to confer and endeavour to reach agreement as to the commencing date but if the Commission has to decide the commencing date it intimates that the time of filing and serving applications will be an important factor as will also be reasons for delay.
- 7 In some cases in which a conditional joinder was made by the Commission a warning is given that some unions have not complied with the conditions imposed in relation particularly to filing affidavits of service and in relation to service itself. These defects must be rectified before Orders can be made in those cases.
- 8 In the Metal Trades Award and in awards generally the basic wage for adult females is prescribed at seventy-five per cent. of the basic wage for adult males. The result of the increase of the basic wages for adult males by 20s. per week will be to increase the basic wage for adult females in these awards to seventy-five per cent. of the new basic wage for adult males.
- In those awards which do not contain such a provision but which prescribe basic wages for adult females of a stated amount equal to seventy-five per cent. of that for adult males the rate will be re-calculated to give effect to this decision.
- 9 In the Metal Trades and in many other awards the rates for juniors and apprentices of both sexes are prescribed at a percentage of the basic wage for adults in which cases the existing provisions of the awards will cover proportionate increases for such juniors and apprentices. In awards which do not contain such provisions applications may be made to the Commission and will be dealt with by the appropriate member of the Commission.
- 10 Where awards provide basic wages on other than a weekly basis—for example annual, monthly, daily, hourly or the like—these rates will be increased to give effect to the increase now prescribed for weekly basic wages. The base for such calculations shall be the increased weekly basic wage now prescribed and not the amount of the increase itself.
- 11 As stated in paragraph 4 the new rates generally will operate from the beginning of the first pay period commencing on or after 19th June instant subject to special cases. The types of special case in mind are those in which the period of pay is other than weekly or fortnightly.

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- 12 The Orders varying the awards before the Commission in this hearing will contain any necessary consequential variations and will be drawn by the Industrial Registrar and settled by him or a Deputy Registrar directed by him. It is pointed out that, pursuant to the Regulations, Orders may be settled with or without notice to the parties.

The following reasons for judgment were then delivered and published.

Kirby C.J. and Moore J.:

There are before the Commission two applications to increase the basic wage, one in the Metal Trades Award by the unions parties to that award and the other in the Pastoral Industry Award by The Australian Workers Union. The claims are identical each as lodged being for an increase of 52s. a week. The amount of 52s. is ascertained by applying to the basic wage of September, 1953, movements in the "C" Series Index from the September quarter 1953 until the June quarter 1961, and thereafter movements in the Consumer Price Index until December, 1963. A figure of 20s. is arrived at by this method of attempting to restore the value of the 1953 basic wage. That 20s. is then added to 288s., the present Six Capital Cities' basic wage which for the purposes of the claim would become 308s. Then the assumption is made that national productivity has increased at a rate of one per cent. per annum since 1952-1953. This, when compounded, is ten point four per cent. and ten point four per cent. of 308s. is 32s. which with the 20s. for price movements gives the 52s. claimed.

The "C" Series Index used partly by Mr. Hawke in the above exercise has of course ceased to be published by the Statistician and had become progressively less satisfactory before this happened. We would reject the use of the old index rather than the Consumer Price Index even for Mr. Hawke's purposes in regard to the claim. Indeed Mr. Hawke himself recognised that the Consumer Price Index might be the more appropriate index to use to try to ascertain movements in the cost of living from 1953 onwards. Using that index and applying the same calculations, the amount of the claim would become 31s., representing 1s. for price movements and 30s. for productivity increases since 1952-1953. Mr. Hawke primarily relied on 1952-1953 as a starting point, a matter with which we will deal later, but suggested certain other figures as alternatives if we rejected that starting point. He took the 2s. increase in prices since the 1961 fixation and added to it the 11s. which he submitted represented movements in productivity since 1958-1959 making a minimum suggested increase of 13s. He started from 1958-1959 because, in his submission, the 1960 decision did not apply movements in productivity to the basic wage up to 1959-1960, as was suggested in the 1961 Basic Wage judgment. If the movement in prices is taken back to 1959, because in 1960 there was no allowance for price movements since 1959, the 2s. increase in prices becomes 9s. and the 11s. increase for productivity becomes 12s. making in all 21s. In addition Mr. Hawke put other alternatives, using figures which are different from the figures of wage and salary earners in civilian employment which have heretofore been used in productivity calculations. For this purpose Mr. Hawke added to wage and salary earners employees in

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rural industries, domestic service employees, self-employed persons, employers and members of the defence forces. If this divisor were applied to the Gross National Product at constant prices, the increase in productivity of three point nine per cent. used in the two preceding calculations would become six point one per cent. By taking the 2s. increase in prices since 1961 and using this higher productivity figure the increase would be 20s. and by taking the 9s. increase in prices since 1959 the increase would be 27s. Mr. Hawke suggested one further refinement whereby the six point one per cent. became seven point nine per cent. as the result of introducing terms of trade into the calculation. Using this figure the 20s. becomes 25s. and the 27s. becomes 32s. It follows that Mr. Hawke while not abandoning his 52s. claim could fairly be said to have pressed for an increase of 31s. with alternatives of 13s., 20s., 21s., 25s., 27s. and 32s.

We would add that, in Mr. Robinson's submission, if we applied to the 1961 basic wage a combination of price movements and productivity increases since 1961 the increase would be 10s. 6d., though of course he argued that in principle this was a wrong approach.

These many alternatives over such a wide range emphasise the difficulties which confronted the Commission not only in this case but also in the *Total Wage case*⁽¹⁾ because of the differing results arrived at from the use of differing figures.

AUTOMATIC QUARTERLY ADJUSTMENTS

The unions also asked for the reintroduction of automatic quarterly adjustments, which was opposed both by the employers and the Commonwealth Government. We agree with what was said in the 1961 Basic Wage judgment about automatic quarterly adjustments and we therefore reject this part of the claim.

PASTORAL AWARD DIFFERENTIAL

The Australian Workers' Union asked for the deletion from the Pastoral Industry Award of the basic wage for the station hand which would abolish the disparity of 1s. a week by which the basic wage for station hands is less than that for shearing employees. Mr. McKenzie explained in detail the history of the difference which is related to basic wage concepts which in his submission no longer apply. Mr. Robinson argued that questions of principle were involved and that the employers should be given an opportunity of presenting a more detailed case before the application was fully considered. We appreciate that the difference between these two basic wages was at different times in the past a matter of some significance, not only because statistics were available upon which to adjust these different basic wages, but also because the amounts between them at times were considerable. It might follow that in theory the Commission in Presidential Session should undertake a lengthy exercise to examine the history and perhaps other factors in detail, but, bearing in mind that the amount involved is 1s. and if the application were refused would remain for ever at 1s., we think the unions' application should be granted and the difference between the two basic wages, which is now quite artificial, should be removed.

⁽¹⁾ *Infra* p. 683

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BASE YEAR

Mr. Hawke chose 1952-1953 as a base year because, in his submission, the elimination of automatic adjustments in that year combined with the failure in succeeding years to restore the 1953 standard, had resulted in the real value of the basic wage now being less than it should be. In the 1961 *Basic Wage case*⁽¹⁾ the Commission considered alternatives and rejected 1952-1953 as a proper starting point. In dealing specifically with productivity the Commission used certain productivity figures then before it as part, but only part, of its reasoning in rejecting 1952-1953 and preferring 1949-1950 as a base year from which to consider productivity movements. The figures were not the only reason for rejecting the 1952-1953 starting point as a reading of the whole 1961 Basic Wage judgment will show. The important thing in our view is that in 1961 the Commission after a full consideration of all the material and after hearing lengthy argument came to a decision which in our view was correct and upon which Mr. Hawke now strongly relies as using a proper approach to wage fixation. In our opinion the 1961 decision is the proper starting point for our consideration of the basic wage, both because it was the latest fixation in point of time and because it applied correct principles.

The productivity figures before the Commission in 1961 to which we have referred showed a decrease in productivity between 1950-1951 and 1952-1953, whereas Mr. Hawke was able to demonstrate from figures he produced in this case an increase in productivity over that period. These latter figures were in an index of Gross National Product at constant prices per wage and salary earner in civilian employment. However, later in the hearing and for a different purpose Mr. Hawke produced figures which confirmed the decrease shown by the figures before the Commission in the 1961 case in fact though not in proportion. These later figures were in an index of Gross National Product at constant prices with terms of trade adjustment per head of working population. The conflict shown by these three different groups of figures confirms for us views which the Commission has expressed before about relying too heavily on figures of this kind to control its decisions.

ATTITUDE OF PARTIES

The applicant unions were supported both as to the increase sought and the restoration of automatic adjustments by the State of Tasmania, the Australian Council of Salaried and Professional Associations and the High Council of Commonwealth Public Service organisations, all of which sought and were granted leave to intervene.

The attitude of the employers to the application to increase the basic wage was one of outright opposition, not because employers did not desire a wage increase but because they sought the abolition of the basic wage and the substitution of total wages in the Commission's awards. They also submitted that it was most desirable and consonant with proper economic thinking that movements in wages and other conditions of employment should be kept within movements in productivity. Although this was related to their total wage application, we realise it would also apply to basic wage increases, which will cause movements in wages, at least of employees

(1) 97 C.A.R. 376

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covered by our awards. In view of what is contained in the majority judgment in the *Total Wage case* issued today we do not propose to discuss in this decision the employers' proposal as to the fixation of wages. We content ourselves with saying that we agree with what was said in that decision about that proposal.

It can therefore fairly be put that the applications to increase the basic wage can be considered by us in an atmosphere in which employers are prepared to agree to wage increases, though, it is true, on certain terms. The employers attacked the principles laid down in the 1961 Basic Wage decision, in particular the *prima facie* adjustment for prices. They also attacked the amount awarded. The Commonwealth Government while intervening neither to support nor oppose an increase in the basic wage did not attack the concept of a basic wage, though it criticised in some detail the 1961 Basic Wage decision. On the other hand Mr. Hawke relied strongly on that decision. We consider it necessary to look closely at what was said and done in that case.

In considering the 1961 decision, and indeed in all other relevant aspects of this case, we have taken account not only of the fact that the employers' *Total Wage case* was inextricably interwoven with this case but also of the arguments which were put in that case.

1961 BASIC WAGE DECISION

The decision of the Commission in 1961 to increase the basic wage by 12s. a week was arrived at by looking at a number of factors including productivity, capacity of the economy based on a detailed review of the economic indicators used by the Court and the Commission in turn since 1953, and a consideration of past standards set by basic wage decisions from 1950 onwards. As the Commission said—

"It follows from what we have said on the subjects of capacity, standards and productivity that the new basic wage, the standard of which will in our expectation and hope be maintained for some time, combines in the result our conclusions on fundamental factors in a three-fold way in that firstly it is fixed at the highest amount the capacity of the economy allows, secondly it adopts as a standard that set by the basic wage of 1960 and thirdly it takes account of productivity increases up to and including 1959-1960."¹

Although the 12s. awarded was the same as the amount needed to maintain the standard set by the 1960 decision by adjusting it for price changes, it is not correct to assert that the 12s. increase was granted merely because of the movement in prices. Such an approach ignores the detailed reasons given by the Commission.

In this connection it is necessary also to look at the 1963 Margins decision because it confirms, in Mr. Robinson's submission, an approach by the Commission which he stringently criticised. The 1963 decision, he suggested, demonstrates that in general economic cases the Commission has embraced the doctrine of awarding the sum of productivity and price increases since the last fixation. In 1961, he said, only price movements were relevant because the Commission found that productivity movements were already covered by the 1960 fixation. He said that the ten per cent. increase in margins awarded in 1963 represented the sum of productivity

⁽¹⁾ 97 C.A.R. 376 at p. 413

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and price increases since 1959. We are unable to find in that judgment confirmation of such a mathematical approach. We reject Mr. Robinson's submission that the Commission has, in the light of the 1961 and 1963 decisions, adopted a policy of granting increases which amount to the sum of price movements and productivity increases since the last fixation. His submission is not sustained on a proper reading of either of the decisions accompanying those two increases.

In 1961, having arrived at the figure of 12s. in the manner described, the Commission made a positive finding that it was prepared to assume that the capacity of the economy would continue to be such as to enable the real value of the increased basic wage to be maintained. The 1961 decision explained the Commission's reasoning in some detail. It indicated that there would in each year be a consideration of price movements, but went on to say—

"Since such a consideration of price movements is to take place annually the question remains whether the Commission should at the annual hearing continue to review all factors in the economy to decide whether or not to change the level of the real basic wage. It seems to us that once the question of prices is dealt with otherwise a review of the economy generally and in particular of productivity increases could more properly take place at longer periods of time, say, every three or four years. This statement of our views does not, of course, preclude any party from seeking to exercise its right to come to the Commission more frequently than every three or four years to seek a change in the real basic wage but, except in unusual circumstances, we consider such a period a proper interval between reviews of this kind."⁽¹⁾

Having made it clear that it was open to any party whenever it desired to do so to apply to the Commission to review the real basic wage, the Commission went on to indicate that it anticipated that, in the absence of special circumstances, the next review of the basic wage would be a review only of the money wage; in other words, only a consideration of price movements. Then it said:—

"If our anticipation is correct, in the proceedings next year the only issue will be whether or not the money wage should be adjusted in accordance with any change in the Consumer Price Index. The onus will be on the party opposing such an alteration to show that it should not be made. If the price index has risen the unions may rely *prima facie* on that fact. It will then be for the employers to show that the increase in prices is of an exceptional character such as those referred to by Professor Downing so that it should not be reflected in a basic wage increase or that there is some special factor in the economy which would make it inadvisable to allow the increase."⁽²⁾

The anticipation there expressed was in fact correct in that in the next year and indeed also in 1963 the Commission in the Basic Wage hearings was concerned only with whether there had been a movement in prices sufficient to cause an increase in the basic wage. In fact there was no such increase in prices and therefore the basic wage was not sought to be changed except this year when the application for a 2s. increase for prices was withdrawn by the unions because of the present applications. It is even more important, however, as will be seen from what we say later, that until this year there have been no applications made to the Commission to review the real basic wage.

⁽¹⁾ 97 C.A.R. 376 at p. 387

⁽²⁾ *Ibid* at p. 388

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It is not possible in our view to consider the 1961 decision independently of the conduct of the parties since that decision. Relying on it the unions have waited for three years before making an application for an increase in the basic wage. It has been put to us forcibly by Mr. Hawke that the Commission in 1961 laid down a course of procedure which the unions accepted and upon which they have acted during the past three years. If the Commission did not now implement the 1961 decision there would in his submission be a grave injustice to the unions which had conducted their affairs on the premise that the 1961 decision would be allowed full operation. We consider this submission to be one of importance, because the probity of the Commission must not be in doubt, particularly in view of its statutory role of preventing and settling industrial disputes. The unions have not in fact attempted to increase the real basic wage since 1961 and have conducted their affairs in relation to this Commission on the basis that there would be an annual consideration of price movements but no overall consideration of the real basic wage except at longer periods when they or the employers chose to bring cases.

To reject now the implications of the 1961 judgment might in our view be properly regarded particularly by the unions as a breach of faith by the Commission. It is true that in 1962 when the *Basic Wage case* was first re-listed after the 1961 decision the employers made it clear that they strenuously opposed the implications of the 1961 decision and reserved their right to argue the matter at a later date. The Commonwealth similarly reserved its right so to argue. It is not unfair to point out, however, that the employers did not make their total wage proposal or create any other vehicle for the arguing of those reserved rights until after the unions had applied for the present basic wage increase.

No-one before us has suggested a reversion to the kind of annual review which the Court and the Commission undertook between 1956 and 1959. Such a review would be a clear alternative to the procedure laid down in 1961, but neither the employers nor the Commonwealth Government suggested the Commission should go back to such annual reviews. The employers of course asked for annual reviews of a total wage, but annual reviews of a different kind from those formerly held. The Commonwealth Government expressed the view that there should be reviews of the kind held between 1956 and 1959 but that they should occur at longer intervals. The issue before the Commission is whether an increase should be awarded now, how much it should be and whether it should be alterable in the future either

- (1) *prima facie* by price movements each year with overall reviews at longer periods as suggested by the unions consonant with the 1961 decision, or
- (2) by movements in productivity annually within certain limits as suggested by the employers (although they asked for consideration of a total wage) or
- (3) by a review of all the factors in the economy at longer than annual intervals as suggested by the Commonwealth.

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The decision of 1961 was a deliberate and unanimous departure from the practice of annual reviews since 1956. The bench was presided over by the President, who had presided over all those annual reviews and included Ashburner J. who had participated in two of them.

OVERALL APPROACH TO BASIC WAGE FIXATION

Having confirmed the 1961 decision we now state our overall approach to general applications for alterations in the basic wage. It is necessary to look at the state of the economy, past, present and future. The past state of the economy is relevant not only as the base upon which to assess the present and future but also to see what has happened in the economy since the last assessment. A consideration of the past state of the economy leads to a consideration of its present state, that is, the position at the time of the making of the decision because the ability to pay increases is primarily the existing capacity and the immediate effect of the decision will be upon the economy as it now is. But we also consider the future of the economy, to the extent to which it can be predicted, because any increase in wages awarded will have impact in the future. There are two elements which are given most prominence, one is the movement in prices and the other is the movement in productivity. As to movements in prices both past and future we regard them as of importance because in our view it would be inequitable in an economy developing as rapidly as the Australian economy to allow the basic wage to erode through price movements unless there were some good reason for doing so. This we still regard as fundamental to the duty of the Commission to fix a just and reasonable basic wage. However, in economic reviews even movements in prices must be seen in the context of the economy as a whole. Past or future productivity movements in the sense of Gross National Product per person employed or some analogous concept are also important in our consideration, difficult though they may be to measure with any precision. But they also are considered by us in the overall economic context. Neither price movements nor productivity movements should in our view be applied automatically and inevitably nor should they be the only things considered in a review of the real basic wage.

In this case in arriving at our decision we have looked at movements in the economy since 1961, including price movements and productivity movements; we have considered the present state of the economy and the future to the extent that it is predictable. We have not reached a decision to lump together price and productivity movements since 1961 nor have we merely looked at future movements in productivity as suggested by the employers. We have endeavoured to look at the economy in the round and base our decision on its capacity since 1961, its capacity now and its capacity for the predictable future.

What we have just said is not new. It is consonant with what was said and done in both 1961 and 1963, but in view of some of the submissions made in this case we considered it wise to spell it out in detail.

In our present thinking we agree with the idea of undertaking a general review of the economy every three or four years, subject of course

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to the qualifications contained in the 1961 judgment. In 1964, as in 1961, the state of the economy is such that we are prepared

- (1) to assume that the capacity to pay the present real basic wage will continue until the next review and
- (2) *prima facie* to apply price movements each year, subject to the same qualifications as appear in the 1961 judgment.

At the time the 12s. increase was awarded we were told that it would lead to price increases and so to other economic difficulties. In fact since the 1961 decision there has been virtual price stability although there are now signs of an upward tendency. We are conscious of changed and changing economic circumstances, and in particular that the 12s. was awarded at a time when the economy was comparatively depressed following governmental measures in 1960. We consider however that the desirability of adhering to the 1961 approach for the reasons already given should be the determining factor in this case.

We have reached this conclusion in the knowledge that just as 1961 was a distinct departure from earlier approaches so might it be necessary for the Commission in different circumstances to alter in a minor or even a major way the approach of 1961 which we now affirm. We refer to what the Commission said in the 1961 decision about departing from past practices, which has been quoted in the majority decision in the *Total Wage case* handed down today and to which we adhere. It might happen that either one or both parties might in fact seek more frequent reviews of the real wage and if that situation arose the Commission would have to deal with it, even if it broke the pattern created in 1961 and reaffirmed by us now. However, we leave that to the future because we have decided that this application should be determined here and now. The only departure from the 1961 procedure is that we now consider it preferable for the future to leave it to the parties to apply as they may be advised either for money or real changes in the basic wage. We would not therefore stand this matter over from year to year as has been done since 1961.

ECONOMIC CAPACITY

We turn now to consider economic capacity by reviewing the indicators normally considered by the Commission. It is possible to state on this occasion that the position of each of the indicators is sound and that taken as a whole the economy is in a flourishing condition.

RURAL INDUSTRY

It is expected that overall the volume of rural production will exceed last year's record by two and a half per cent. The movement in the index of volume of rural production has been—

Average 1936-1937 to 1938-1939 = 100					
1960-1961	..	..	..	..	152
1961-1962	..	..	..	..	157
1962-1963	..	..	..	..	168
1963-1964	..	..	..	..	172

It will be seen that the movement in 1962-1963 was greater than was anticipated when the 1963 Margins judgment was delivered.

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The gross value of rural production is expected to reach a new record of £1,621 m., £143 m. above the 1962-1963 level. The value of exports of rural origin is likely to rise from £819 m. in 1962-1963 to £1,014 m. in 1963-1964. It is expected that farm income will increase by £131 m. to £667 m., the highest level since 1950-1951.

It may also be pointed out that there is an upward trend in many world commodity prices, which, generally speaking, are at present a good deal more favourable than they have been for a number of years.

As to wool, production is expected to reach the record level of 1,751 m. lbs. greasy, an increase of five per cent. over the 1962-1963 figure. The average price per pound of greasy wool sold at auction during the seven months ended 31st January, 1964, was 70.69d., a rise of 13.76d. or twenty-four per cent. above the July to January, 1963, figure. The gross value of wool production for 1963-1964 is expected to be £471 m. as compared with £393 m. for 1962-1963 and the value of exports at £466 m. as compared with £394 m.

The "Wool Outlook" December 1963, of the Bureau of Agricultural Economics says that—

"The average price for wool sold at Australian auctions in the period July to November, 1963, is substantially above the average for corresponding periods in recent years. A review of the overall supply-demand situation suggests that, although certain weaknesses could arise, indications at present are for a continued strong market outlook for wool. With the improved price situation and a record clip, the value of Australian wool production in 1963-1964 will be higher than in any year except 1950-1951 and 1956-1957."

As to wheat, production in 1963-1964 is estimated at a record of 323 m. bushels or 16 m. bushels more than the previous record of 307 m. bushels in 1962-1963. The area sown to wheat for grain showed a further increase in 1963-1964 despite excessively wet conditions at planting time. The gross value of wheat production in 1963-1964 is estimated at £232 m. compared with £225 m. in 1962-1963. The value of exports in 1963-1964 is expected to reach £182 m. or £58 m. greater than the previous year, and overseas prices have risen 1s. 6d. or more per bushel. Wheat and flour exports are expected to reach a record level of about 260 m. bushels compared with 183 m. bushels in 1962-1963 and so the disposal of the huge current crop seems virtually assured. Moreover, a new wheat stabilisation scheme came into effect in 1963.

As to meat, cattle numbers were at the record of 18.5 m. head and cattle slaughterings increased. During the first five months of 1963-1964 beef and veal production increased by eight per cent. Exports of beef and veal again rose, the United States of America remaining the most important market and on 18th February, 1964, an agreement was announced between Australia and the United States of America concerning future meat marketing arrangements. Although the agreement has been under attack in the United States of America it must at present be accepted as giving a stability to Australian exports to the United States of America, the lack of which has been referred to in earlier proceedings before the Commission. Sheep slaughterings fell and during the first four months of 1963-1964 mutton production decreased by about eight per cent. Mutton prices, however, have been at a very high level, largely attributable to the season's high wool prices.

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As to dairy produce, there was a record production of whole milk for the first five months of 1963-1964 and a rise in butter production in the same period. Exports of butter for those months were 42,410 tons compared with 28,800 for the same period in 1962-1963. Shipments to the United Kingdom increased over the same period as compared with the year before and the London price for Australian butter in February, 1964, stood at the very high figure of 334s. Stg. per cwt. ex store.

There was a slight drop in sugar production caused by adverse seasonal conditions in Queensland. The gross value of cane produced is estimated to be £77.8 m. compared with £62 m. in 1962-1963.

This brief review of the rural sector shows that it is in a satisfactory condition.

BALANCE OF PAYMENTS

As at June 1963 Australian international reserves stood at £626 m., an increase of £65 m. over the previous June. By December 1963 the figure had risen to £795 m. and by 29th January, 1964, to £808 m. Exports for the year 1962-1963 stood at £1,067 m., the same as for 1961-1962. Imports for 1962-1963 stood at £1,034 m. whereas for 1961-1962 they were £857 m. However, for the first six months of 1963-1964 exports at £672 m. were an increase of £172 m. on the same six months of 1962-1963, whereas imports for the same period of 1963-1964 at £531 m. were only £11 m. more than for the same period in 1962-1963. In other words, whereas there was an adverse balance of trade of £20 m. for the first half of 1962-1963 there was a balance in our favour of £141 m. for the first half of 1963-1964.

There can be no doubt that our overseas reserves are in a healthy position.

COMPETITIVE POSITION OF SECONDARY INDUSTRY

As to industrial production, the production statistics issued by the Commonwealth Statistician show that of the thirty-four items for which figures for March 1964 are available there have been increases over March, 1963, in twenty-five of them. Looking at earlier months for November, 1963, there was an increase in nineteen over November, 1962, for December, 1963, there was an increase in twenty-nine over December, 1962, and for January, 1964, there was an increase in only seventeen over January, 1963. Taken over a longer period in the first six months of 1963-1964 there were increases in twenty-eight over the 1960-1961 figures.

As to exports of the selected manufactured goods to which it has become customary to refer, in 1962-1963 there was a decline to £94,277,000 from the 1961-1962 figure of £99,910,000, though still an increase from the 1960-61 figure of £86,843,000. However, exports of manufactures rose to the record level of £40.7 m. in the September quarter of 1963, an increase of forty-eight per cent. over the September quarter of the previous year. Manufactured products have more than kept pace with the current level of total exports and in the September quarter represented **thirteen**

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per cent. of all exports of Australian merchandise as compared with twelve per cent. in each of the last three years. The Department of Trade in "Exports of Manufactures" (November 1963) said that:

"an important feature of the September quarter (1963) figures is that the increases are spread over a very wide range of products. This therefore continues the widespread evidence of growth in manufactured exports that had already been observed in the year 1962-1963".

In the 1963 Margins decision reference was made to the comparative movement in average wage rates and earnings in manufacturing in a number of countries. The 1963 figures give a further indication that any disadvantage Australia may suffer as to wage rates is still being overtaken. The figures are:—

—	1959	1960	1961	1962	1963
United Kingdom(a) ..	100	108	115	120	123 (2nd quarter)
France(b) ..	100	107	116	125	134 (average of 1st 9 months)
United States(a) ..	100	103	106	109	112 (average of 1st 9 months)
Canada(a) ..	100	104	107	110	113 (average of 1st 6 months)
Japan(a) ..	100	109	119	131	N.A.
Italy(a) ..	100	105	112	129	143 (February)
West Germany(a) ..	100	109	120	133	142 (average of 1st 6 months)
Australia(a) ..	100	108	110	112	115 (1st quarter)
Australia(b) ..	100	106	109	110	112 (average of 1st 10 months)

(a) Average earnings

(b) Average wage rates

In its report for 1963 the Reserve Bank said:—

"A recovery of economic activity was in train at the beginning of 1962-1963. Expenditure and employment were rising but there was still a substantial degree of unemployment of labour and physical capacity and private expenditure on plant and equipment had not revived. . . .

In the third quarter of the year there were signs of some slackening in private investment expenditure, including expenditure on plant and equipment. However, total domestic expenditure continued to increase over the second half of the year and the trend of industrial production rose further. . . .

The increase in economic activity in 1962-1963 had encouraging features, with further progress towards achieving full and effective use of the work force and physical resources while preserving stability of costs and prices. However, unemployment is still too high. It is necessary to follow through with policies to encourage the growth of economic activity and to realise the potential for expansion of the economy presented by the high level of new entrants to the work force in years to come."

Although it is difficult to draw precise conclusions from the figures quoted, we think that looking at them in conjunction with the extracts from the Reserve Bank Report it is proper to draw the conclusion that the position of secondary industry is improving.

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INVESTMENT

Gross fixed capital expenditure by private enterprises for 1962-1963 was £1,226 m. compared with £1,085 for 1961-1962, £1,777 for 1960-1961 and £1,066 for 1959-1960. The first three quarters of 1963-64 compared with the first three quarters of 1962-1963 and 1961-1962 are as follows:—

			Dwellings	Other new building and construction	All other	Total
1961-1962						
1st quarter	..	..	75	55	138	268
2nd quarter	..	..	71	58	140	269
3rd quarter	..	..	73	54	132	259
1962-1963						
1st quarter	..	..	80	69	147	296
2nd quarter	..	..	81	68	164	313
3rd quarter	..	..	81	57	161	299
1963-1964						
1st quarter	..	..	88	68	159	315
2nd quarter	..	..	90	75	171	336
3rd quarter	..	..	94	65	165	324

The increases for the three components represented respectively sixteen per cent., fourteen per cent. and two per cent. in the third quarter 1964 as compared with the same quarter in the preceding year.

The figures for new houses and flats commenced show that although the figure commenced for 1962-1963 of 88,269 is higher than the figure of 82,470, it is lower than the figures for 1960-1961 of 88,889 and 1959-1960 of 91,344. For the six months to December, 1963, there has been an increase to 51,857 from the corresponding six months to December, 1962, of 44,671. A similar kind of pattern emerges from the figures of new houses and flats completed. As to new non-residential buildings the value of buildings commenced in 1962-1963 of £269.5 m. is higher than the figure for 1961-1962 of £263.7 m. and is higher than the other preceding years. Similarly the figure for such buildings completed of £268.8 m. is considerably higher than preceding years. For the three months to September, 1963, the value of commencements of such buildings at £78 m. is £14 m. higher than the figure for the corresponding three months in 1962 and the value of completions at £65 m. is £0.5 m. higher. The value of approvals of new non-residential buildings in the December quarter 1963 at £64.1 m. is almost £5 m. higher than for the corresponding three months in 1962.

Investment in Australian manufacturing industries took a distinct upward turn in 1962-1963 compared with previous years, details of which will be found in the publication "Developments in Australian Manufacturing Industry 1962-1963" published by the Department of Trade.

Reference was made in the 1963 Margins decision to a slowing down of investment over the preceding two years but to signs that the position was then improving. The latest figures and other material available since the 1963 decision confirm that there has been a definite improvement in the position.

EMPLOYMENT

In the twelve months to October, 1963, there was a movement in estimated civilian employment from 3,238.2 to 3,357.0 or an increase of three point seven per cent.

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Relevant figures as to employment published by the Department of Labour and National Service are as follows:—

—	Registered for employment	Recipients of unemployment benefit	Unplaced vacancies registered
June, 1959 ..	65,708	27,528	20,043
June, 1960 ..	47,213	16,310	31,716
June, 1961 ..	111,684	57,154	12,308
June, 1962 ..	93,128	46,324	18,066
June, 1963 ..	81,407	38,188	21,053
January, 1964	85,809	28,649	43,965

From the survey of overtime working in larger private factories the percentage of employees working overtime in the week ended 13th December, 1963, was thirty-five point one per cent. compared with thirty-two per cent. for the corresponding week in 1962, twenty-six point one per cent. in 1961 and thirty-three point one per cent. in 1960.

These figures demonstrate that while the labour force is increasing there has been a steady improvement in the employment position.

COMPANY INCOME

Company income has moved in the following way in recent years.

	£m.	Per cent. of gross national product
1957-1958	595	10.3
1958-1959	660	10.6
1959-1960	783	11.4
1960-1961	729	10.1
1961-1962	696	9.5
1962-1963	771	9.8

This has resulted in an increase of ten point eight per cent. for 1962-1963 after a fall of four point five per cent. in 1961-1962.

In the Quarterly Estimates of National Income and Expenditure for the September quarter 1963, the December quarter 1963 and the March quarter 1964 the surplus of companies was stated to be ten per cent., five per cent. and six per cent., respectively, over the same quarters in 1962-1963.

Mr. Robinson submitted that company profits should not be regarded as providing a special source of capacity to pay. In our view the correct approach is to look at company profits as part of the overall economic picture, bearing in mind that it is companies which mainly pay employees under our awards, but we agree that company profits should not be treated in isolation or separately.

Even though company profits are recovering from a trough, after falling for two years, we consider the fact that they are recovering and appear likely to continue to recover is another indication of the prosperity of the economy.

MONEY AND BANKING AND PERSONAL CONSUMPTION EXPENDITURE

The volume of notes and coins in the hands of the public and deposits of the public with cheque-paying and savings banks rose from £3,923 m. in June, 1962, to £4,259 m. in June, 1963, and from £4,183 m. in December,

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1962, to £4,621 m. in December, 1963. Deposits with the major trading banks at £2,151 m. in January, 1964, discloses a continuing trend of upward movement in these deposits. Savings banks deposits at £2,112.5 m. in December, 1963, showed a similar continuing upward trend. Overdraft limits outstanding in January, 1964, at £1,868.7 m. had increased from the January, 1963, figure of £1,762.7 m.

The Governor of the Reserve Bank has more than once indicated that the holdings of liquid assets both by the community and the banking system are already high and the Reserve Bank has taken steps to maintain a proper degree of liquidity in such a way as to enable economic capacity at high levels to be maintained.

Personal consumption expenditure (now including motor vehicles) at £4,998 m. for 1962-1963 was five point three per cent. greater than the £4,745 m. of 1961-1962. For the first half of 1963-1964 the expenditure of £2,682 m. is to be compared with the expenditure of £2,529 m. for the first half of 1962-1963.

A consideration of these aspects of the economy confirms that it is buoyant.

RESTRICTIVE TRADE PRACTICES

The question of the suggested absence in this country of legislation against restrictive trade practices in contrast to its existence in some form or other in competing countries was debated before us. We do not find ourselves able on present material and information to decide whether the absence of the legislation has had a significant effect on the economy as far as our task is concerned. If in the future legislation is passed its effect on the economy as it concerns this Commission can be considered from time to time.

GENERAL CONCLUSION

A consideration of all the indicators separately and collectively must lead to the conclusion that in all its aspects the Australian economy is at present buoyant. Confirmation of this general conclusion is given by a survey of industrial trends in Australia published on 15th March, 1964, by the Associated Chambers of Manufacturers of Australia and the Bank of New South Wales. The survey, which was conducted in the two weeks ended 11th March, 1964,

"covered the experience since last November of over three hundred and forty companies which formed a representative weighted sample of Australian manufacturing industry".

The survey says—

"The opinions expressed affirm widespread improvement in industrial activity during recent months and reveal buoyant hopes for the period immediately ahead. The increase reported in employment, new orders, and output maintained the rising trend of the earlier period from August to November, 1963, and exceeded the changes expected at the time of the November survey"

Expectations for the future are more widely optimistic; most industrialists expect continued expansion in employment, orders, and output; and the proportion who foresee any slackening in business activity is negligible. In short manufacturers report, and expect, continuing widespread upward trends in industry."

When this is linked with the highly satisfactory condition of our rural industries we are able to conclude that the economy is sound with every indication that it will continue to remain sound. We are conscious that there

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is some fear in the community that unless care is exercised the present situation may develop into an inflationary boom with possible consequent dampening down measures. However, we think that the Commission would not be fixing a basic wage which was just and reasonable if it did not act on the present state of the economy which is expanding and buoyant with no positive sign of inflation although there is an upward tendency in some prices. As we have noted the Reserve Bank is watchful about inflation and we would assume that other authorities will be equally watchful.

In these circumstances there is and can be no real dispute that the basic wage should be significantly increased. Bearing in mind all we have said we conclude that a just and reasonable increase to the male basic wage would be an amount of 20s. a week. We would point out that the 20s. by which we would increase the basic wage is not arrived at by the method suggested by Mr. Hawke in regard to that amount and referred to earlier in this judgment. It is our view that the present and predictable capacity can provide for such an increase and that a lesser sum would not be just and reasonable. This increase should in our view come into operation from the beginning of the first pay period to commence on or after 19th June, 1964.

The increase of 20s. a week granted this year compares with the increase of 12s. granted three years ago. In the 1961 judgment it was calculated that the 12s. added £60 m. to the wages bill or something less than two per cent. of the £3,311 m. paid as wages and salaries during the preceding year. Using the same approach but conceding that it is only a rough rule of thumb method the 20s. now granted would increase the wages bill by £100 m. This would be approximately two point five per cent. of the £3,965 m. of wages, salaries and supplements during 1962-1963. This year's 20s. represents an increase of something under four per cent on the figure of average weekly earnings. The following table shows the percentage by which the Six Capital Cities basic wage has been increased by the Court or the Commission since 1950:—

TABLE

Date of Decision	Amount of Six Capital Cities Basic Wage before Decision	Amount of Increase	Percentage of Increase
24.10.1950.. .. .	£ s. d. 7 2 0	20s.	14
12.9.1953	11 16 0	Nil	..
26.5.1956	11 16 0	10s.	4.2
29.4.1957	12 6 0	10s.	4
12.5.1958	12 16 0	5s.	1.95
5.6.1959	13 1 0	15s.	5.7
12.4.1960	13 16 0	Nil	..
4.7.1961	13 16 0	12s.	4.3
9.6.1964	14 8 0	20s.	6.9

All the above approximate percentages are given for information only and did not form part of the reasoning which led to the amount of the increase.

This decision should in our view be applied to all the applications and disputes which have been ordered by the Commission to be joined for hearing and decision with the original application, the awards respectively concerned being listed in the schedule to this judgment.

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SCHEDULE OF AWARDS, ETC.

(Being Awards, Determinations and Agreements, the Subject of Applications before the Commission at the Hearing)

- Clerks (Breweries) Award, 1962.
- Clerks (Airways Operating Industry) Award, 1959.
- Clerks (Australian Capital Territory) Award, 1954.
- Clerks (Wool Stores, etc.) Award, 1955.
- Clerks (Oil Companies) Award, 1960.
- Clerks (Shipping) Award, 1948.
- Graphic Arts (Interim) Award, 1957.
- Pulp and Paper Industry Agreement, 1961.
- Printing Industry (Northern Territory News Services Ltd.) Agreement, 1954.
- Country Printing Award, 1959.
- Clothing Trades Award, 1960.
- Dry Cleaning and Dyeing Industry Award, 1960.
- Stevedoring Industry Commission Order No. 4 of 1949.
- Waterside Workers Award, 1960.
- Mobile Crane and Auto Truck Drivers (Port of Melbourne) Award, 1950.
- Mobile Crane and Auto Truck Drivers (Port of Sydney) Award, 1954.
- Stevedoring Industry Commission Order No. 22 of 1948.
- *Locomotive Enginemen's Award, 1956.
- Railways Professional Officers Award, 1958.
- Railways Miscellaneous Grades Award, 1960.
- Railways, Traffic Permanent Way and Signalling Wages Staff Award, 1960.
- Railways Metal Trades Grades Award, 1953.
- Railways Salaried Officers Award, 1960.
- Salaried Officers Award, 1955, Department of Railways, New South Wales.
- Senior Officers New South Wales Railways Award, 1954.
- Salaried Officers Award 1960 (Department of Government Transport, N.S.W. and Department of Motor Transport, N.S.W.
- Senior Officers Award 1954 (Department of Government Transport and Department of Motor Transport—New South Wales.
- Transport Workers (General) Awards, 1959, 1962 and 1963.
- Transport Workers (Airways) Award, 1962.
- Transport Workers (Bulk Milk Carters) Award, 1950.
- Transport Workers (Milk Carters) Awards, 1951 and 1955.
- Transport Workers (Oil Companies) Award, 1964.
- Transport Workers (Melbourne and Metropolitan Board of Works) Agreement, 1950.
- Mobile Crane, Fork Lift and Tow Motor Drivers Awards, 1946 and 1948.
- Mobile Crane etc. Drivers (Australian Glass Manufacturers Co. Pty. Ltd.) Agreement, 1946.
- Bread Carters (Australian Capital Territory) Determination No. 5 of 1949.
- Butchers Carters (Australian Capital Territory) Determination No. 15 of 1949.
- Transport Workers (Australian Capital Territory) Determination No. 18 of 1947.
- Storemen and Packers (Wool etc. Stores) Award, 1960.

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*Kirby C.J., Moore J.]*SCHEDULE OF AWARDS, ETC.—*continued.*

- Storemen and Packers (Oil Stores) Award, 1962.
 Storemen and Packers (Bond and Free Stores, Victoria and South Australia) Award, 1961.
 Storemen and Packers (General Stores) Award, 1962.
 Storemen and Packers (Carbon Black) Award, 1962.
 Storemen and Packers (Grain Stores) Award, 1960.
 Storemen and Packers (Oil Companies) Award, 1964.
 Storemen and Packers Northern Territory General Stores Award, 1963.
 *Ham and Bacon Industry Award, 1949.
 Abattoir and Slaughteryard Employees (Australian Capital Territory) Determination No. 11 of 1948.
 *Butchers Shops etc. (Private Employees—Australian Capital Territory) Determination No. 10 of 1948.
 Liquor Trades (Wine and Spirit Stores, New South Wales) Award, 1963.
 *Liquor Trades (Breweries) Award, 1950.
 *Liquor Industries (Yeast and Vinegar Section) Award, 1960.
 Liquor Industries (Marine Stores) Award, 1960.
 Liquor Industry (Aerated Waters Section) Federal Award, 1961.
 *Liquor Trades (Hotels and Wine Saloons) Award, 1959.
 *Liquor Trades (Maltsters) Award, 1950.
 *Liquor Industries Maltsters (Victoria) Award, 1961.
 *Liquor Industries (Distilleries Victoria) Award, 1961.
 *Commonwealth Hostels Award, 1962.
 Liquor and Allied Industries Catering etc. (Australian Capital Territory) Award, 1962.
 Liquor and Allied Industries, Hotels, Hostels, Clubs and Boarding Establishments etc. (Australian Capital Territory) Award, 1961.
 Liquor and Allied Industries Aerated Waters (Australian Capital Territory) Award, 1957.
 Fruitgrowing Industry Award, 1949.
 Hop Industry Award, 1956.
 Dried Fruits etc. Industry Award, 1957.
 A.W.U. Queensland Oil Refineries Pty. Ltd. Award, 1963.
 Wineries Award, 1962.
 Gold and Metalliferous Mining Award, 1960.
 Australian Workers Union (State Electricity Commission, Victoria) Coal Winning Award, 1964.
 Chemical Workers Award, 1961.
 Chemical Workers Award, 1960.
 Australian Workers' Union Bituminous Materials (Ruberoïd Company of Aust. Pty. Ltd.) Award, 1961.
 Oil Refinery Employees (Shell Refining Australia Pty. Ltd.) Agreement, 1953.
 Australian Workers' Union Construction Workers (Melbourne and Metropolitan Board of Works) Agreement, 1958.
 Australian Workers' Union Construction and Maintenance (State Electricity Commission of Victoria) Award, 1964.
 Australian Workers' Union Construction and Maintenance (Corporation and District Councils of South Australia) Award, 1963.

JUDGMENT—BASIC WAGE INQUIRY 1964

[Kirby C.J., Moore J.]

SCHEDULE OF AWARDS, ETC.—*continued.*

- Australian Workers' Union Construction and Maintenance Award, 1964.
 Australian Workers' Union Construction and Maintenance (Hydro-Electric Commission Tasmania) Award, 1964.
 Laundry Employees (Private Employees) Australian Capital Territory Award, 1959.
 Milk Treatment and Distribution Employees (Australian Capital Territory) Award, 1962.
 Engine Drivers and Firemen's (General) Award, 1955.
 Engine Drivers and Firemen's (Melbourne City Council) Agreement, 1952.
 Engine Drivers and Firemen's (State Electricity Commission of Victoria) Award, 1964.
 Engine Drivers and Firemen's (Electricity Trust of South Australia) Agreement, 1955.
 Engine Drivers and Firemen's (Australian Capital Territory) Award, 1957.
 *Engine Drivers and Firemen's (Breweries) Award, 1948.
 Municipal Employees (Victoria) Award, 1960.
 Municipal Employees (Melbourne City Council) Award, 1961.
 Municipal Employees (Victorian Sewerage (Maintenance) Authorities) Award, 1961.
 Municipal Employees (Victorian Waterworks Trusts) Award, 1961.
 Municipal Employees (Geelong Waterworks and Sewerage Trust) Award, 1960.
 Municipal Employees (Tasmania) Award, 1961.
 Municipal Officers (Victoria) Award, 1959.
 Municipal Officers (Melbourne City Council) Award, 1955.
 Municipal Officers (Richmond City Council) Award, 1959.
 Municipal Officers (Melbourne and Metropolitan Board of Works) Award, 1953.
 Municipal Officers (Victorian Water and Sewerage Authorities) Award, 1960.
 Municipal Officers (Melbourne and Metropolitan Tramways Board) Award, 1955.
 Municipal Officers (Geelong Waterworks and Sewerage Trust) Award, 1960.
 Municipal Officers (Bendigo Sewerage Authority) Award, 1959.
 Municipal Officers (New South Wales) Interim Award, 1959.
 Municipal Officers (Queensland) Award, 1959.
 Municipal Officers (Rockhampton City Council) Award, 1959.
 Municipal Officers (Brisbane City Council Transport) Award, 1955.
 Municipal Officers (Adelaide City Council) Award, 1955.
 Municipal Officers (Hobart City Council) Award, 1955.
 Municipal Officers (Launceston City Council) Award, 1955.
 Municipal Officers (Metropolitan Transport Trust) Tasmania Award, 1955.
 *Rum Jungle Uranium Mining Agreement, 1955.
 *United Uranium Mining Agreement, 1956.
 *Shop Assistants etc. (Northern Territory) Award, 1957.
 *Northern Territory Pearl Fishing Award, 1955.
 *Breweries (Northern Territory) Award, 1959.

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SCHEDULE OF AWARDS, ETC.—*continued.*

- *Quarrying (Northern Territory) Award, 1960.
- *Building Trades General (Northern Territory) Award, 1962.
- *Building Trade (Civil Construction Northern Territory) Award, 1962.
- *Shell Co. (North Australian Workers Union) Employees Northern Territory Award, 1949.
- *Municipal Employees (Northern Territory) Award, 1959.
- *Motor Garages (Northern Territory) Award, 1959.
- *Hotel Employees (Northern Territory) Award, 1960.
- Commonwealth Works and Services (N.T.) Award, 1957.
- Musicians Award, 1960.
- Musicians (Commercial Broadcasting) Award, 1948.
- *Actors etc. (Television) Award, 1957.
- *Actors (Theatrical) Award, 1960.
- *Announcers (Commercial Broadcasting) Award, 1956.
- *Theatrical and Amusement Employees Award, 1947.
- *Theatrical Employees (Drive-in Theatres) Awards, 1956 and 1962.
- *Theatrical Employees (Recreation Grounds, etc.) Award, 1952.
- *Theatrical Employees (Sound Engineers) Award, 1954.
- *Theatrical Employees (Motion Picture Production) Award, 1959.
- *Theatrical Employees (Film Processing) Award, 1962.
- *Theatrical Employees (Night Trotting Courses) Award, 1949.
- *Theatrical Employees (Stadiums) Award, 1950.
- *Ten Pin Bowling Industry Award, 1961.
- Manufacturing Grocers Award, 1962.
- Food Preservers Award, 1960.
- Timber Workers Award, 1950, 1952 and 1960.
- Artificial Fertilizer and Chemical Workers Award, 1963.
- Artificial Fertilizer and Chemical Workers (Carbon Black) Award, 1962.
- Rope and Cordage Industry Award, 1964.
- Tanning Industry Award, 1948.
- *Tanning Industry (Furred Skins) Award, 1947.
- *Gelatine and Glue Workers Award, 1948.
- *Saddlery, Leather and Canvas Workers Award, 1951 and 1952.
- Felt Hatting Award, 1948 and 1950.
- Footwear Manufacturing Industry Award, 1963.
- *Footwear (Wood Heel Last Counter Unishank and Toe-puff) Manufacturing Award, 1951.
- Flour Millers Award, 1949.
- *Confectioners Award, 1959.
- Furnishing Trades Award, 1964.
- Wool and Basil Workers Award, 1961.
- *Agricultural Implement Making Award, 1936.
- *Oven, Stove, Bedstead and Fender Making Award, 1939.
- Sprinklers Pipe Fitters Agreement, 1957.
- The Electrical Contracting Industry Agreement, 1960.
- Gas Industry Award, 1959.
- *Gas Industry Salaried Officers Queensland Agreement, 1961.
- New South Wales Tramways and Omnibus Consolidated (Non-Traffic Section) Award, 1961.

JUDGMENT—BASIC WAGE INQUIRY 1964

[Kirby C.J., Moore J.]

SCHEDULE OF AWARDS, ETC.—*continued.*

- *Hobart Tramway and Omnibus Award, 1955.
- *Tramways Employees (Melbourne) Interim Award, 1958.
- *Tramways (State Electricity Commission of Victoria) Award, 1955.
- *South Australian Tramway and Omnibus Award, 1963.
- *New South Wales Government Omnibus Traffic Employees Award, 1963.
- Textile Industry (Knitting Section) Award, 1963.
- Textile Industry (Miscellaneous Section) Award, 1963.
- Textile Industry (Man-made Fibres Section) Award, 1963.
- Textile Industry (Cotton etc. Section) Award, 1963.
- Textile Industry (Woollen and Worsted Section) Award, 1963.
- Department of Works Construction and Maintenance Supply Establishments (Remote Areas) Award, 1960.
- Television Industry Award, 1960.
- The Aluminium Industry Award, 1963.
- *Aircraft Industry Award, 1955.
- Vehicle Industry Award, 1953.
- Vehicle Industry Award, 1953, Appendix "A"—South Australian Railways Commissioner.
- Vehicle Industry Award, 1953, Appendix "B"—Municipal Tramways Trust—Adelaide.
- Ship Painters and Dockers Award, 1960.
- Ship Carpenters and Joiners Award, 1959.
- Shipwrights (Seagoing) Basic Wage Award, 1953.
- Shipwrights (Shore) Award, 1961.
- Marine Engineers (Department of Public Works, Victoria Dredges) Margins Award, 1955.
- Merchant Service (Department of Public Works, Victoria Dredges) Margins Award, 1955.
- Seamen's Award, 1955.
- Marine Cooks Basic Wage Award, 1953.
- *Radio Technicians Broadcasting Stations Award, 1957.
- *Professional Radio Employees (Aircraft Radio Officers) Award, 1949.
- *Licensed Aircraft Maintenance Engineers (Radio Systems) Award, 1963.
- *Professional Radio Employees (Marine Inspectors) Award, 1948.
- Carpenters and Joiners Award, 1962.
- Carpenters and Joiners (N.S.W.) Award, 1961.
- Government Transport (New South Wales) Carpenters and Joiners Award, 1959.
- Railways (New South Wales) Carpenters and Joiners Award, 1956.
- Carpenters, Joiners and Bricklayers (A.C.T.) Award, 1963.
- Builders Labourers (Construction on Site) Award, 1962.
- Builders Labourers (Mixed Industries) Award, 1963.
- *Life Assurance Agents Award, 1961.
- *Bank Officials (Federal) (1963) Award.
- *Bank Messengers (Federal) Award, 1960.
- *Bank Officials (The Hobart Savings Bank) Award, 1961.
- *Bank Officials (The Launceston Bank for Savings) Award, 1961.
- Pursers Award, 1955.
- Shipping Officers Award, 1963.

JUDGMENT—BASIC WAGE INQUIRY 1964

*Kirby C.J., Moore J.]*SCHEDULE OF AWARDS, ETC.—*continued.*

- Shipping Officers (Australian Coastal Shipping Commission) Agreement, 1957.
- Wool Brokers Staffs Interim Award, 1954.
- Wool Classers and Shearing Staff Employees Award, 1959.
- Airline Hostesses Award, 1960.
- Airline Hostesses Award, 1963.
- Professional Engineers Award, 1961.
- Professional Engineers Award, 1962.
- Professional Engineers (Oil Companies) Award, 1964.
- Professional Engineers (Construction Industry) Award, 1963.
- Engineers (Local Governing Authorities Victoria) Award, 1959.
- Engineers (Local Governing Authorities Queensland) Award, 1959.
- Professional Engineers Award (Local Governing Authorities, South Australia) 1961.
- Journalists (Commercial Broadcasting) Award, 1960.
- Journalists (Television) Award, 1960.
- Journalists (Press Agencies) Award, 1963.
- Journalists (Newcastle Daily Newspapers) Award, 1963.
- Journalists (Australian Associated Press) Agreement, 1963.
- Journalists (Northern Territory) Award, 1964.
- Journalists (Southdown Press) Award, 1963.
- Journalists (Provincial Daily Newspaper) Award, 1959.
- Journalists (Provincial Non-Daily Newspapers) Award, 1959.
- Journalists (Western Press) Award, 1963.
- Journalists (Metropolitan Daily Newspapers) Agreement, 1963.
- Metal Trades (A.C.T.) Determination No. 13 of 1947.
- Painters (A.C.T.) Determination No. 8 of 1948.
- Builders Labourers (Australian Capital Territory) Award, 1963.
- Hospital Employees (Nursing Staff A.C.T.) Award, 1958.
- Hospital Employees Australian Capital Territory (Ambulance Staff) Award, 1957.
- Hospital Employees Australian Capital Territory (Administrative Staff) Award, 1960.
- Hospital Employees (Professional and General Staff—A.C.T.) Award, 1959.
- Brickmakers (Commonwealth Employees A.C.T.) Determination No. 2 of 1947.
- Plumbers (A.C.T.) Determination No. 36 of 1948.
- Plasterers (A.C.T.) Determination No. 22 of 1941.
- Retail Shop Employees (Australian Capital Territory) Award, 1957.
- Hairdressers (Australian Capital Territory) Award, 1959.
- Miscellaneous Workers (Australian Capital Territory) Award, 1960.
- *Watchmen, Caretakers, Cleaners and Liftdrivers (A.C.T.) Award, 1961.
- Federal Meat Industry Award, 1959.
- *Glass Workers Award, 1962.
- *Gas Industry Salaried Officers (Colonial Gas) Agreement, 1956.
- *Gas Industry Salaried Officers (Colonial Gas) Agreement, 1958.
- †Pastoral Industry Award, 1956.
- *†Metal Trades Award, 1952.

* Section 28 Notifications

† Original matters before the Commission

[Gallagher J.]

Gallagher J.:

The employers' claim for the establishment of a new system of wage fixation having been rejected it now becomes necessary to reach a decision whether there should be an alteration to each basic wage for adult males covered by relevant awards or agreements.

The applicant unions bespoke a maximum increase of £2 12s. weekly and also asked for restoration of the system of quarterly adjustments. The State of Tasmania sought leave to intervene in the proceedings and when this was granted, it was announced that it supported both the claim for an increased basic wage and the claim for restoration. Upon making this announcement its representative withdrew and took no further part in the proceedings. The Australian Council of Salaried and Professional Associations and the High Council of Commonwealth Public Service Organizations also sought and were granted leave to intervene. Each of these organizations remained represented throughout the proceedings and supported the claims.

The respondent employers while prepared to concede pay increases under the total wage system which they had advocated opposed an alteration of the basic wage.

The Attorney-General for the Commonwealth of Australia who intervened in the public interest by virtue of section 36 neither supported nor opposed the applications but through counsel submitted for the assistance of the Commission relevant statistical information and the views of the Commonwealth upon material aspects of the economy.

Mr. Hawke in opening the case for the unions, which he represented, stated that "the purpose of the application is to obtain at this point of time the translation into the basic wage of productivity and price movements recognized but denied from 1953 onwards". He contended that at least up till 1961 successive basic wage inquiries had failed properly to take into account productivity and prices and he argued that in order to restore wage justice there should be an increase of 52s. However, while continuing to emphasize that the main claim of the unions was for an increase in that amount, he stated that the Commission in the event of its refusal to accept as a starting point the year 1952-1953 could on the basis of productivity and prices and according to whichever of methods explained by him it chose grant increases of 13s., 27s. or 32s.

Mr. McKenzie, in the presentation of the case for The Australian Workers Union, supported Mr. Hawke both as to the amount of the increase and the reasons advanced for granting it. He made detailed submissions in relation to the rural industry and directed attention to the growth in the number of farms, the volume of wool production, the volume of wheat production, the increased acreage of wheat, the satisfactory and assured prices in the sale of wheat, the fact that the value of exports of beef and cattle has almost doubled since 1961-1962, the record return for the sale of sugar and the increase in whole milk production. Mr. McKenzie emphasized that although there has been a marked increase in production, the labour force in the rural industry has been reduced. He summed up his case by stating:—

"In general it is our submission that the present overall review of the economy shows that the economy is advancing to a point where justice shows the need for substantial improvement in the basic wage. The rural industry has shown a resounding improvement, not a transient improvement."

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One particular feature of the *Australian Workers Union case* may be dealt with in isolation. Mr. McKenzie directed attention to the fact that the basic wage for a station hand is £14 7s. which is one shilling per week less than the basic wage for all other employees covered by the Pastoral Award and he argued that particularly since the abolition of the country differential, this is an anomaly for which there is no justification. On this aspect of the case, Mr. Robinson argued that the country differential decision did not provide adequate reason for the granting of the claim. He claimed that the station hand possesses certain advantages which make reasonable the retention of the differential rate. Having given consideration to the respective points of view it appears to me that since the differential rates are so close each to the other it is anomalous to provide for them in the award. I would, therefore, grant the union's application on this point.

Mr. Robinson in the presentation of the case for the employers stated that there were two fundamental issues,

- (a) whether capacity allows for any or part of the increases claimed and
- (b) if there is capacity whether it justifies an increase in the basic wage.

As to the first issue, Mr. Robinson while maintaining that capacity to pay and productivity are "not synonymous" submitted that capacity should be assessed in the light of a proposal put forward by the employers which was to the effect that the basic wage should be abolished and that there should be one total wage which subject to an examination of the economy should be capable of being increased annually within the range of a productivity increase of one per cent. to two per cent. It was the essence of his argument which he supported by reference to the written opinion of overseas economists that wage increases should always be kept within productivity gains and he contended if this were done price increases would be avoided and economic stability would be maintained.

As to the second issue Mr. Robinson examined in detail the indicators of the economy and having done so conceded that if the employers' proposals were accepted the present proceedings tended to point to an increase at the top of the range which had been put forward.

In his general submissions in reply to the unions' case, Mr. Robinson contended that relevant statistical information made it clear that over the years there had been a proper distribution of productivity, that the reasons advanced for an increase were without substance, that it would be wrong to take 1952-1953 as the base year, that the proper base year was 1960, and that if the productivity plus prices method was followed by the Commission the maximum increase which could be awarded was 10s. 6d. made up of 8s. 8d. for productivity and 1s. 10d. for prices.

Mr. Kerr in his presentation of the views of the Commonwealth dealt in detail with the factual position of the economy and tendered written submissions portions of which are summarised in manner following:—

- (1) Our economic situation is expansive in terms of employment, output building and construction sales and commercial activity at large.

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- (2) There are no evident shortages of plant equipment or basic materials and with ample overseas reserves and few restrictions on imports overseas supplies can be obtained freely as required.
- (3) It would be prudent not to rely on the indefinite continuance of some of the factors which have helped to create the present generally favourable situation.
- (4) The real key to the situation lies in the availability of labour. Already there are serious shortages of skilled and unskilled labour.
- (5) A drought could bring heavy reductions in rural output and exports particularly if it occurred in some of the main sheep and wheat areas. Wool prices could shrink. The possibility of loss of markets for wheat should not be excluded.
- (6) An increase in the Federal basic wage applying as it does to all employees under Federal awards affects directly and immediately rather more than half the total of wage and salary earners in Australia and consequential adjustments of other salaries and wages affect most of the remainder. Certainly it can be said that the effects are widespread; they in fact extend to all fields of industry and employment.
- (7) Even though the margin increase and extra week's annual leave granted last year do not seem to have had so much effect on the level of prices, it would be testing fortune to assume that if there were loaded on to them a further general wage increase at this stage, the conditions of price stability that we have known over the past few years would be likely to continue.
- (8) Much would depend on the size of the increase.

In the consideration of this dispute, I have decided to proceed on the basis that the capacity of the economy is the predominant issue in the assessment of the basic wage. In the application of this principle, I shall adhere to the rule that the wage should be the highest which the community can afford and I shall also keep well in mind the *dicta* of Dixon, C.J., in the *Queen v. Kelly and others ex parte Australian Railways Union*.⁽¹⁾

"While an arbitral tribunal deriving its authority under an exercise of the legislative power given by s. 51 (xxxv) must confine itself to conciliation and arbitration for the settlement of industrial disputes including what is incidental thereto and cannot have in its hands the general control or direction of industrial social or economic policies, it would be absurd to suppose that it was to proceed blindly in its work of industrial arbitration and ignore the industrial social and economic consequences of what it was invited to do or of what, subject to the power of variation, it had actually done."

My adherence to the "capacity principle" does not, as I understand the position, bring me into conflict with the procedure, so far as it relates to *prima facie* adjustment for price movement, introduced by the Full Bench in the decision which resulted from the 1961 Basic Wage Inquiry.⁽²⁾ The Court in 1956 had decided "that a yearly assessment of the capacity of Australia for the purpose of fixing the basic wage would be most appropriate"⁽³⁾ and with the encouragement of the Commission this procedure was followed by the parties in each subsequent year up to 1961. In

⁽¹⁾ (1953) 89 C.L.R. 461 at pp. 474-5

⁽²⁾ 97 C.A.R. 376

⁽³⁾ 87 C.A.R. 437 at p. 459

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the last mentioned year after stating that “ the Commission and the Court before it has never ceased to recognize that although the criterion by which the basic wage is assessed is the greatest which the economy can afford, the purchasing power of the basic wage has always been a matter of importance ”.⁽¹⁾ The Full Bench eventually went on to say that “ our present opinion is that this consideration of prices should take place annually. We will each year make the assumption that the effect of the movements in the Consumer Price Index should be reflected in the basic wage unless we are persuaded to the contrary by those seeking to oppose the change ”.⁽²⁾ Later in its reasons, the Full Bench said:—

“ It seems to us that once the question of prices is dealt with otherwise, a review of the economy generally and in particular of productivity increases could more properly take place at longer periods of time, say every three or four years. This statement of our views does not, of course, preclude any party from seeking to exercise its right to come to the Commission more frequently than every three or four years to seek a change in the real basic wage but, except in unusual circumstances, we consider such a period a proper interval between reviews of this kind.

As will appear later in these reasons, we have come to the conclusion that the basic wage which we now fix takes into account increases in productivity up to June 1960. That being so, we anticipate that in the absence of special circumstances the next review of the basic wage will be a review only of the money wage and not the real wage; in other words, only a consideration of price movements. We anticipate that we will not be required to review the real basic wage for some three years. If our anticipation is correct, in the proceedings next year the only issue will be whether or not the money wage should be adjusted in accordance with any change in the consumer Price Index.”⁽³⁾

The Full Bench then dealt with onus of proof. It said:—

“ The onus will be on the party opposing such an alteration to show that it should not be made. If the price index has risen the unions may rely *prima facie* on that fact. It will then be for the employers to show that the increase in prices is of an exceptional character such as those referred to by Professor Downing so that it should not be reflected in a basic wage increase or that there is some special factor in the economy which would make it inadvisable to allow the increase.”⁽⁴⁾

Consistently with the procedure determined in 1961, the Commission in 1962 and also in 1963 restored the matter to the list solely for the purpose of deciding whether price movements called for an increase in the basic wage. In neither year was a change required. In each year employers and the Commonwealth reserved the right to argue that the procedures were wrong.

In February of this year, the matter was again restored to the list. On this occasion an increase of 2s. to meet price movements could apparently have been sought but as the present hearing was about to commence the application which had formed the basis of the 1961 decision was by consent withdrawn.⁽⁴⁾

I respectfully express full agreement with the Full Bench “ that the purchasing power of the basic wage has always been a matter of importance ”. Nor do I consider that the *prima facie* adjustment for prices or the onus placed upon the employers created an undesirable procedure.

Provided the relevant evidence is available (and I see no sound reason why it should not be), it is not unreasonable that the employers may be called upon to satisfy the Commission that price increases, although

(1) 97 C.A.R. 376 at p. 384

(2) *Ibid* at p. 387

(3) *Ibid* at pp. 387-8

(4) 105 C.A.R. 557

[Gallagher J.]

admittedly having occurred, should not be reflected in the basic wage. The matter of fundamental importance, as I see it, is that the employers in raising objection should have the right fully to raise capacity to pay, that is to say it should be open to them to examine all material aspects including the accepted indicators and then to establish that in the light of the economic position viewed as a whole, an alteration based alone on increased prices should not be made.

I have already indicated my belief that the 1961 basic wage decision did not constitute a departure from the principle that capacity to pay is the predominant issue but if there has been such a departure I would to that extent respectfully refuse to apply the decision.

My concurrence with the "1961 procedure" is, as I have already indicated, restricted to the extent to which it provides for a *prima facie* adjustment for price movement. For the reason that the taking into account of productivity increases over an extended period could lead to a large increase of the basic wage, I would be inclined to the view that adjustments for productivity, if they are to be made, should be effected at fairly frequent intervals. In this way I would hope to avoid the serious impact upon the economy flowing from a substantial increase.

Ordinarily I would have thought it desirable to discuss each of the accepted indicators in detail but it is conceded on behalf of the Commonwealth that the situation of the economy is favourable and I do not deem it necessary at this stage to state anything more than that rural industry is buoyant, employment is increasing, building construction is reaching record levels, secondary industries are in general sound, export trade is increasing, the balance of payments are satisfactory and overseas reserves exceed the high figure of £800 m.

I propose now to deal with the application for the restoration of quarterly adjustments. Mr. Hawke conceded that it may be reasonable to have some short preliminary inquiry before allowing an adjustment to become effective. I do not consider such an inquiry would permit of a sufficient examination of capacity and would follow previous decisions refusing similar applications.

I proceed now to consider whether there should be an increase in the basic wage.

The existing "six capitals" basic wage rate for adult males working under relevant Federal awards is £14 8s. The rate as above stated came into operation on 14th July, 1961. Mr. Hawke stated that the 52s. weekly increase sought by the unions was constituted by 20s. as an amount necessary "to give the basic wage the same real value on the basis of price movements as it possessed in 1952-1953" and by 32s. as the amount necessary in respect of increased productivity based on the "conservative figure" of one per cent. for each year of the period 1952-1953 to 1961-1963. Alternatively to his main claim he argued there could be increases of 13s., 27s. or 32s.

In the presentation of his case in relation to capacity, Mr. Hawke emphasized the substantial changes for the better which have taken place since 1961 and in particular directed attention to an increase of two hundred and fifty thousand in the labour force, an increase of £202 m.

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in farm income, a forty-five per cent. increase in the value of exports of rural origin, substantial expansion in non-rural production, growing strength of the competitive position of secondary industries—record production having been achieved in major commodities—the estimate of the value of exports for the seven months up to January 1964, namely, £799.7 m. which is £202.7 m. or thirty-four per cent. more than in the same period of 1962, the attainment of high liquidity in money and banking, the upsurge in investment particularly in the important area of building which shows a twenty-eight per cent. improvement over 1961, the high level of retail sales and of consumer spending, and the record level of international reserves, standing at £808.2 m., an increase of £200 m. over the previous year.

Mr. Hawke argued that the highly satisfactory state of the economy afforded clear evidence of how wrong were the employers when they predicted in the 1961 proceedings that an increase in the basic wage would have damaging results.

Mr. Robinson in his submissions on capacity stated that "it was no part of the employers' case to decry advances which had taken place since 1961" but contended that "Australia has a long way to go before she can claim to be a significant manufacturing exporter" and went on to say that "Australia's performance has been snail like compared with overseas countries". He conceded that overseas reserves are buoyant but submitted that the volume of reserves is subject to seasonal fluctuation and claimed that "all the factors can dramatically change a very favourable situation to a very unfavourable situation."

Mr. Robinson dealt in detail with productivity and argued that the assessment of productivity shows how the economy has moved in real terms. He said that "there is broad agreement that what workers are entitled to is increased productivity" and also "that there is no great area of dispute as to what the increase in productivity is". He argued that "an equitable distribution of the productivity increase would ensure that prices do not rise in consonance". He contended that productivity can only be related to the total wage, that it cannot be legitimately applied to the basic wage which is part of the wage only, that in fact productivity has been distributed to wage and salary earners as a whole and that in these circumstances alteration of the existing basic wage could not be justified.

The employers' argument that productivity gain is a factor properly to be taken into account when assessing a total wage but not when assessing a basic wage is inconsistent with the view taken in previous basic wage inquiries and cannot be accepted. Nor do I think there should be acceptance of the claim by the unions that 1952-1953 should be taken as the base year and an adjustment be made on the basis of price movements and increases in productivity which have since taken place. Previous inquiries have in fact taken into account both factors and I am not prepared to reach an affirmative conclusion that the attention given has been insufficient.

I propose to look at the amount of the last fixation and having done so to decide whether in the light of all relevant facts and circumstances there is a case for alteration of the basic wage.

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The last assessment was made in July, 1961, and the "six capitals" basic wage was then fixed at its present rate of £14 8s.

I take the view that the contribution which wage earners have made to the general improvement in the economy which undoubtedly has taken place since 1961 justly and reasonably requires an upward alteration of a rate which has remained unchanged for a period of almost three years. The amount of the increase is however a complex problem of great difficulty and in my approach to it I shall endeavour to keep in mind material aspects of the Australian economy, the interests of the wage earners who would receive the benefit of the increase, the interests of the employers who would be directly called upon to pay it and the interests of the public who would be affected by it.

ECONOMIC ASPECTS

With the preliminary explanation that the statements made or the opinions expressed are in my opinion broadly consistent with material tendered in evidence in the proceedings, I quote *verbatim* from the work of Professor Karmel and Miss Maureen Brunt, "The Structure of the Australian Economy"—(reprinted with revisions in 1963). Under the heading Economic Background it was said:—

"Australia, with an area of just under three million square miles, is almost as large as the United States and four-fifths the size of Canada. About 40 per cent. of the area receives less than ten inches of rainfall per annum and the great bulk of the central area is unsuitable for settlement. Settlement is heavily concentrated in the South-Eastern corner of the continent.

With a population of 10.7 millions, the domestic market is limited. This has obvious implications for the structure of manufacturing industry. Nevertheless, the economy is highly industrialised in terms of employment, only 13 per cent. of the work force being engaged in primary production, while 28 per cent. are engaged in manufacturing. This compares with 12 and 27 per cent., 5 and 37 per cent. and 14 and 26 per cent. for the United States, United Kingdom and Canada respectively. About 80 per cent. of the work force are wage and salary earners. Of these about three-quarters are in private employment, the balance being employees of public authorities. Associated with this industrialisation is a very strong tendency towards urbanisation, just over 80 per cent. of the population living in cities. The population is highly concentrated in the larger cities. There are only eight cities with populations over 100,000 and these account for 59 per cent. of the total population. Nearly 40 per cent. is contained in the two great metropolises of Sydney and Melbourne alone. For purposes of comparison it may be of interest to note that in the United States there are 106 cities with populations exceeding 100,000 and these account for 29 per cent. of the total population. The corresponding figures for the United Kingdom and Canada are 46 cities and 51 per cent. and 11 cities and 23 per cent.

Although primary production employs a relatively small fraction of the work force, it contributes about one-fifth to the national income and some 90 per cent. to Australian exports. With exports standing in recent years between 15 and 20 per cent. of gross national product, Australia is essentially an open economy. Moreover, since most exports are primary products the Australian scene must be viewed against a backdrop of fluctuating export proceeds—fluctuating by reason both of domestic seasonal conditions and of the instability of world prices. Year to year movements of up to 30 per cent. in export proceeds are not uncommon. This implies a considerable potential for instability in income and employment.

General aspects of the Australian economy calling for emphasis include the fundamental importance of primary production in relation to Australia's export trade, the influence of seasonal conditions and world prices upon primary production, the dependance of seventy-five per cent. of wage and salary earners upon private employment, the importance to employees

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of secondary industry as a means of obtaining a livelihood, the concentration of industries in capital cities, and the need for long haulage or carriage of goods by land transport or by sea.

I turn now to observations made by leading Australian economists on particular aspects, including wage fixation and matters incidental thereto.

In a paper published during 1960 entitled "Australia—Present Conditions and Future Prospects", Professor R. I. Downing, Ritchie Professor of Research in Economics and Dean of the Faculty of Economics and Commerce at the University of Melbourne, said in relation to productivity:—

"There seems to be every ground for believing that a substantial rate of increase of productivity can be maintained. A large and growing population gives excellent opportunities for the establishment of new industries, for the securing of the economies of large-scale production, for breaking through barriers set by restrictive practices, and for the enjoyment of the economies that accrue from growth in the economy as a whole on a wide front. Moreover, the types of industries whose establishment becomes possible and desirable as the economy grows in size and wealth are often precisely those, notably in consumer's durable goods and heavy industry, which offer the best opportunities for highly capitalized, efficient production, enjoying maximum benefits from the expansion of the scale of production. The special problems that arise in the fields of transport and power from a small and scattered population will be eased by the growth in numbers. The high level of investment that accompanies growth promises a rapid incorporation of new methods of production and new products.

The large inflow of foreign capital helps to maintain the high level of capital per worker that is essential to high productivity, and brings with it overseas technical and managerial methods which benefit not only the firms in which the investment is made but also, by example, all firms throughout the economy. The flow of ideas from overseas is now being supplemented by the fruits of Australia's own industrial research, which is growing and must continue to grow as firms become aware of the advantages of domestic research, particularly into peculiarly Australian problems of local materials and production methods; and as these firms achieve a scale of production which justifies high research expenditures. The dramatic success in recent years of research, innovation and investment in raising productivity in the traditional rural export industries has struck the imagination of producers in all sectors of the economy and of the public generally.

Finally, there is so much scope for improvement in industrial relations in Australia and in the attitudes of workers and their trade unions to the benefits of rising productivity, that the awakening consciousness of the need to effect these improvements, absolutely essential and basic to a substantial and sustained rise in productivity, can be expected to pay rich dividends in the coming decade.

Total Growth

There is, then, for the 'sixties certainly the possibility of growth in the work force and in productivity at even higher rates than have been achieved in the 'fifties; and, on the whole, good prospects of a high rate of growth being actually achieved."

Under the heading "The Changing Structure of the Economy", the Professor said:—

"In the August, 1959, issue of the Economic Record, Professor Burgess Cameron has published a projection of the Australian economy in 1965. He draws a reasonably optimistic picture of prospects, with no significant pressures either to inflation or deflation, and no serious balance of payments problem. He expects real output in 1964-5 to be some 60 per cent. higher than in 1953-4.

Within this total growth, some industries naturally are expected to grow faster than others, though all industries are expected to grow substantially. Of the forty industrial groups into which he divides the economy, only two are expected to expand by less than 30 per cent. (mining other than coal by 21 per cent., coastal shipping by 26 per cent.). Fifteen industries are expected to expand by 30 to 60 per cent. (with even the classic problem industry of textiles expected to expand by 48 per cent.).

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Twelve industries are expected to expand by 60 to 70 per cent., three by 70 to 85 per cent., and seven by more than 85 per cent. (including motor vehicles and ferrous castings by about 88 per cent., electricity by 97 per cent., and brown coal by 133 per cent.).

Professor Cameron has done a great deal of statistical investigation into the changing structure of the Australian economy. In a recent paper, not yet published, he points out that, in the last five years, the percentage rise in output of some major engineering and chemicals industries has been more than twice the percentage rise in national product—among them are oil refining, radio and electrical goods, copper, motor vehicles, electricity, chlorine, steel and iron wire. The high growth-rate of these and other heavy industries has been sustained by a switch of consumer expenditure towards durable, particularly electrical goods; by industries using more electricity, steel and cement per unit of output as a result of changing technology; and by import-replacement and expansion of exports."

In a further paper entitled "The 1961 Basic Judgment and Wage Policy", Professor Downing, on this occasion jointly with Professor J. E. Isaac, also of the University of Melbourne, stated:—

"In general, therefore, price increases should not provide satisfactory grounds for wage increases. To repeat, the plight of the lower wage groups under rising prices cannot be alleviated more than temporarily by a general wage rise which accrues indiscriminately to all wage-earners. For social and economic reasons the remedy must be found elsewhere. In the only circumstances where there seems a strong prima facie case for raising wages, namely, higher export prices, there are more sensible ways of redistributing the higher export incomes by a wage increase although, to be fair, if confronted with this situation at present the only course open to the Commission is to grant a wage increase."

Elsewhere in the paper it was stated:—

(1) "Briefly, the weight of our argument has been that statutory wage determinations on a national scale, unless it carries effective powers to impose ceilings as well as floors to wages, serves little useful purpose under conditions of full employment, so long as over-award payments fail to absorb award increases.

(2) . . . We must accept the fact that, under full employment, the market is able to secure an appropriate share of productivity for a large percentage of wage-earners—at any rate, as much as employers will yield, with or without tribunals.

(3) . . . The concern of the Commission has been for those on awards who tend to lag behind the rest. A method must be devised to do justice to these workers without at the same time raising the general level of wages and prices and defeating the very object of the Commission's concern."

Professor Isaac, in a paper read at the Fifth Convention of the Industrial Relations Society held during May, 1963, stated in the course of his observations on the general level of wages:—

"There is another sense, however, in which the Commission may perhaps be justified in deliberately raising its awards and so increasing overall wages in excess of productivity. This arises in connection with the 'wage drift' problem through over-award payments, bonuses, etc. What seems to happen is that from year to year these over-award payments tend to absorb the wages share of increased productivity; and that the granting of award increases simply accentuates a tendency already in operation of wages rising in excess of productivity—with consequent price increases. In these circumstances, it could be argued by the proponents of price stability that the best assurance for a stable price level is to hold the level of award rates constant."

Later in his paper, the Professor said:—

"The present policy of long-lagged basic wage adjustments seems to me to be not only more unjust to those on award rates but also to carry the danger of greater price increases because of the greater build-up of over-award payments."

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In the course of a paper entitled *Aims of an Income Policy* read a week or two ago, Professor Cochrane, Dean of the Faculty of Economics and Politics, Monash University, made observations which included the following:—

"1 Since award wages lag behind actual wages it's fairly clear that any attempt to raise award wages periodically must tend to perpetuate the wage slide. Nor is the problem resolved by not raising award wages since if this happened a large number of workers, particularly in governmental and semi-governmental establishments, would not share in the benefits of productivity gains.

If the Arbitration Commission is to vary wage rates the basic question is how is it to do so without adding fuel to the wage-price spiral and still provide a reasonable measure of wage justice. In other words, is it possible for the Commission to vary wages in such a manner that the rate of technical progress is encouraged, while at the same time provide the trade unions with acceptable and reasonable wage adjustments. This duality of objectives is the keynote to a wages policy. Accordingly, if these are the main objectives, it would seem to me that it is the basic wage that should be revised upwards, preferably at six monthly intervals, by a predetermined percentage in order to adjust for productivity gains. This is not a new suggestion. Similar suggestions have been made by economists over the past ten years or so in both Australia and Britain.

2 An adjustment of the basic wage on productivity grounds every three to four years is likely to be a very substantial one.

3 There is little evidence of a shift to profits during periods when wage increases are low and there is accordingly little evidence of any stored up absorptive capacity in industry that may be used to offset the sharp rise in wages that might take place every three to four years.

4 It seems apparent that periods of relative boom provide evidence of a healthy economic situation which, when presented to the Arbitration Commission, tend to tip their scales in favour of higher than otherwise wage increases.

5 Finally, and most importantly, a regular and foreseeable increase in wages could make a valuable contribution towards increasing the rate of growth of the economy. The knowledge that wages were going to rise in a certain specified manner would encourage the introduction of more capitalistic methods of production as a means of lowering the impact of the inevitable rise in labour costs. While in the short run many producers might not be able to change their techniques of production, in the longer run careful planning and research could bring about a high rate of substitution of capital for labour. Given the choice of several production techniques a rapid rise in wages is needed to push the choice towards the most capitalistic or automated technique. A low rate of increase of wages is unlikely to have much impact on the rate of technical progress. On the other hand too high a rate of increase could cause economic dislocation."

The expressions of opinions I have set out have been extracted from documents tendered as evidence:—

The economists leave these impressions:—

- (a) The Australian economy is developing and productivity will increase.
- (b) There is a lag in award wages as compared with average weekly earnings.
- (c) The position of the lower wage groups cannot be alleviated more than temporarily by a wage rise which accrues indiscriminately to all wage earners.
- (d) Smaller adjustments made with greater frequency are preferable to substantial adjustments made after lengthy intervals.

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- (e) A low rate of increase of wages is unlikely to have much impact on the rate of technical progress.
- (f) A rate of increase which is too high could cause economic dislocation.

THE INTERESTS OF THE WAGE EARNER

It is important to bear in mind that although the basic wage has remained static for almost three years, average weekly earnings have consistently increased. According to the relevant Commonwealth exhibit the increase to the June quarter of 1962 was three point nine per cent. and to the June quarter 1963 two point eight per cent. In the September quarter 1963 average weekly earnings were three point seven per cent. greater than a year earlier. Average weekly earnings per employed male unit stood at £24.49 in December 1961 and £26.85 in December 1963, the figures in each case being for the whole of Australia.

Commenting on the movement in average weekly earnings the Commonwealth in its submissions said:—

“It should not be assumed that this movement simply reflects an increase in award rates and overtime. No definite figures are available for the break-up of the increase in earnings into award increases, overtime increases and increases in other payments such as over-award payments. However, some clues to the distribution are available. Between the September quarter of 1962 and the September quarter of 1963, the latest date for which a figure is available, average weekly earnings per employed male unit rose by 17s. 7d. per week. Between the end of September 1962 and the end of September 1963 average minimum weekly wage rates for adult males rose by about 8s. 5d. Despite the different statistical concepts, the contrast is significant.”

In the consideration of the weight to be attached to average weekly earnings, it is to be of course assumed that on the one hand many employees receive above the average and on the other hand many receive below the average. As regards those who are on the average or above it and who are therefore receiving some £12 per week above the existing “six capitals” basic wage of £14 8s., it is reasonable to think that price movements and productivity have received due attention in the assessment of total wage payments. But as regards those whose earnings are appreciably below the average it may well be that the provision has been insufficient. Further it may well be in relation to those appreciably below the average that as a matter of equity and good conscience an improvement in their standard of living is required.

There is some statistical evidence which would give rise to the inference that the number of workers whose earnings are little above the basic wage are relatively few in number but the figures do not take into account employees in government undertakings and therefore do not necessarily provide a conclusive guide.

In the assessment of the basic wage, the position of the small wage earner is of importance but at the same time it would be unsound to order an increase determined exclusively in relation to his situation.

The respective positions of the lower, average and higher paid groups are all to be taken into account.

Notwithstanding the departure from the “needs” concept, “it must be remembered that the assessing of a basic wage at the highest which the economy can pay must of itself aim at provision of the highest living

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standard for the wage earner which the community can afford".⁽¹⁾ When it is borne in mind that of the 800,000 females employed as at February this year in the six capital cities, 350,000 were married women, it is difficult to form any precise conclusion as to the adequacy, for the attainment of the standard, of the earnings of the male wage earner. This is a point upon which direct proof by way of oral evidence may have been of greater assistance than the statistics which have been placed before us. However, the statistical information does provide a broad indication of the general standard.

As to earnings, the document "Wage Rates and Earnings (January, 1964)" prepared by the Commonwealth Bureau of Census and Statistics shows the weighted average minimum weekly wage rate as £18 15s. 5d. (375s. 5d.) and the average weekly earnings for employed males as £26 17s. (£26.85), the figures in each case being for the whole of Australia.

The following tables give respectively particulars relating to personal consumption expenditure at average 1959-1960 prices, new motor vehicle registrations, number of new houses and flats commenced and completed and savings banks deposits.

PERSONAL CONSUMPTION EXPENDITURE AT AVERAGE 1959-1960 PRICES

	(£ million)			
	1959-1960	1960-1961	1961-1962	1962-1963
Food	1,053	1,049	1,100	1,144
Tobacco, cigarettes, alcoholic drinks ..	451	468	468	479
Clothing, footwear	509	521	515	523
Household durables	384	382	370	387
Rent of dwellings	379	397	415	431
All other expenditure	1,591	1,632	1,672	1,801
Total	4,367	4,449	4,540	4,765

NEW MOTOR VEHICLE REGISTRATIONS

Quarter ended	Number
1959—September	69,285
December	80,534
1960—March	68,516
June	74,800
September	82,995
December	84,048
1961—March	56,925
June	58,343
September	56,916
December	65,556
1962—March	68,051
June	77,524
September	86,863
December	90,808
1963—March	82,036
June	85,276
September	103,552
December	103,299
Months	
1963—January	25,637
1964—January	26,368

(1) 84 C.A.R. 157 at p. 177

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NUMBER OF NEW HOUSES AND FLATS COMMENCED AND COMPLETED

	Commenced	Completed
1958-1959	81,687	84,158
1959-1960	91,344	90,021
1960-1961	88,889	94,465
1961-1962	82,470	86,263
1962-1963	88,269	87,747
Six months to:		
December, 1962	44,671	44,600
December, 1963	51,857	47,956

SAVINGS BANK DEPOSITS

	(£ million)
1962—December	1,852.6
1963—December	2,112.5

In connection with consumption expenditure the Commonwealth in its submissions said:—

“On the demand side, personal consumption expenditure is by far the largest element. In 1962-1963 it was £4,998 m. at current prices, or five point three per cent. higher than in 1961-1962. Revalued at average 1959-1960 prices, it was five per cent. higher than in the previous year. Much the most rapid rise was in expenditure on motor vehicles which increased by twenty-eight per cent. in current prices. Nevertheless, consumer spending on all major items increased: for example, on food, three point three per cent., electrical goods, three point six per cent., and on other household durables, three point four per cent.

In the first half of 1963-1964 expenditure on motor vehicles remained at a very high level, being fifteen per cent. greater than in the first half of 1962-1963, while total consumption expenditure was six per cent. greater. In recent quarters, motor vehicles have been registered in record numbers.

These rises in consumer spending have accompanied increases in personal income. Wages and salaries increased by £210 m. to £3,995 m. or by five point five per cent., in 1962-1963 and in the first half of 1963-1964 rose by seven point five per cent. compared with the first half of the previous year. Other forms of personal income also have been rising.

Consumer credit, too, has been expanding. The value of instalment credit outstanding in respect of retail sales financed by non-retail finance businesses rose by £36 m. during 1962-1963 in contrast to a fall of £24.2 m. in the previous twelve months. The rise in the following six months to December, 1963, was more pronounced; it is provisionally estimated at £45 m., compared with an increase of £28.4 m. in the corresponding months of 1962.

The finance companies have ample funds and their borrowings account for most of the capital being raised by companies on fixed interest terms. They are in a position to add substantially to the consumer spending that rising incomes will make possible.”

The information I have set out could leave the impression that existing earnings are providing a reasonable standard but it must not be excluded from consideration that working wives are making a contribution. When the figure of £18 15s. 5d. (375s. 5d.) constituting the minimum weekly wage, is regarded in the light of current money values a doubt is created whether there is being attained “the highest living standard for the wage earner which the community can afford”.⁽¹⁾

Some increase is warranted but the important thing for the wage earner is that the amount be of real value. A substantial increase could seriously upset price stability. A moderate increase should be much less likely to do so.

A middle course approach seems to be in the best interest of the employees.

(1) 84 C.A.R. 157 at p. 177

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THE POSITION OF THE EMPLOYER

It is correct that industry as a whole is in a favourable situation but there are undoubtedly some industries and some employers, within certain industries, not without economic difficulties. There are industries which face strong competition from other industries such as the coal industry against the oil industry, sea transport as against land transport and railways as against road transport. There are employers whose production falls short of that achieved by other employers in the same industry. Then again there are industries which necessarily require a large labour force as against industries which are highly mechanised and which operate with relatively few employees.

It is reasonable to assume that employers who attain high, economical, production and have a ready sale of their products are in a position to meet wage increases but that employers who do not possess these advantages, although their competitive relations are not necessarily altered, are not so well situated.

Here again, the middle course approach is indicated.

PUBLIC INTEREST

In my reasons for decision in the Basic Wage Inquiry 1959, I set out *verbatim* a passage from the judgment of Foster, J. in the 1949-1950 Inquiry. I again do so—

"Increasing wage rates produce immediate and secondary consequences; they bring benefits to the recipients; they increase costs and prices to all consumers; they distort the distribution of the national income; they produce hardships upon some sections whose incomes are fixed which include workers as well as others; they produce problems of finance for public, private and quasi-public institutions; they increase the problems of private employers and may even threaten the existence of their enterprises. At some point the hardships are such that they ought not to be imposed for they then outweigh the social benefits that flow from higher living standards and could be no real settlement of the dispute. This is where there is call for the kind of judgment spoken of by Mr. Justice Holmes: 'To see as far as one may and to feel the great forces that are behind every detail'. It is tremendously difficult and controversial it must be based on the evidence and it must be conservatively undertaken."⁽¹⁾

It may well be correct that with increased mechanisation, reduced labour forces in particular establishments and higher productivity the danger of rising prices through increases in wages has become less acute and it is also correct that the 12s. increase which resulted from the Basic Wage Inquiry 1961, the large increases received by a section of salary earners as a result of the *Professional Engineers' cases* 1961 and 1962,⁽²⁾ and the increases of ten per cent. in margins awarded last year to most employees covered by Federal awards did not whether singly or in combination materially affect prices. It should not be excluded from consideration, however, that the economic slump which resulted in unemployment and reduced spending during 1960-1962 may have been one of the factors bringing about stability. With a buoyant economy, the ready availability of money and the inclination to spend more freely, there is a distinct possibility that the way is open to pass on increased wage costs. Further, the cumulative effect of wage increases is not to be disregarded and there is

(¹) 68 C.A.R. 698 at p. 801

(²) 97 C.A.R. 233 and 100 C.A.R. 158

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the possibility that employers who up till now have been able to meet added costs from the resources of industry may take the opportunity of making the public share the burden.

I am fully conscious that remarks such as these do not add to the fund of human knowledge and that in practice fears, sometimes strongly expressed, of the effect of wage increases have not materialised. Nevertheless it is just as foolish not to have regard to the possibility of increased costs as it is not to insure against a fairly remote contingency such as the destruction of a dwelling by fire, and particularly is this the position when attention is directed to a lecture by Sir Garfield Barwick speaking as the Attorney-General concerning the ways and means available in important sectors of industry for the stifling of the fundamental cost control factor of competition. A publication containing this lecture was tendered as evidence and the following summary has been extracted therefrom:—

“Let me briefly recapitulate the main points which, painting on a broad canvas and sketching the outlines rather than attempting a complete presentation, I have endeavoured to make tonight. I have tried to show that restrictive trade practices distort the pattern of a free-enterprise economy; that their objective is always protection in one form or another; that protection discourages initiative, resourcefulness and productive efficiency; that, particularly in a developing economy, these are qualities that need to be encouraged; that there is, at the same time, a need to recognize that there is a place in such an economy for some such practices, which, in their particular circumstances, have beneficial, or at least no detrimental, effects and are, therefore, on balance, compatible with the public interest; that with relatively few exceptions, the compatibility of a restrictive practice with the public interest can be determined only after a pragmatic examination of the circumstances in which the practice is operated; and that legislation to control such practices should provide an independent, impartial and standing tribunal and should spell out in as much detail as is reasonably practicable the criterion to be applied by the tribunal on such an examination.”

The Commonwealth in its submissions in relation to the claims before us has emphasized that “much would depend on the size of the increase”. When public interest is under consideration this, of course goes to the root of the problem. That following the increase of £1 granted by majority decision in the 1950 Basic Wage Inquiry⁽¹⁾, automatic adjustments made over a period of two years collectively added £3 9s. per week to the “six capitals” basic wage is an established fact but Mr. Hawke, as he was fully entitled so to do, contested the accuracy of the sequence of events as the explanation and instead asserted that the real reason was not the bare circumstances of the £1 increase but the existence of economic circumstances, arising from the wool boom, which made adjustment to wage rates not only necessary but desirable. It is to be noted that Mr. Hawke’s submission apparently has the support of Professor Downing. However, whatever was the position in 1950—and it must be readily conceded that there is now a much larger labour force and a much greater degree of mechanization it was stated in these proceedings that “the four alternative claims for increases of 13s., 27s., 31s. and 52s. (the main claim) would produce resultant costs of £78 m., £162 m., £186 m. and over £300 m. respectively based on approximately £6 m. per shilling increase”.

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(It should be explained that in the early stage of his submissions Mr. Hawke spoke of an amount of 31s. and not 32s.).

In the consideration of the size of the basic wage increase it is important to bear in mind that every employer, every wage earner, and almost every industry in Australia may be affected almost simultaneously. This is a point which must be of the utmost economic importance and particularly when it is realised that although the hearing of these proceedings was in open court, the nature of the Commission's decision will become known only when a public announcement is made. It is thus apparent that any preparation made in anticipation of the decision must necessarily have been based on speculation and have been purely tentative.

However while there are undoubtedly cogent reasons for the exercise of caution it should not be lost sight of that eighty per cent. of the work force of Australia consists of persons working under contracts of employment. Public interest may well supply a valid reason for the granting of an increase just as it may be concerned with the protection of the community from excessive wage costs.

Under present circumstances a moderate increase in the basic wage would not in my opinion be against public interest.

CONCLUSION

I have set out in broad terms the nature of the claims, the submissions of the parties, the principles I have applied, certain economic aspects and my observations on the respective interests of employers, employees and the public.

For the average employee, it seems clear that although the Federal basic wage has not moved since 1961 there have been wage or salary increases either by reason of industrial awards, agreement with employers or by both methods. Within the last twelve months there have been general marginal increases and since these were largely made on a percentage basis many employees have had substantial increases. Further, with a buoyant economy the tendency more and more is not to regard the minimum award payment as the maximum and the figures relating to average weekly earnings would indicate the over-award payment is the rule not the exception. With due recognition of the existence of other points of view, I think it desirable that there should be room for private arrangement on wages between employers and employees. In these days of mechanisation there is great scope for incentive payments and my experience, particularly in the coal mining industry, has convinced me that by their use not only is there achieved much greater production but there is created a better industrial relationship. An employee who receives a payment directly assessed on the results of his work feels that he is getting something out of the industry in which he serves and his interest in its development becomes stronger. In the same way employers find that good remuneration can bring good results. These remarks are made with the object of demonstrating that the keeping of the basic wage within moderate limits need not result in depressed earnings. Some further indication that this is the position is

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obtained when it is observed that in December, 1963, Victoria with a lower basic wage attained a higher "average weekly earnings" figure than New South Wales. (£27.94 as against £27.71).

Of course, there are undoubtedly employees, particularly in some governmental undertakings, who do not receive the benefit of over-award payments. I have been mindful of their situation. An increase in the basic wage will be to their immediate advantage. The joint opinion of Professor Downing and Professor Isaac to which reference has already been made in these reasons stresses, however, what must be the fact "that the plight of the lower wage groups under rising prices cannot be alleviated more than temporarily by a general wage rise which accrues indiscriminately to all wage earners."

A moderate basic wage increase may not affect prices and to that extent some succour would be given to the lower paid worker. Those wage earners for whom the minimum award payment is the maximum may, however, best be protected by a particular examination of their position made by an appropriate industrial authority.

I repeat my conclusion stated earlier in these reasons that some increase in the basic wage is warranted but the important thing for the wage earner is that the amount should prove to be of real value. A substantial increase could seriously upset price stability. A moderate increase should be much less likely to do so. When regard is had to total wage increases already obtained I would not regard a moderate increase as being inconsistent with the principle of the highest amount which the community can afford. I have no doubt that it would best serve the interests of the community as a whole.

Accordingly I would fix the amount of the increase in each basic wage for adult males covered by relevant awards or agreements in the sum of ten shillings weekly or the equivalent thereof.

Nimmo J.:

In each of these applications the Commission is called upon to settle by arbitration disputes between the parties which extend beyond the limits of any one State. The disputes involve determination by the Commission of two issues common to both applications and a further issue which is confined to the application for variation of the Pastoral Industry Award.

Stated shortly the three issues are:—

- 1 Should the basic wage for adult males be increased and, if so, by what amount?
- 2 Should the system of automatic quarterly adjustments to the basic wage which was abolished in 1953 be restored?
- 3 Should the differential in the Pastoral Industry Award between the basic wage payable to station hands and that payable to employees other than station hands be eliminated by increasing the amount payable to station hands?

These issues will now be dealt with in the order in which they have been stated.

Nimmo J.]

SHOULD THERE BE ANY AND WHAT INCREASE IN THE BASIC WAGE?

The Applicants' primary claim is that the basic wage should be increased by 52s. In support of this claim Mr. Hawke contended that if the Court had not, as he argued, wrongly abolished the system of automatic quarterly adjustments to the basic wage in 1953, movements in prices in accordance with the "C" Series Retail Price Index between 1953 and 1961 and in accordance with the Consumer Price Index since 1961 would justify an increase in the basic wage of 20s. He further contended that since 1953 wage earners have not received the full share in increases in national productivity to which they have been entitled and that the basic wage should be further increased by 32s. to give them that share. The Applicants claim as alternatives to their primary claim that movements in prices and increases in national productivity over periods and upon bases specified by Mr. Hawke justify an increase in the basic wage ranging from 13s. to 32s.

In opposing the Applicants' claims Mr. Robinson argued that Mr. Hawke's contentions were not soundly based and that all of the Applicants' claims should be rejected by the Commission. In dealing with this issue I think I should restate at the outset the principle of basic wage fixation on which the Commission and its predecessor the Court have acted for many years and make some observations in relation to it which appear to have particular relevance.

PRINCIPLE OF BASIC WAGE FIXATION

The principle which is sometimes referred to as the "capacity to pay" principle is that the basic wage should be the highest that the capacity of the community as a whole can sustain.⁽¹⁾ The principle has not been affected by the inclusion in a procedural section of the Act in 1949 (re-enacted in the present section 33) of a description of the basic wage for adult males as being—

"that wage, or that part of a wage, which is just and reasonable for an adult male, without regard to any circumstance pertaining to the work upon which, or the industry in which, he is employed".

If the basic wage current at the date of a review is not the highest amount which the capacity of the community as a whole can sustain, it is the duty of the Commission to increase it or reduce it, as the case may be, to that amount. Since any alteration to the basic wage operates in the future the Commission in dealing with an application for either an increase or a reduction in the basic wage is obliged to estimate what, in its judgment, is the highest amount which the capacity of the community as a whole will be able to sustain during the period for which it is contemplated the alteration will operate.

In estimating what is the highest amount the capacity of the community as a whole will be able to sustain during the operation of its award the Commission considers a variety of factors each of which it weighs and balances against the others. They include:—

- The State of the Economy
- National Productivity
- Total Wages and Recent Awards
- Movements in Prices
- Consequences of any Alteration in the Basic Wage

⁽¹⁾ 77 C.A.R. 477 at p. 495 and 87 C.A.R. 437 at p. 447

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It has been the practice of the Commission to weigh these factors but any party is free to urge the consideration of others which it argues are in point. The Commission is in no way bound to regard the factors enumerated as being the only ones which may be looked at, but in the present case no party has gone beyond them and I do not consider it necessary to do so.

STATE OF THE ECONOMY

In assessing the present state of the economy and what it is likely to be during the operation of its award the Commission examines a number of what are called "Indicators". Indicators which have commended themselves to the Commission and which have been examined by it in the present cases to ascertain as far as possible their present and future effect on the economy are:—

- Rural Industry
- Overseas Reserves and Trade
- Competitive Position of Secondary Industries
- Non-Rural Production
- Company Profits
- Investment
- Employment and Unemployment
- Money and Banking
- Retail Sales.

NATIONAL PRODUCTIVITY

It is well recognized that wage earners are entitled to share in increases in national productivity and although such increases cannot be measured with any degree of certainty the attempt must be made. Since any alteration to the basic wage operates in the future it is with future increases in national productivity that the Commission is concerned. It is impossible to look to the past in favour of either employers or employees except to the extent that it may have a bearing upon the present and future capacity of the community to sustain any alteration. This capacity may be affected by past losses if unrecouped or past gains if undistributed. However, in estimating what changes in national productivity are likely to occur during the period its award will cover, the Commission does examine productivity over a substantial period immediately preceding the application before it. From that examination it ascertains what the trend is. It then considers that trend in the light of the economy at the time and in the foreseeable future and, as an act of judgment on its part, makes the necessary assessment. It must always be remembered that productivity is not synonymous with capacity to pay but is a factor to be considered in assessing it. Reference to productivity in this judgment should be read in this sense.

TOTAL WAGES AND RECENT AWARDS

Since the community as a whole must sustain the total wages bill of the nation, the Commission in Presidential Session cannot consider an application for an increase in the basic wage in isolation. It must also have regard to the fact that the community has to meet the cost of margins and over-award payments. However, over-award payments should not be given such weight as to over-ride the claim of low wage earners to a justified basic wage increase.

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Where recent awards have been made by the Commission the effect of those awards on capacity to pay must likewise be taken into account.

MOVEMENTS IN PRICES

The maintenance of reasonable price stability has been one of the objectives of national economic policy. Wage earners and people on fixed incomes have been the principal sufferers when it has not been achieved. There is widespread agreement amongst economists that it cannot be achieved if average wages increase at a faster rate than national productivity. When they do, there follows, except when profit margins can be and are reduced, an upward movement in prices on the domestic market which in turn produces serious consequences of the kind hereinafter mentioned.

CONSEQUENCES OF ANY ALTERATION IN THE BASIC WAGE

The Commission must always give earnest consideration to the consequences it foresees in any alteration in the basic wage. This responsibility was recognized by Dixon C.J. in *The Queen v. Kelly; Ex parte Australian Railways Union* where His Honour said:—

“While an arbitral tribunal deriving its authority under an exercise of the legislative power given by s.51 (XXXV.) must confine itself to conciliation and arbitration for the settlement of industrial disputes including what is incidental thereto and cannot have in its hands the general control or direction of industrial social or economic policies, it would be absurd to suppose that it was to proceed blindly in its work of industrial arbitration and ignore the industrial social and economic consequences of what it was invited to do or of what, subject to the power of variation, it had actually done.”⁽¹⁾

Reasons for this responsibility are not difficult to find. In given circumstances too great an increase in the basic wage could commence or accelerate a wage-price spiral. This would produce serious consequences for many sections of the community especially low wage earners, employees not in receipt of over-award payments, people on fixed incomes and those obliged to live on their savings or superannuation and lead to a reduction in the standard of living of those affected. It could directly, and indirectly through price rises, increase the cost of locally produced commodities to the extent that here in Australia it would be cheaper to buy imported goods and overseas it would not be possible for our exported commodities to compete effectively with manufactures produced abroad. Thus our overseas trade and reserves would be adversely affected and the rate of our economic growth retarded. In some industries, due to a reduction in demand, there could be unemployment. Any consequence which threatens full employment, for example, by helping to create a recession or conditions which call for sudden applications of economic controls is highly undesirable. Such conditions could well have an adverse effect on the migration which has played and is playing such an important part in the growth of the economic strength of the nation.

In circumstances, such as those prevailing during the economic depression, a reduction in the basic wage could produce most serious consequences to the industrial, social and economic life of the community.

⁽¹⁾ (1953) 89 C.L.R. 461 at p. 474-5

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For these reasons amongst others the Commission in considering an application for an alteration to the basic wage has regard to matters beyond those raised by the parties to the dispute, matters involving the interests of the community as a whole. In this connection it is to be noted that section 36 of the Act empowers the Commonwealth to intervene, in this and the other kinds of disputes there set out, "in the public interest".

CONSIDERATION OF APPLICANTS' CLAIMS

I turn now to the Applicants' claims.

I do not accept Mr. Hawke's contentions that the Court had wrongly abolished the system of automatic quarterly adjustments in 1953 and that since that date wage earners had not received the full share in increases in national productivity to which they have been entitled. In any event whatever the suggested basis or bases may be for an increase in the basic wage, no increase may be awarded which will take the basic wage beyond the highest amount which the capacity of the community as a whole can sustain during the period for which the Commission determines its award shall operate. I shall now proceed to examine the factors.

THE ECONOMY—PRESENT AND FUTURE

There is no dispute as to what the indicators reveal and accordingly I do not propose to refer to them in detail. Argument in relation to them was centered upon what consequences are likely to flow from the position they indicate the economy is in. Rural exports, manufactured exports subject to overseas competition and overseas reserves are at their highest levels on record. There is near full employment of the nation's work force and in some industries there exists a shortage of workers. Notwithstanding the imposition of several restraints recently, the build-up of holdings of money and other liquid assets in the hands of the public and the banking system has been sufficiently high to sustain current and expanding levels of economic activity. Non-rural production, company profits, investment and retail sales are all rising steadily. Collectively the indicators disclose that the Australian economy is in a healthy state today and point towards it remaining in that state.

FUTURE NATIONAL PRODUCTIVITY

An examination of figures made available by the Commonwealth Statistician reveals that national productivity, obtained by taking the Gross National Product at constant prices and dividing it by the number employed, has shown an annual increase over the last decade. It also reveals that over the last three years, depending upon the methods adopted for assessing the Gross National Product and calculating the number of persons employed, national productivity may be estimated as having increased annually by between one point two per cent. and two point four per cent. The breadth of this range is a clear indication that it is not possible with existing statistical information to estimate growth in national productivity with precision. The trend, which emerges from the examination, is for a moderate but steady growth which may, on present indications, be reasonably expected to continue in the future.

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TOTAL WAGES AND RECENT AWARDS

The need for the Commission in dealing with an application for an increase in the basic wage to have regard to the total wage bill the nation will have to meet for the duration of its award could hardly be more apparent than it is today. For years over-award payments have increased at a faster rate than award wages and in December 1963 the average income of an adult male wage earner in Australia was £26 17s. a week. This contrasts sharply with the basic wage for the same person which for the six capital cities then stood and now stands at £14 8s. a week. Any increase in the basic wage, if the pattern of the past is any indication, will spread throughout the ranks of wage earners and will not be absorbed into over-award payments. The all important consideration in my mind is that future wages are to be sustained by future capacity, an important factor of which is future growth of national productivity. The evidence given in this case satisfies me that it is impossible to look to past increases in productivity to meet the wages bill of the future. It is apparent that most of the productivity gains of the past have been distributed in a variety of forms to consumers, employers and employees including over-award payments to the last mentioned. In 1963 the Commission increased annual leave generally in secondary industry by one week and this increase has since been granted in sections of primary industry. In the same year it increased margins in the Metal Trades industry by ten per cent. and, speaking generally, that increase was given widespread application. This year the Commission has awarded thirteen weeks long service leave after fifteen years service to unionists employed under Metal Trades and Graphic Arts awards.

MOVEMENTS IN PRICES

Consumer prices have been steady since June, 1961. It must be remembered, however, that early in this period the economy was depressed and unemployment existed and that the recovery which has taken place since then has been until recently of a gradual nature.

CONSEQUENCES OF AN INCREASE IN THE BASIC WAGE

There are features in our economic life today, such as the state of liquidity, the high average income of adult male wage earners and the increasing shortage of labour in some industries which, in my opinion, pose a serious threat to the balance of the economy. With these potential inflationary elements present it is my view that a substantial increase in the basic wage would aggravate the position and could easily trigger off a wage-price spiral which would produce the undesirable consequences mentioned in the earlier references I have made to this subject.

CONCLUSION ON THIS ISSUE

After weighing the factors and balancing each against the others I am satisfied that the basic wage for adult males is not the highest the capacity of the community as a whole can sustain now and in the future. As far as the future is concerned this conclusion could, of course, prove to be wrong. Our economy is not a closed one. We are a trading nation and to a very great extent our prosperity depends upon the volume and prices of our exports and imports. Since our exports consist chiefly of rural

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products a drought which reduces their volume is likely to affect our national income seriously. Again, our export trade could change suddenly and drastically for the worse if some of our customers abroad ceased to buy, or substantially reduced the volume of their purchases, from us.

Having regard to the current state of affairs and to the conclusion I have reached that for the time being there should be annual reviews of the basic wage it is my opinion that the increase which is justified is one of 10s. to apply until the next annual review.

PROCEDURES

In 1961 the Commission abandoned the practice of reviewing the basic wage annually as it had done since 1956. It introduced the following new procedures to operate thereafter. A review of the economy generally would be undertaken at three or four yearly intervals. Each year the Commission would make the assumption that the effect of movements in the Consumer Price Index should be reflected in the basic wage unless it was persuaded to the contrary by those seeking to oppose the change, upon whom the onus of showing that it should not be made was to rest. Since I find myself at variance with the learned President and my brother Moore, on the question whether the 1961 procedures should be continued I think it incumbent on me to give my reasons in detail. They are as follows:—

- (a) I think it is incompatible with the capacity to pay principle of basic wage fixation to single out any particular factor for separate treatment. In my view if a question of altering the basic wage arises it should be determined only after all the relevant factors have been examined and each of them weighed and balanced against the rest.
- (b) A situation could arise in which an upward movement in the Index would lead to an application which might not be opposed by employers who would simply increase domestic prices. In such an event there could be an increase in the basic wage without regard to the public interest and to the consequences it would produce for the people on fixed incomes and those obliged to live on their savings. Of course if the increase in prices contributed to a wage-price spiral it would produce serious consequences for earners of low wages and employees not in receipt of over-award payments as well.
- (c) It is natural that the Commission should hope that the basic wage which it fixes should not decline in real value. This is no doubt the hope of the whole community. Under the system of annual reviews a complete consideration of an application for an increase in the basic wage proceeded on the basis that a rise in capacity to pay should lead to a rise in the wage. Such a rise would ensure that the real value of the basic wage would be protected. But this would happen not because prices had risen, if that were the fact, but because capacity to pay had increased. In my opinion

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it is a mistake to substitute reviews at three or four yearly intervals and treat prices changes which occur in the meantime as founding an assumption that the wage should change unless those who resist a change can persuade the Commission to the contrary. The emphasis so placed on changes in prices tends to obscure the proper consideration of capacity to pay and to distort the regard which may properly be paid to movements in the Index in the general context of a review of the basic wage.

(d) Since it is the future capacity of the community as a whole which must sustain an increase in the basic wage the Commission must, as an act of judgment, make a prognosis in respect of that capacity. The practice of a full annual review, as opposed to a full review only once every three or four years, reduces to a minimum the margin of error involved.

(e) In the 1956 Basic Wage judgment the Court pointed out that—

“the basic or foundation wage cannot be looked at in isolation. It must be fixed in its proper place as part of the whole wage structure, for the reason at least that in considering the capacity of the economy to sustain a basic wage, that question cannot be divorced from its capacity to bear also the existing level of marginal wages.”⁽¹⁾

In the 1958 Basic Wage judgment the Commission referred to this subject in this way:—

“The Commission does not conceive it to have been the policy or principle adopted by the Court up to 1956, or by the Commission in 1957, to determine the basic wage level without regard to the general level of secondary wages.”⁽²⁾

In the same judgment it was pointed out that—

“the mere fact that the Court and the Commission have embraced and applied the doctrine of fixing the basic wage at the *highest* level which it is adjudged the economy can sustain is itself a refutation of any suggestion that some economic capacity has been ‘kept in reserve’ for the satisfaction of known or potential marginal claims.”⁽³⁾

I accept the principle set out in these excerpts and I have applied it in reaching my decision. However, no explanation has been advanced to show how this principle can be applied in a prognosis of capacity extending over three or four years, because the nature and extent of marginal applications over that period cannot be foreseen.

(f) The full review only once in three or four years may lead to one big increase in the basic wage as opposed to three moderate increases which may, in annual reviews, be found to be justified. Such an increase is more likely to commence or accelerate a wage-price spiral than three moderate annual increases which the economy would have a better chance of absorbing. Reasonable price stability is essential if wage earners are to gain an increase in real wages.

⁽¹⁾ 84 C.A.R. 157 at p. 185

⁽²⁾ 89 C.A.R. 284 at p. 289

⁽³⁾ *Ibid* at p. 290

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(g) So long as the capacity to pay principle governs award wages fixation, a party who seeks a change in the basic wage should, in my opinion, show that it is justified having regard to the capacity of the community as a whole to sustain it. Such a party should not be entitled to throw the onus on those opposing the change by the mere proof of a change in one factor amongst many. This opinion applies equally whether the movement in prices be up or down. Movement in prices is a factor which the Commission should consider in the course of deciding what is the highest basic wage the community as a whole can sustain but it should not be taken out of its context. Proof of it should not free one party from the responsibility of establishing that a change is justified and place upon its opponent the task of proving that it is not. As Foster J. said in the Basic Wage judgment of 1959—

“There rests, of course, upon any person who seeks to alter an existing state of affairs, an obligation to show satisfactory and convincing reasons for the alteration. This approach is one of common sense, and is used daily in the myriad affairs of mankind.”⁽⁹⁾

(h) If the 1961 procedures are followed, pressure is likely to develop during the three or four year period between basic wage reviews for increases in over-award payments and margins which are of little benefit to those at or near the bottom of the wage scale. The share which should be available to labour from the growing capacity of the community will not be held in reserve to await the next hearing provided for in those procedures. It will largely be distributed in the form of lower prices, margins, over-award payments or profits. This process will increase the gap between the basic wage and average wage received. It seems to me that the low wage earners who do not ordinarily have the bargaining strength of those on higher wages have the greatest need for the protection which this Commission can give. This protection is best given, I think, by annual reviews. The increases in the basic wage which the Commission is able to grant would be greater if they were not added to all wages.

(i) I see no practical difficulties in the way of annual reviews as, in the words of the learned President (*Kirby C.J.*) and *Wright and Gallagher JJ.* in the 1958 Basic Wage judgment, “the Commission is easy of access and applications for review of the basic wage are capable of being dealt with expeditiously.”⁽¹⁰⁾

The course of the present hearing has shown that much more common ground now exists between the parties as to the factors to be considered in a basic wage inquiry and as to the way in which they should be evidenced than was formerly the case. Consideration of this development by the Commission and the parties and interveners might well lead to

(⁹) 91 C.A.R. 680 at p. 704-5

(¹⁰) 89 C.A.R. 284 at p. 295

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the result that future hearings could be conducted even more efficiently and expeditiously than the present. It seems to me that the presentation of written cases which could be studied by the parties and interveners and the Commission and then spoken to in the sittings of the Commission and, where necessary, supported by evidence, offers the promise of further improvement. Such a procedure would, in my opinion, preserve to the parties and interveners the fullest opportunity of placing before the Commission the submissions and material on which they rely and then of addressing the Commission on them and those of their opponents. The nature of much of the material relied upon is such that it would be an advantage to be able to consider it before being addressed upon it, so that attention could be directed to any aspects which called for further examination or elaboration.

While opposed to the 1961 procedures, I desire to state that, if it were to be held that reviews were to take place at intervals of three or four years, I should prefer that they should take place upon conditions broadly of the kind proposed by Professors Downing, Isaacs and Cochrane providing for staggered increases. As no party in the present case sought the introduction of such a system detailed argument was not addressed to it and it would therefore be premature to reach a final conclusion on it.

SHOULD THE SYSTEM OF AUTOMATIC QUARTERLY ADJUSTMENTS
BE RESTORED

For the reasons given by the Court in 1953 for the abolition of the system of automatic quarterly adjustments and by the Court and the Commission since then for refusing to restore that system, I am not in favour of its restoration and agree that the application should be refused.

SHOULD THE DIFFERENTIAL IN THE PASTORAL AWARD BE ELIMINATED?

In my opinion there no longer exists any adequate reason why the station hand should be paid a lower basic wage than other employees in the pastoral industry and I would grant the application accordingly.