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IN THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

Conciliation and Arbitration Act 1904

NATIONAL WAGE CASE JUNE 1986

In the matter of an application by The Federated Storemen and Packers Union of Australia to vary the

Storemen and Packers (Retail Warehouses, Victoria)

Award 1981(1)

(C No. 142 of 1986)

And in the matter of an application by The Amalgamated Metal Workers' Union to vary the

Metal Industry Award 1984 - Part 1(2)

(C No. 3114 of 1986)

in relation to wage rates

And in the matter of an application by The Manufacturing Grocers' Employees' Federation of Australia to vary the

Manufacturing Grocers Award 1985(3)

(C No. 1690 of 1985)

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

Professional Engineers (General Industries)

Award 1982(4)

(C No. 1773 of 1985)

in relation to wage rates and conditions of employment on account of national productivity

And in the matter of an application by the Confederation of Australian Industry for a review of the Principles of Wage Fixation

(C No. 1794 of 1985)

MR JUSTICE MADDERN, PRESIDENT

MR JUSTICE WILLIAMS

MR DEPUTY PRESIDENT ISAAC

JUSTICE COHEN

MR COMMISSIONER CONNELL MELBOURNE, 26 JUNE 1986

REASONS FOR DECISION

(1)Print D6124 [S068]; (1978) 209 CAR 609 [title change Print F2442 [S068 V006]] (2)Print F4869 [M039]

(3)Print G0585 [M003] (4)Print F1735 [P067]

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THE CLAIMS

In these proceedings we have before us three substantive issues for determination:

(i) an application by the Confederation of Australian Industry (CAI) to review the Wage Fixing Principles adopted by the National Wage decision of 23 September 1983(5)

(ii) union applications to adjust wages and salaries by 2.5% based on CPI movements in the September and December 1985 quarters

and

(iii) union applications for a 4% increase in wages and salaries or improvements in conditions by way of superannuation based on national productivity and amounting to a "3% wage equivalent".

In the course of proceedings we made Statements two of which are appended to this decision.

After the adjournment of proceedings on 30 May 1986 and following the Prime Minister's Address To the Nation on 11 June 1986, we invited all parties to make written submissions. We have taken these responses into account in addition to the material presented in proceedings.

THE CENTRALISED SYSTEM

Central to the issues for determination is whether the Commission should continue with a structured centralised system for the fixation of wages and conditions of employment based on National Wage Cases.

The Australian Council of Trade Unions (ACTU), the Australian Council of Professional Associations (ACPA), the Commonwealth and all States with the possible exception of Queensland supported a continuation of a structured centralised system, although it must be said that the ACTU support was not unequivocal. The ACTU made it clear throughout the proceedings that if required to make a choice between a centralised system or its basic objective of wage justice, then wage justice would take precedence.

The employers generally either supported the continuation of a centralised system based on National Wage Cases or opposed it in principle whilst accepting the reality of a centralised system in current circumstances.

CAI supported a structured centralised system based on National Wage Cases while not supporting many of the existing Principles. In particular CAI made it clear that adjustment of wages for prices was too high a price to pay for a centralised system.

The Business Council of Australia (BCA) submitted that the economy and the community would be best served by a gradual but fundamental shift over time to a more decentralised and enterprise oriented system of industrial regulation. This shift, it said, would need to be carefully phased in and be capable of achieving broad community acceptance. However, it said, an attempt to move to a sectional or award by award approach immediately would threaten a major breakout with adverse macro-economic effects. BCA submitted that the Australian business community and the community at large could not afford that risk in the period under immediate review and in that context it supported the continuation of a centralised system based on National Wage Cases.

(5) Print F2900; (1983) 291 CAR 3

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The National Farmers Federation (NFF) said that it did not accept that a structured centralised wage fixation system was the most desirable and effective system and it indicated support for industry and enterprise level arrangements. However, NFF directed its submissions primarily to the national focus despite its conviction that the national approach is not appropriate. It said: "It is the outcome that matters to us, not the way the outcome is achieved".

The Australian Chamber of Commerce (ACC) supported direct negotiation between employers and employees at the level of individual firms based on economic capacity to pay and direct negotiations. Such negotiations would have regard to standards outlined in the "central industrial relations institution" which would also act in an administrative role as the Central Registry for labour contracts. However, its second-best approach was one in which "total labour costs are adjusted for movements in national economic capacity to pay within a centralised industrial relations system".

The exception was Australian Mines and Metals Association Inc. (AMMA), which argued in some detail that assessment of capacity ought to take place industry by industry or establishment by establishment because as a matter of economic principle, the centralised approach was not sound. It was not sufficiently responsive to the economic situation of individual industries.

Further, again with the exception of AMMA, no one opposed price movements and productivity movements being considered in National Wage Cases although widely different approaches were adopted.

We outline these views on the continuance of a structured centralised system to indicate the background against which we have carried out our deliberations.

In coming to our decision we have taken into account the merits of the submissions both in theory and in practice. We have also considered the terms of the ACTU/Commonwealth Agreement which figured so prominently in the proceedings before us and which we summarize later. Many employer parties, particularly CAI, regarded the ACTU/Commonwealth Agreement as an attack on the integrity of the Commission, undermining its stature and independence. This was denied by the ACTU and the Commonwealth, both submitting that the Commission should determine the matters before it on their merits, having regard to its statutory responsibilities. This we have done.

However, we should add that although the ACTU/Commonwealth Agreement expresses the attitude of the ACTU and the Commonwealth to wage fixation and the Commonwealth's approach to economic policy, it is of limited significance as an "agreement" for our purposes because the employers are not party to it. Further, while the expectations created by the Agreement have not been critical to the decisions we have come to, it has not been possible for us to ignore them. It is regrettable that these expectations have been magnified in various ways - publicity emanating from the parties to the Agreement, the publication of government guidelines, agreements made between some employers and unions, media speculation and advice - all of which have made our task more difficult. It should be obvious that no matter how well-meaning the intention, if strong expectations are generated on a claim which the Commission later finds to lack sufficient merit, the potential is created for serious dissatisfaction and disputation.

On the question of the system which should exist in the immediate future, we have come to the conclusion that in the present circumstances, the continuance of a structured centralised system of the kind which has operated since September 1983 provides the best prospects for maximum labour cost

restraint together with reasonable industrial stability, both essential ingredients for economic recovery.

We base this conclusion partly on the absence of any convincing material which would indicate how any alternative system would operate, and partly and more positively on our understanding of labour market institutions in this country. We also base it on the decision of the Commonwealth, supported generally by those at the National Economic Summit, to adopt a prices and incomes policy approach to economic management currently operating. As to the latter, the centralised system is a foundational feature of government economic policy which allows the adoption and implementation of supporting policies directed towards income restraint. The reduction in real wages resulting from the Medicare effect on the CPI was an important feature of the 1983 wage fixing package. Further possibilities of wage restraint are afforded by trade-off of taxation and social welfare benefits. These types of measures can only operate in the context of a centralised system based on Wage Fixing Principles to be applied generally and consistently.

On the other hand, the decentralised, award-by-award system proposed by AMMA and others ignores important practical considerations. First, the institutional framework within which industrial relations is conducted which includes a multiplicity of awards within each industry, many of them extending to a number of industries; the operation of Federal and State tribunals in particular industries; the occupational structure of unions; and a multiplicity of employer groups. These institutional characteristics which operate in the Australian labour market are a far cry from the simple enterprise-oriented industrial relations system on which the submissions for decentralised wage fixing appear to be premised.

Second, the decentralised approach gives little weight to the high probability that firms or industries, each acting independently in accordance with its own perceived interest, in conjunction with trade unions doing likewise, can result in a general wage increase greatly in excess of the capacity of the economy. The pressure of comparative wage justice is a real force in industrial relations. The strength of this concept, the place it holds in the thinking of employers and employees, even with high unemployment, together with the institutional characteristics of the labour market to which we have referred, would ensure that across-the-board wage increases of similar amounts would occur, and not varying increases based on capacity of individual industries or establishments. Thus, for example, a local or sectional settlement agreed to in a strategic industry based on its ability to absorb or to pass on wage increases, would flow generally regardless of the economic capacity of individual firms or industries. The intentions of the proponents of a decentralised system based on capacity to pay would therefore not materialise. The results, including serious industrial disruption while the flow-on was being resisted, would be worse than under the centralised system.

The perceived advantages of a decentralised system so eloquently argued by its proponents on the basis of the experience of selected countries, is illusory and at best transient in the context of the current Australian labour market. This is so clearly exposed in the experiences of the late 1960s and early 1970s and more recently during 1981/82, that it is surprising that the proponents of decentralisation should continue to ignore the lessons of history and their underlying institutional basis.

Despite the submission of CAI and other employers suggesting that the experiences of 1981/82 would not be repeated in the current environment, we believe that substantial evidence exists of the likelihood of a wage break-out in some sectors if we abandoned the centralised system. This would have inevitable consequences on other sectors of industry. We are not prepared to take the risk at this difficult time for the economy especially as the system

has worked reasonably well since 1983. It is easily forgotten that our legal power extends only to fixing award rates and conditions, and that in the absence of the kind of strictures contained in the Principles, the "labour market" by overawards may be expected to raise the standards of pay and conditions above those which would prevail within the Principles, with damaging effects on the economy. We see our task under the centralised system as avoiding such an outcome and its attendant industrial turmoil.

Nor do we believe that the benefits of a centralised system are confined to big businesses, as suggested by the Council of Small Business Associations. While it may be true that the small business sector is faced with problems not encountered generally by large businesses, the benefits of overall wage moderation from the current centralised system have flowed to large and small businesses. It is also true that the wage explosions of 1973/74 and 1981/82 were not confined to large businesses but affected the economy generally. Small businesses cannot be isolated from the total labour market and its institutional framework; they are part of the total labour market and are subject directly or indirectly to the economic and industrial pressures of that market. This is reflected in the overaward amounts which many small businesses pay. To say as the Council of Small Business Associations has suggested, that small businesses have not benefited from the greater industrial stability which has prevailed in the last 2 years "because for the most part, small business does not get caught up with disputation", is to take a highly superficial view of the way in which the centralised system has operated since 1983.

It is also wrong to believe that the centralised system as it has operated since 1983 and as we intend it should operate in the next two years, is "inflexible". There is a fair degree of wage flexibility within the package but of necessity flexibility is controlled and subject to the strictures of the Principles. This will be evident when we come to deal with

the Principles.

We are not unaware of the economic and industrial relations advantages of greater wage flexibility. However, it is our considered view based on our experience of Australian industrial relations that to allow greater flexibility in the present circumstances would not only be self-defeating because of the corrective pressures which it would generate; it would also undermine the extent of overall labour cost restraint which we believe is achievable under the present system. In due course, it may be possible to introduce greater flexibility in the system. But this is not the time to experiment.

As we show in the review of the economy later, the centralised system which has operated since September 1983 with the general support of all industrial tribunals has, overall, produced better economic and industrial results. It is our judgment that these results would not have been achieved under a decentralised system.

This does not mean that the present position is without its problems. As we elaborate later, the economy faces serious problems especially in relation to its external sector - the balance of payments, the terms of trade, the unstable exchange rate, high interest rates and the large external debt. Further, unemployment is still high, investment is low and sluggish, and inflation is still too high compared to our overseas competitors.

We do not underrate the magnitude of these problems. But we believe that the continuance of the centralised system with the opportunities for labour cost restraint it provides, offers the best option for dealing with these problems in an orderly way. It has been properly put by the NFF that "the real dispute is not whether Australia needs wage retraint, rather the question is what degree of restraint is feasible". We agree with BCA that to move now to a more

decentralised system would "threaten a major breakout with adverse macro-economic effects" which "the Australian business community and the community at large" cannot afford to risk.

We are also concerned at developments in wage and salary fixation outside National Wage Cases.

One essential feature of the package is that the Principles which govern wage and salary adjustments outside National Wage Cases are strictly adhered to and that these additional Principles do not become a vehicle for general improvements in wages or conditions. Our concern relates to a number of instances in both the public and private sectors which circumvent or stretch the Principles beyond reasonable limits, and which have the potential to destroy this essential feature of the package - a matter we elaborate later in this decision.

In introducing the system in September 1983, the Commission listed a number of requirements which must be met for the system to work. It summarized these requirements as going to:

"the minimization of labour cost increases outside national wage, consistency in the application of the Principles generally, the honouring of undertakings and the existence of supporting mechanisms which ensure restraint on prices and non-wage incomes, restraint on government charges and taxation especially those which feed into the CPI, and attention to the social wage".(6)

These requirements apply with equal force to the package we have formulated.

We emphasise in particular that whether or not this package will work and deliver its promise of better industrial relations and economic results will depend to a very large extent on the commitment to it of all - unions, employers, governments and tribunals - and their willingness to discharge their obligations and responsiblities under the centralised system. Experience shows that without such commitment the centralised system breaks down.

The package we have put together pays regard to the present state of the Australian economy and its future prospects. It also offers wage and salary earners the prospect that as far as possible their standard of living will be protected and that any burdens will be shared fairly. Provided that the terms of the package are strictly adhered to, the package is consistent with the preservation of the current profit share and a significant easing of the inflation rate. It also allows the Commission to react positively to any further deterioration in the economy.

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(6)Print F2900, p.22; (1983) 291 CAR 3 at 24

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THE ECONOMY

We begin with a review of the economy since September 1983 when we embarked on the current centralised system of wage determination. This will form the background against which the present claims will be considered. Many of the statistics referred to are to be found in the tables appended.

During this period, following a wage pause effectively for over a year for most wage and salary earners, four national wage increases were awarded under Principle 1:

October 1983 4.3%

April 1984 4.1%

April 1985 2.6%

November 1985 3.8%

On each occasion, in applying Principle 1, the Commission examined the state of the economy closely to decide whether a CPI adjustment should be made.

In September 1983, the Commission, while noting that there were signs of tentative recovery, said:

"The ACTU described the economy as being in a very dismal state. The CAI said that there is no indicator of economic activity which is not in a worse position than it was twelve months ago. The Federal Government submitted that the realities identified at the Summit had not changed - the economy was in deep recession and the process of recovery would necessarily be slow."(7)

The Commission also referred to a point made in the Summit Communique that "Australia's economic problems are deep-seated and not amenable to rapid solution."(8)

In awarding a national wage increase of 4.3%, the Commission gave weight to the fact that the bulk of wage and salary earners covered by Federal awards had not had any pay increase for fifteen months. It was also of the view that any further delay in national wage adjustment would not be sustainable and would frustrate the option generally supported by the parties and interveners for a return to a structured centralised system.

In April 1984, the Commission said that the tentative signs of recovery noted in September 1983:

"have been confirmed and some have strengthened . . . However, all agree that uncertainty about the future and particularly about next year and beyond, persists. The recovery so far has been variously described as fragile, brittle, embryonic and patchy."(9)

The next National Wage Case was a year later because, reflecting the Medicare effect, the CPI had fallen slightly during the first two quarters of 1984. Effectively, therefore, there was a wage pause of twelve months for a large proportion of employees. In April 1985, the Commission remarked that its

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(7)Print F2900, p.44; (1983) 291 CAR 3 at 44

(8)Print F2900, p.10; (1983) 291 CAR 3 at 12

(9)Print F5000, p.5; (1984) 293 CAR 40 at 44

"expectations have been justified by the course of economic events since April 1984. These events are reflected in the continued decline in the inflation rate, the more balanced economic growth, the increase in employment and the fall in unemployment . . . Nevertheless, there are . . . certain worrying signs in the economy which must also be taken into account. The recovery has still a long way to go. However, overall, the economy is in better shape than it was a year ago."(10)

In November 1985, the Commission noted a number of pointers to continued recovery but expressed concern especially at the adverse balance of payments position. This problem has become more serious since then and presents a major threat to continued recovery. Without in any way underestimating the seriousness of the balance of payments problem which accompanied the recovery, we first evaluate the performance of wage policy during the period since September 1983.

In embarking on a centralised system based on a coherent set of principles the Commission did so on the expectation that "it would lead to a more stable

industrial environment and that it would provide the basis for a more rapid economic recovery than would occur in any alternative system".(11) It did so in the economic and industrial context prevailing at the time following the Accord and the National Economic Summit which endorsed a prices and incomes policy as an integral part of the Government's strategy for economic recovery. On the assumption that the economic and industrial environment could change, the package was subject to review at the end of two years.

The Preamble to the Principles formulated in September 1983 included the statement that "The Principles have been formulated on the basis that the great bulk of wage and salary movements will emanate from national wage adjustments".(12)

This expectation has been met. Between September 1983 and December 1985, 96% of all award wage increases emanated from national wage adjustments.

The annual growth of award rates and of earnings slowed down markedly in this period by comparison with earlier years. The growth in average weekly ordinary time earnings and in average weekly earnings in the last three quarters of 1985 were among the lowest for over twenty years. Although earnings increased faster than award rates, it appears from ABS Surveys and other statistics that compositional changes largely accounted for the discrepancy between the series and that no sizeable earnings drift due to overaward payments could be identified. Moreover, in 1983/84, 1984/85 and in the first half of 1985/86, the rate of growth in average award rates fell short of the CPI (adjusted for Medicare). While there was an increase in real average earnings in this period, this may be attributed largely to the compositional change revealed in the ABS Surveys.

These results are all the more significant because employment grew substantially in this period while the level of industrial disputation fell.

(10Print F8100, p.20; (1985) 297 CAR 7 at 26 (11)Print F2900, p.16; (1983) 291 CAR 3 at 18

(12)Print F2900, p.49; (1983) 291 CAR 3 at 51

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Between July 1983 and April 1986, full-time employment grew by 8% while total employment grew by 10 per cent. In the year to the March quarter 1986, employment grew by 4.2 per cent. These are high rates of growth by any standard. Unemployment fell from 10.3% in July 1983 to 7.9% in April 1986, despite a substantial increase in the labour force participation rate. On the basis of a constant participation rate at the April 1983 figure, the recent unemployment rate would be 5.2 per cent.

Since 1983, the level of industrial disputes as measured by man-days lost has fallen to 40% of the average annual level for the preceding 10 years and is back to the level of the late 1960s. The decline in industrial disputes is particularly marked in relation to wage matters. This is unusual and particularly gratifying in a period of rapid economic growth and it is largely due to union adherence to the no extra claims provision.

Until the devaluation effect on prices came into play, the inflation rate had fallen substantially since 1983. Even excluding the moderating effect of Medicare on the CPI, the inflation rate halved between 1982/83 and 1984/85, falling from 11.5% to 5.8 per cent. In its decision of April 1985, the Commission reported that the inflation rate for the December quarter 1984 as measured by the CPI adjusted for Medicare was the lowest since December 1972, and that it was at about the same as the average OECD rate and only marginally above the rate of our main trading partners.

By raising import and petrol prices, the devaluation has reversed this trend. Since the March quarter 1985, the CPI has climbed progressively from 5.3% to 9.1% in March 1986 on the corresponding quarter a year earlier. However, it is expected that by now most of the devaluation effect will have been passed on and the increase in the CPI should be lower as from the June quarter 1986.

Measured in terms of unit labour cost in the non-farm sector, Australia's international competitiveness had returned to the level of the early 1970s by December 1985. During 1985, hourly earnings in manufacturing rose by 5.9% compared with a figure of 7.2% for European OECD countries and 5.1% for all OECD countries.

The moderation of wage increases in conjunction with productivity growth over this period has brought real unit labour costs down to the levels of the late 60s and early 70s.

At the same time, on all the measures presented to us, the share of profits has risen markedly since 1982/83. On the corporate non-farm sector measure favoured by the Treasury, profit shares are back to pre-1970 levels. Between 1982/83 and 1984/85, wages, salaries and supplements rose by 16% while the gross operating surplus of companies and unincorporated enterprises rose by 48% and 33% respectively. The gap between wage and profit increases has been narrowed since then, but the growth of profits is still well ahead of wages.

The above indicators of labour cost moderation, greater industrial stability and greater profitability were accompanied by high GDP growth figures in the period. Following virtually no growth in 1982/83, GDP (non-farm) grew by 3.5% and 4.6% in 1983/84 and 1984/85 respectively; and despite the recent substantial slowing down of growth, brought about deliberately by monetary policy to deal with the balance of payments problem, 1985/86 should see a growth of about 4.0 per cent. These GDP and employment growth rates are well ahead of nearly all OECD countries. Further, over this

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period the balance of growth has been substantially in favour of the private sector. For 1984/85, Private Final Demand made up 3.3% of the 4.8% growth in GDP. This is also reflected in the much greater increase in private employment as compared with employment in the public sector. Between July 1983 and December 1985, 85% of the growth in employment was in the private sector.

CAI has argued that the magnitude of the GDP and employment growth figures, when related to the economic indicators, probably overstates the actual rate of recovery which has taken place. In relation to GDP, CAI submitted that

"the rate of growth being shown in the economy is coming from a very unusual mixture of statistical events, which may or may not represent true production growth . . . a very large question-mark hangs over the growth rates shown in the national accounts."

In connection with the unemployment figures, CAI said that the recent growth rates were "beyond anybody's wildest expectations."

The Australian Bureau of Statistics (ABS) generally warns against too great a reliance being placed on recent figures and many such figures are adjusted later for over or under-statement. But apart from this cautionary note, which is normally made on the figures referred to by CAI, the ABS does not suggest that the rates of growth of GDP or employment referred to should be treated with reserve because of their extra-ordinary magnitude. In the circumstances, while we must regard very recent figures, particularly those related to the quarterly national accounts, with the caution we normally exercise, we are not persuaded that we should be unduly sceptical about the extent of recovery indicated by the official figures.

Before dealing with the current economic difficulties it is important to

acknowledge the record of economic achievement since September 1983 outlined above as well as the role played by the Wage Fixing Principles. It should be noted that the danger and difficulties of a wage explosion so often encountered after a prolonged wage pause, were avoided in the transition to a policy of labour cost restraint under a structured centralised system. Referring to the operation of incomes policy, the OECD June 1985 Economic Survey on Australia said:

"It is evident that to date this policy approach and the preceding wage pause have been remarkably successful, with the annual inflation rate falling by about 6 percentage points from its recent peak and employment rising by around 340,000 within the first two years. One reason for the apparent success of the Accord has been the fact that it paid due regard to the institutional framework and labour market norms in the Australian environment, including the role of the Conciliation and Arbitration Commission and of the trade union movement and its major peak council, the Australian Council of Trade Unions (ACTU). While the current framework of the Accord implies a lack of flexibility in wage fixing at the micro level, it has provided a major source of stability in industrial relations which was badly needed."

However, this record of achievement has been accompanied by a growing weakness in the external sector of the economy which, if not corrected, will threaten further recovery and probably put the economy into reverse. GDP growth virtually stopped in the December 1985 and March 1986 quarters and while this result, at least in direction, was intended by the tightening of monetary policy to relieve the balance of payments problem as a matter of urgency, it does demonstrate the threat to our employment prospects if contractionary policies must be so heavily relied on to deal with our external problems.

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In our November 1985 decision, we gave special emphasis to the balance of payments difficulties and enumerated the following factors as the source of these difficulties:

. the low level of international competitiveness of the Australian economy

. the more rapid rate of growth of the Australian economy relative to that of the rest of the world resulting in imports being inadequately balanced by exports

. depressed world prices for our exports, especially of minerals and metals in a slowing world market

. the high cost of servicing our sharply growing external debt.

A clear manifestation of these difficulties was the substantial devaluation which occurred in the early part of 1985. Between December 1984 and December 1985, the devaluation as measured by the trade weighted index was about 25 per cent. We noted in November 1985:

"The size of the devaluation is a tangible warning that Australia has been borrowing too heavily from abroad as reflected in the size of the balance of payments deficit and the international debt; but the devaluation also presents an opportunity to rectify this unsustainable state of affairs. This opportunity is provided by the restoration of our international competitiveness to the level of the early 1970s. It was not disputed that the opportunity will be lost to the extent that the price effects of the devaluation are ultimately fed into wages."(13)

Since then an even more adverse movement in the terms of trade has become evident as the decline in the world prices of metals and minerals has extended to energy and grains. The circumstances are such that a recovery in the terms of trade is not in sight, at least for the next two years, despite the projected faster growth in the world economy. From March 1985 to March 1986,

the terms of trade fell by 14 per cent. The ABS has estimated the growth in real GDP over this period adjusted for the terms of trade to be 1.1% as compared with the unadjusted figure of 4.0 per cent. This difference must be seen as making a substantial inroad into productivity available for distribution to the domestic economy.

A further reflection of the strain on the economy imposed by the adverse terms of trade is the fact that over the 12 months to the March quarter 1986, while the volume of exports and imports rose by 14.1% and 0.9% respectively, their corresponding values rose by 18.9% and 21.5 per cent.

Consequently, although the underlying signs are that the balance of payments is turning around, because of the fall in world commodity prices and the gloomy outlook for these prices as well as the high cost of servicing our external debt, it may be some time before the balance of payments is back to more normal and sustainable levels.

These circumstances impose stern constraints on economic policy, including wage policy, if, as the NFF has reminded us, the top priorities of the Accord, reducing unemployment and inflation, are to be met. The need to bring down the inflation rate is all the more urgent because our trading partners are lowering their inflation rate faster than we are.

(13Print G0700, p.10

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The sectors of the economy more directly involved in exports, the rural and mining sectors, are clearly feeling the direct effects of the fall in world commodity prices. Although not all parts of the rural sector are in difficulty, the Bureau of Agricultural Economics expects rural net real income for 1985/86 to be down to the second lowest level since 1950/51. The mining sector has benefited from the devaluation, moving it from losses to profits, but profit rates are still well below pre-recession levels.

The correction of the balance of payments rests heavily on manufacturing industry being able not only to increase exports but also to compete against imports in the domestic market. Manufacturing has shared in the strong overall growth in the economy. Factory production grew by 7% between the December quarters 1983 and 1985. The devaluation has improved the international competitiveness of certain sectors of manufacturing industry significantly; in other sectors competitiveness has been offset by the cost of imported materials and components. We have already mentioned that Australia's international competitiveness had returned by December 1985 to the level of the early 1970s. Overall, the effects of devaluation have been favourable but the margin of advantage could quickly be eroded if Australian costs rise faster than international costs. In this connection, while wage costs are an important factor, as Professor Brian Johns, Director, Bureau of Industrial Economics, has recently pointed out, structural changes in manufacturing which are critical to its growth, rest heavily on the application of improvements in technology, managerial efficiency and all such factors which bear on cost minimisation.

One matter of immediate concern to growth generally is the level of business investment. We have had occasion in previous cases to express concern at the slow recovery in business investment and its low proportion of GDP as compared with the early 1970s. A more serious position is reflected in investment in equipment, a major component of business investment, which, after being negative in 1982/83 and 1983/84, began to show positive growth in the three quarters of 1984/85. However, negative growth has been resumed in the three quarters of the current financial year. The latest quarterly figure, which must be treated with reserve, shows that between the March quarters 1985 and 1986, investment in equipment fell by about 12% in real terms. The slow

response of total private investment to the considerable improvement in real unit labour costs and profits is most likely a reflection of the very high interest rates and uncertainty about future demand and cost prospects. However, the most recent ABS Survey of new fixed capital expenditures by private enterprises conducted during October-November 1985 shows improved investment expectations in all sectors surveyed. Further, a large proportion of imports in the last year has been in the form of capital goods.

A paper published in January 1986 by the Economic Planning Advisory Council drawn to our attention by the ACC, gives a perspective of the issues involved including wage policy:

". The incentive to invest still remains relatively low. This is because recent improvements in real unit labour costs and competitiveness have not been sufficient to outweigh the negative effects of a declining terms of trade and increases in real interest rates in recent years. Uncertainty about exchange rate overshooting and its implications for inflation and the cost of capital goods are also likely to have been important factors.

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. A sustained increase in the rate of investment requires continued firm restraint in public sector borrowing to reduce pressures on domestic credit markets, the current account deficit and the rate of accumulation of foreign debt. With proposed cuts in rates of taxation, this requires reduced growth in government current spending in order to increase the public sector's contribution to domestic saving. Such developments will assist in reducing real interest rates in the medium term, making room for business investment. The speed with which this room is created is an important policy issue.

. It also requires the continued successful use of the centralised wage fixation system to achieve appropriate adjustment of wage costs. Stability, together with appropriate flexibility in this area, are essential to reduce uncertainty based on past volatility of real unit labour costs, and concerns about greater than expected exchange rate depreciation induced wage claims.

. The proposed increase in superannuation in remuneration packages may also contribute to increased private saving, reinforcing the contribution of fiscal policy to reducing real interest rates.

. Macro-economic policy in general must provide a stable investment environment by reducing uncertainty. The current wages policy under the Accord and budgetary policy under the Trilogy provide a framework for achieving such a stable environment. Continued use of this framework with other branches of economic policy in a mutually reinforcing way should assist to reduce uncertainty, particularly about future inflation and exchange rate movements, and help to bring the medium-term orientation of government policy into sharper focus."

In summary, since we embarked on the centralised system in September 1983, the economy has made rapid gains in terms of growth in GDP and employment; the unemployment rate although still unacceptably high has fallen; wage increases have come down markedly; real unit labour costs are down at or close to the levels of the late 1960s; and profit shares are back at or close to the rates of the late 1960s. All this has happened in a much more stable industrial relations climate in which Wage Fixing Principles have generally been adhered to in an orderly way, with little earnings drift due to overaward payments and some 96% of total earnings being attributed to national wage.

However, the recovery has encountered a persistent and serious balance of payments problem which, in a floating exchange rate regime, has led to a substantial devaluation of the Australian dollar. This problem is in part due to the very rapid growth of the Australian economy itself in the context of much slower growth in the world economy; but it has been more seriously affected by a very adverse movement in Australia's terms of trade. While it is

not unusual for the terms of trade to worsen following a devaluation, the extent of devaluation is largely due to the considerable fall in world commodity prices which affects the bulk of our exports. The signs are that these prices will remain low in the next two years. Unless the deficit in the balance of payments is reduced, the growth in our external debt is halted and the Australian dollar is stabilised, the economy faces the prospects of losing all the gains made in the last three years.

Fiscal and monetary measures have been applied to slow down the growth of domestic demand; and although it is too soon to be confident, there are signs that the balance of payments is beginning to turn around. Continued labour cost restraint and continued growth in productivity provide the

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opportunity of lowering our inflation rate relative to our trading partners. This would assist fiscal policy and relieve the strain on monetary policy in dealing with the balance of payments. The consequential lowering of interest rates would encourage the current faltering level of private investment and restructuring, and in that way increase the economy's employment and productivity potential.

BCA has summarized the economic trends and prospects as follows:

"Australia's relatively strong performance over the last two years, which has included a reduction in domestic inflation levels and good employment growth, stemming mostly from increased utilisation of existing production capacity, masks very serious and fundamental economic problems. These problems of high inflation, high interest rates, a chronic current account deficit, a rising overseas debt burden and poor levels of investment are inter-related and are not amenable to quick-fix or overnight solutions. They require some fundamental readjustments within the economy."

MTIA has emphasised that any improvement in the overall situation is the responsibility of all and that this will require sacrifices. This point is as relevant now as it was when the Summit Communique noted: "If restraint is to be exercised then such restraint should be exercised universally."

While the recovery in profits as revealed by global figures does not mean that all sectors of the economy are enjoying high profits, it does suggest that there is room for labour cost restraint to be matched by profit restraint. Such an outcome would not only hasten the fall in inflation and interest rates, it would also help to sustain the commitment of wage and salary earners to the stringent requirements of the centralised system.

It is against this economic background that we turn to consider the claims before us. Although we deal with them under separate headings, it will be understood that they are interrelated so far as their cost implications for the economy are concerned, directly and indirectly.

THE MONEY CLAIMS

The money claims relate to the movement in the CPI in the second half of 1985 and any increase in productivity.

At the commencement of the proceedings, the question was raised whether Principles 1 and 2 of the package of 23 September 1983 would continue to apply in relation to these applications. In our Statement on 13 February 1986, we decided as follows:

"An issue relating to the November 1985 National Wage decision raised for clarification by the ACTU is whether, in extending the period of application of the Principles, the Commission had in mind the extension of all Principles or, as CAI contends, all Principles other than Principles 1 and 2.

Our intention was that all Principles should continue to apply pending the

outcome of the review of the Principles to ensure that no hiatus would occur. This is explicitly stated on pp.6 and 7 of the November 1985 decision as well as on p.22 in our formulation of the No Extra Claims clause. It should be noted also that the comments on p.18 of that decision have a bearing on the way CPI and productivity claims should be considered in the present case.

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Although it was generally submitted in those proceedings that no hiatus should occur in the operation of wage fixing principles, no debate took place on the issue of whether certain of the existing Principles should not be applied in any future national wage case. In view of the fact that the review of the Principles, the CPI claims and the productivity claims are being heard together in the present proceedings, the parties are not precluded from making further submissions on this issue as part of their overall submission on the three matters before us."

Further submissions made to us on this matter have not persuaded us to change our view although we should state that no practical difference would have resulted from taking the course proposed by CAI. It should be clear, however, that the determination of these claims disposes of the package which came into operation in September 1983. It also marks the end of any expectations inherent in that package.

These claims need to be viewed against the ACTU/Commonwealth Agreement of September 1985 which formed the basis of the ACTU's and the Commonwealth's submissions in this case. We summarised the terms of the Agreement in our November 1985 decision as follows:

"1. A full national wage adjustment of 3.8% in the present case and a deferment of any discounting for devaluation to the next national wage adjustment 'expected to occur in April 1986'. The discounting on that occasion will cover the direct effects of the devaluation on the CPI for the four quarters of 1985 and should be limited to 2 per cent. To compensate for the effect of the 2% discounting on the living standards of employees, income tax will be reduced appropriately as from 1 September 1986.

2. In relation to the 4% productivity claim made by the ACTU, the agreement provides for extension and improvement of occupational superannuation generally to be 'offset against national productivity and be based on a three per cent wage equivalent'. Except 'in very isolated circumstances', negotiations on superannuation can proceed on the understanding that the cost impact of new or improved arrangements will not occur before 1 July 1986 and that implementation will occur progressively to 'about mid-1988, as negotiations between unions and employers were completed industry by industry, occupation by occupation or, in certain circumstances, company by company'.

The Commonwealth admitted that there were a number of complex issues related to superannuation which would need to be discussed in conference between employers and unions prior to any productivity case being commenced.

3. The current Principles will continue to apply until new principles are adopted. The Commonwealth's support of the terms of the agreement is based on the continuance of the 'no extra claims' commitment by the unions.

Other terms of the agreement relate to support for certain changes to the present Principles, to tax reform, and to industry development."(14)

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(14)Print G0700, p.14

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The CPI Claim

This claim is based on the 4.3% increase in the CPI for the September and December 1985 quarters.

We noted in November 1985 that the need to adjust any wage increase for the price effects of devaluation was not disputed by anyone. The adjustment constitutes a reduction in real wages needed to meet the underlying causes of the devaluation and to ensure that the opportunity to restore international competitiveness is not dissipated by wage increases based on devaluation-

induced price increases. At that time, the Commission was considering an adjustment of 1.2% in relation to CPI increases of the March and June quarters 1985. Because deferral of such adjustment to the next National Wage Case would involve negligible cost, the Commission acceded to the submission of the ACTU, Commonwealth and others for the devaluation adjustment of the March and June 1985 quarters to be deferred.

The matter of the adjustment for the devaluation induced price effects which occurred during the four quarters of 1985 is therefore before us in these proceedings.

The ACTU and ACPA submitted that the direct effect of devaluation on the CPI was 1.73% and that this was the appropriate extent of adjustment. This figure was based on the Statistician's assessment of the rise in the price of imported items and petroleum products in the CPI. The Commonwealth, supported by New South Wales, Victoria, South Australia, Western Australia and Tasmania, argued that the December 1985 quarter CPI was affected by petrol price discounting which masked the full increase in the CPI due to devaluation. Allowing for the petrol price discounting element, the direct effect of devaluation as estimated by the Treasury was 1.91 per cent. The Commonwealth pointed to the difficulties of any precise measure especially that relating to the indirect price effects of devaluation. It submitted that taking into account the cost savings from the moderation, deferral and phasing in of the productivity claim, 2% was an appropriate figure to offset completely the direct and indirect effect of devaluation on the CPI in 1985. It should be noted that under the ACTU/Commonwealth Agreement, a 2% reduction in income tax would take place in September 1986 to offset this adjustment.

The appropriateness of the 2% figure was also endorsed by the Treasury in the following note contained in its calculation of the devaluation's effect:

"The Government/ACTU agreement on wages referred to above provides for a 2 percentage point discount on the indexation increase due in the April 1986 national wage case, provided the Statistician's estimate for the four quarters of 1985 is 2 percentage points or more. The results for the first three quarters of 1985 suggest that this will prove close to the mark. The Government/ACTU agreement also provides for the deferral and moderation of the ACTU's productivity claim. In view of the continuing growth in productivity (on past indications, at a rate of about 2 per cent per annum), these other provisions of the agreement should lead to approximately a further 2 percentage point lowering of unit labour costs in 1985-86 beyond the effect of discounting and should offset those effects of the depreciation not reflected in the Statistician's estimates."

Queensland adopted the devaluation adjustment of 2% proposed by the Commonwealth but argued that the consequent 2.3% CPI adjustment should be applied up to a weekly wage of $286, this being the weighted average weekly minimum award rate and that for wage rates above $286, a flat $6.30 should be awarded. Having regard to other aspects of our decision in this case and the inadvisability of interfering with existing relativities, we reject this course notwithstanding its economic attraction.

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The private employers generally argued that in view of the state of the economy, there should be no increase at all on account of prices. However,

certain employer groups said that if the Commission were persuaded to grant any increase, there should be discounting for the full effect of devaluation.

On the basis of a number of indicators of price movements, CAI submitted that the full impact of devaluation appeared to be between 3% and 3.5% and that the Commission should discount by 3.5 per cent. In addition, the Commission should discount for the cost of industrial disputes which was estimated at 0.3 per cent.

BCA estimated the direct and indirect effects of devaluation to be 3%, as a conservative figure. NFF also suggested that the discount should be at least 3 per cent. ACC after initially suggesting that there should be discounting for devaluation of 2% and discounting of 0.8% for public sector price increases, later modified its position to suggest that the total discount should be no less than 2 per cent. The Northern Territory supported a devaluation discount of at least 3.5 per cent.

In our view, there should be discounting for both the direct and indirect effects of devaluation on the CPI for the four quarters of 1985. To exclude the indirect effects would allow these effects of devaluation to be fed into the labour costs and so increase prices further. This would reduce the beneficial effect of devaluation on international competitiveness.

However, there are difficulties in measuring these effects. We are prepared to accept the direct effect at about 1.9% but we are not satisfied that the various attempts at assessing the indirect effects can be relied upon.

Because of the complex and interrelated issues involved in the three claims before us, the hearing of the claims has taken longer than usual. The CPI adjustment for the September and December 1985 quarters has therefore been delayed beyond the expected time. The ACTU has sought an operative date of 7 April 1986 for the national wage adjustment. It has done so for a number of reasons, including that such adjustments have generally been made around April and October and that there has been a long delay in the present case because the Commission chose to deal with the three cases jointly. In addition to submissions on the national wage adjustment, this involved extensive submissions from many parties and interveners on the Principles and on productivity, as well as a jurisdictional challenge.

The Commission has repeatedly made it clear that it does not favour retrospective adjustments of national wage. We affirm this. However, in the present case we have decided to take the extraordinary length of the proceedings into account in determining the size of the devaluation discount. On the basis of CAI's own calculations of cost savings resulting from longer lags in wage adjustment, this delay has provided employers with substantial cost relief which will go a long way to covering the indirect effects of devaluation. Further, in order to maintain the spacing of national wage adjustment at six-monthly intervals we would expect the next national wage adjustment not to operate before January 1987.

Bearing in mind the cost saving arising from the delayed adjustment we have decided that a devaluation discount of 2% is an appropriate figure for the direct and indirect devaluation induced price increases which occurred during 1985. We will therefore award a uniform national wage adjustment of 2.3% on the basis of the CPI movement for the September and December 1985 quarters, to operate as from the beginning of the first pay period on or after 1 July 1986. This will be the only national wage increase in 1986. It will

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effectively keep the general level of wage rates in real terms 2% below the level fixed in November 1985. In conjunction with our decision on productivity, this national wage adjustment is consistent with a slowing down of inflation, an outcome which, as we have emphasised earlier, is a necessary element in dealing with the current economic difficulties.

We should add that the discount factor we have applied, relates to the direct and indirect devaluation induced increases in the CPI which occurred during 1985. This does not preclude adjustment, if necessary, in future National Wage Cases for devaluation-induced price increases which may be shown to have taken place since then.

The Productivity Claim

The applications relating to productivity have been referred to earlier. This is the first occasion on which claims in this form have come before the Commission.

In its decision of 23 September 1983, the Commission formulated Principle 2 as follows:

"Upon application and not before 1985, the Commission will consider whether an increase in wages and salaries or changes in conditions of employment should be awarded on account of productivity."(15)

In making this provision, the Commission said:

"We do so on the clear understanding that there will be no productivity adjustment until the economy has recovered substantially and can sustain an increase in national wage beyond CPI adjustment."(16)

The Commission noted that a consensus on national productivity was achieved at the President's Conference prior to the hearing of the case on the following:

". the distribution of gains in national productivity should be considered in National Wage Cases

. there should be no double counting in respect of productivity

. the method of distributing national productivity may take forms other than wage increases."(17)

It should also be noted that the productivity principle was formulated against the background of the Accord of February 1983 and the National Economic Summit Conference of April 1983, the terms of which were discussed in some detail in the Commission's decision of 23 September 1983. One of the terms of the Accord was that effective prices and incomes policies:

"should aim to ensure that living standards of wage and salary earners and non-income earnings sectors of the population requiring protection are maintained and through time increased with movements in national productivity".

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(15)Print F2900, p.27; (1983) 291 CAR 3 at 29

(16)Print F2900, p.27; (1983) 291 CAR 3 at 29

(17)Print F2900, p.26; (1983) 291 CAR 3 at 28

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The Summit Communique which was endorsed by the ACTU and various employer groups including CAI, noted among other things:

"It is a legitimate expectation that income of the employed shall be increased in real terms through time in line with productivity".

At the National Wage Conference, December 1985, the Report by Mr Justice Williams notes that there was consensus that:

"The objective of the centralised system should be to increase real incomes through time in line with productivity".

It should be clear from the above that there is a legitimate expectation on the part of the unions and endorsed by employers and governments, that the real incomes of wage and salary earners should be increased in time in line with productivity. Further, it is not in issue that productivity is the primary source for improved living standards for wage and salary earners which can be achieved without raising prices or reducing profits.

However, as we pointed out earlier, the determination of this claim marks the end of any expectations inherent in the 1983 package. For reasons which will be clear presently, no productivity-based claims of the kind envisaged under the former Principle 2 will be considered during the term of the new package. The basis on which productivity will be shared after that is of course an open question, and there can be no presumption that a separate productivity principle will necessarily be available.

The question for us now to decide is whether the economy has recovered substantially since September 1983 and can sustain an increase in labour costs beyond the adjustment under Principle 1 which we have decided to award.

To deal with this question it is necessary first to establish the size of productivity increase against which any labour cost increase may be offset. The measurement of productivity growth relevant to the question before us is not straightforward and the submissions differ on certain elements involved in such measurement.

We have been assisted by the Report of the Working Party on the Measurement of Labour Productivity published in November 1975 in direct response to the Productivity Principle of the Principles announced by the Commission on 30 April 1975, namely:

"Each year the Commission will consider what increase in total wage should be awarded on account of productivity."(18)

The Working Party consisted of senior officers of various Commonwealth Departments and of the Australian Bureau of Statistics, all involved in their individual capacities.

It notes that:

"The issues are complicated and the Working Party wishes to make it clear that nobody has yet been able to develop a fully satisfactory measure of productivity at the national level for wage fixation purposes".

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(18)Print C2200; (1975) 167 CAR 18 at 37

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Further, it emphasizes that:

". . . there are various different concepts and measures of productivity and that the selection of an appropriate one needs to be related to the purpose for which it is to be used. The approach adopted, therefore, has been to consider the appropriateness of the various measures of productivity in relation to their possible use in wage fixation."

In this connection, it says:

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

The Working Party points out that the "traditional measure" (gross domestic product at constant prices per person employed) is deficient for purposes of wage fixation in several respects (p.31, para 3):

1. It covers the whole of the economy rather than the market sector only.

2. It is not adjusted for changes in the terms of trade.

3. It does not allow for changes in hours worked.

4. It does not allow for changes in the skill composition (quality of labour) of the workforce.

Covering the whole economy understates the appropriate measure for wage fixing purposes because the productivity of the non-market sector is assumed to be zero; and because adjustment of wages proportionate to the market sector productivity would be consistent with stability in factor shares and would not add to prices. This, the Working Party says, is theoretically the correct concept for wage determination purposes. The adjustment for changes in the terms of trade establishes the volume of goods and services which is available for distribution as against what is produced. Using hours worked instead of per person employed gives a better measure of the quantity of labour used.

Adjusting for improvement in the quality of labour allows for the upward bias in the measure and avoids double counting for higher wages paid on account of the improvement in the average level of skill entailed in production. In this connection, the Working Party suggested tentatively a correction within the range of 0.1% to 0.5% per annum.

The measure recommended attempts to overcome these deficiencies by appropriate adjustments of real GDP per person employed. To avoid volatile year-to-year fluctuations characteristic of productivity series, it recommends the use of a trend based on a period of 10 or 11 years. The Working Party also points out that the labour productivity concept "does not carry with it the connotation that the output is attributable directly or solely to labour, or to any other particular factor of production."

It was generally agreed in submissions to us that the adjustments for terms of trade changes and hours worked are proper; although BCA argued that, along with other relevant economic factors, changes in the terms of trade should be looked at directly when considering desirable wage levels rather than indirectly through adjustment in the productivity measure. There was also general agreement on the need to correct for improved quality of labour, although the ACTU, while conceding the effect of quality of labour on the wages bill, argued that an appropriate measure was not available.

The more contentious issue was whether the measure should cover the whole economy or just the market sector. The ACTU and the Commonwealth supported the view of the Working Party that the market sector was the appropriate measure for purposes of gauging the extent of real labour cost increase without adding to inflation and worsening international competitiveness or reducing the share of profits. CAI, BCA and other employers on the other hand, argued that as the adjustment concerned the whole economy, it is proper that a national measure should be used. However, BCA admitted that while the market sector would overestimate "true" growth, economy-wide measures would underestimate "true" growth; and it said "where there are no hard figures to settle the debate the answer lies somewhere between the two extremes".

A further controversial point is whether the appropriate productivity measure is labour productivity i.e. the ratio between output (appropriately adjusted as indicated above) and labour input; or total factor productivity in which output is related to the input of both labour and capital. The Working Party recommends labour productivity as the appropriate measure for national wage

determination and this measure is urged by the ACTU and the Commonwealth. On the other hand, BCA, MTIA, ACC and the Small Business Coalition argued that such a measure ignores the increasing proportion of capital being applied to labour over time. This imparts an upward bias to this measure for wage fixing purposes. Therefore, these employers argue, to avoid this bias, a total factor productivity measure should be used. CAI while not embracing the total factor productivity concept nevertheless maintained that increasing ratio of capital to labour as well as a "spurious" productivity element produce an upward bias in labour productivity.

The ACTU and the Commonwealth admitted that while a total factor productivity measure may be a useful efficiency indicator for a firm or industry, it was inappropriate for national wage fixing purposes, a point supported by the Working Party. The ACTU submitted that the labour productivity measure provided a neutral base from which the economic implications of national wage adjustments may be considered; such adjustments proportionate to labour productivity would not affect the price level or the respective shares of wages and profit. The use of total factor productivity, on the other hand would impart a bias towards higher profit shares at the expense of wages. The ACTU showed that if such a measure had been applied between 1966/67 and 1984/85, labour's share of GDP would have declined from 61% to 51 per cent. Such a massive reallocation of national output between wages and profits "which would necessarily result from the BCA method would result in enormous economic and industrial relations dislocation". The ACTU pointed to the conceptual and statistical difficulties involved in the measurement of capital and also to the historical experience, not confined to Australia, that real wages have moved in line with labour productivity.

While on the basis of the material before us we are on balance inclined to regard labour productivity as the more appropriate measure for national wage fixing purposes, we share the views expressed by both CAI and the ACTU that the range between the different measures suggested is not great, particularly when allowance is made for overstatement and understatement arising from statistical deficiencies.

The following table reflects this conclusion:

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Productivity Trend Measures Relied On

(average annual rates)

ACTU 1973/74-1983/84 Market Sector Labour Productivity

Compound Growth 2.2%

(No allowance for quality of labour)

Commonwealth 1972/73-1983/84 Market Sector Labour Productivity

Compound Growth 2.16% Least squares 1.81%

Average rounded 2.0%

CAI 1973/74-1984/85 Total Labour Productivity

Compound Growth 1.7%

Least squares 1.6%

BCA 1973/74-1984/85 Total Factor Productivity

Compound Growth 1.4%

(No allowance for change in terms of trade

and quality of labour)

Allowing for upward bias in some and downward bias in other figures, we would regard a range of between 1.6% to 2% per annum as a reasonable trend guide. As the Working Party notes "the numerical effect of including or excluding the non-market sector is not particularly large relative to many of the other uncertainties involved in the assessment of capacity to pay wage increases." (p.17 para. 2)

It is also clear from the technical material presented to us that whatever trend figure is chosen as a measure of productivity which has occurred in the recent past, it cannot be applied mechanically to determine whether the imposition of additional labour costs can be sustained by the economy. In this connection we make it clear that we are not persuaded by the ACTU's retrospective approach on productivity distribution. The ACTU has argued on the basis of its trend figure of 2.2% that for the two years since the commencement of the indexation package in September 1983, an increase of 4.4% in productivity is available for distribution to wage and salary earners.

Such an approach is conceptually and practically untenable as a basis for productivity distribution. It generates unwarranted expectations of an economically unviable catch-up as, for example, the 9.1% national wage catch-up claim made in the 1983 case. It should further be noted that for many years, the quantum of national wage increase repeatedly claimed by the unions was based on a real wage catch-up related to the national productivity movement since 1953. This led the Commission in the 1972-1973 National Wage Case to remark that:

". . . national wage claims which are based on rates fixed some twenty years ago and which are treated in argument as a matter of ambit, can give rise to false expectations and these false expectations are likely to create industrial discontent, either before or during the hearing or following the decision on the claims."(19)

The increase in productivity which has occurred since 1983, has gone to restoring the health of the economy mainly by allowing a recovery in profits

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(19)Print B8865; (1973) 149 CAR 75 at 78

to take place and by slowing down the rate of inflation. These benefits are also revealed in the movement of real unit labour costs to which we have already referred. Past productivity is relevant in so far as it provides the economic and distributional setting for the claim. However, the relevant productivity against which to set off any future increased labour costs arising from benefits to wage and salary earners, is future productivity. The trend figures presented to us are no more than a guide as to what may be reasonably expected from productivity improvement in the near future. The determination of these trend figures, as the Working Party points out, is only a first step, and "a judgement must be made as to how far allowance should be made for the fact that the future may not follow the same pattern as the past".

The present outlook is for a slowing down of economic growth and possibly also for a further adverse movement in the terms of trade. As we have indicated, three-quarters of the 4% growth of the GDP in the year to the March 1986 quarter has been lost by the terms of trade effect. The economic material in the supporting statement to the Prime Minister's Address To The Nation on 11 June 1986 merely confirms the severity of the impact of the adverse terms of trade on the economy which was stressed by CAI and NFF in proceedings before us and to which we have given considerable weight. It is therefore not possible to be confident at this stage that for the next two years a productivity growth of as much as 1.6% to 2% per annum will take place. But

whatever productivity growth does take place, it will provide the potential for distribution in various forms - lower prices, higher profit share, improved real pay and conditions to wage and salary earners, or a combination of these three forms.

As has been shown earlier, in the last two years, productivity has gone principally into lower price increases and higher profits. This approach has been dictated by the severity of the recession and the need, generally endorsed, for economic recovery to be promoted by a slowing down of inflation and a restoration of profitability in order to provide the necessary momentum for economic growth. As we said earlier, the question for us to decide is whether the current state of the economy and its immediate prospects will allow wage and salary earners to enjoy an improvement in pay and conditions beyond adjustments under Principle 1 without damaging the prospects of continued recovery.

We repeat that since 1983 the economy has made a remarkable recovery in certain respects. But it has encountered a persistent and serious balance of payments problem which, in a floating exchange rate regime has led to a substantial devaluation of the Australian dollar and a considerable rise in interest rates. Unless the deficit in the balance of payments is reduced, the growth in our external debt is halted and the Australian dollar is stabilised, the economy faces the prospect of losing all the gains made in the last three years. In short, the inevitable result will be a return to unemployment of over 10 per cent.

In the present economic circumstances, therefore, is a strong case for arguing that productivity growth for the next two years should not at this stage be earmarked for distribution to wage and salary earners and that it should as far as possible be devoted to lowering our inflation rate relative to that of our trading partners. This would assist fiscal policy and relieve the strain on monetary policy in dealing with the balance of payments. Consequential lower interest rates would promote investment, provide the potential for faster productivity growth and minimize the risk of stalling economic recovery or, worse, of putting the economy into decline. There is

therefore distinct immediate and medium term economic advantage in delaying any productivity distribution to wage and salary earners, bearing in mind especially our decision to award a national wage adjustment of 2.3% on this occasion and to continue national wage increases under Principle 1 for the next two years.

We should add that the lowering of inflation and interest rates needed to meet our present and foreseeable economic difficulties, would be promoted not only by labour cost restraint but also by restraint in other incomes including profits. The recovery in profits noted earlier gives force to this point.

We are aware that expectations have been built up by the National Economic Summit Communique and the Accord, at Commission Conferences and by the terms of the package introduced by the Commission in September 1983, that wage and salary earners are entitled to share in productivity improvements through award wage increases in addition to adjustment of wages for prices. These expectations have been reinforced by the labour cost restraint since 1982, and greatly strengthened by the Commonwealth/ACTU Agreement of September 1985, made, it should be said, at a time when the balance of payments problem seemed to loom less large. Nevertheless, expectations however valid at the time they are generated, must be tempered by the rigours of the economic circumstances which prevail at the time they are to be met.

In this connection, we note the following statement in BCA's booklet: The Measurement and Distribution of Productivity:

"The decision on the appropriate way to distribute the benefits of

productivity growth may have to consider labour force expectations and industrial relations considerations. The potential reactions are cast in an environment where customs, notions of equity, and the balance of power between different groups are important. It is a legitimate expectation of employees that the real value of their remuneration should rise over time. While industrial harmony would be encouraged by distributing some productivity gains directly to labour, this does not mean that the entitlement exists as an immutable law and nor does it specify how much need be distributed on this criterion. Expectations of what is a fair share in the circumstances must be capable of adjustment. Expectations are subject to influence by political and union leadership, by public opinion and by critical national priorities."

In the present difficult economic circumstances, we have given priority to national wage adjustment based on Principle 1. The sharing of future productivity must proceed more cautiously and tentatively and with a watchful eye on the course of the economy, especially in view of long lags in the economy's response to policy actions. This is the approach we have decided to take on the distribution of productivity as will be apparent later.

As to the particular form of productivity distribution, the report on the President's Conference in 1983 noted that there was consensus that "the method of distributing national productivity may take forms other than wage increases". The claims before us seek the distribution of productivity by way of 4% increase in wages and salaries or the payment by employers of a "3% wage equivalent" into occupational superannuation funds to the credit of their employees.

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We reject the claim for a 4% increase in wages and salaries and deal with the question of superannuation presently.

THE PRINCIPLES

We turn now to consider the Principles which will apply henceforth. We have decided that the term of this package should extend to July 1988, subject to any modifications during that time as a result of the review, to be referred to later, on minimum and paid rates awards and the minimum wage. Close to the expiry date of the package, upon application by any party, the Commission will consider the future of the system and the principles attaching to it.

Principle 1: National Wage Adjustments

The present Principle 1 is as follows:

"(a) Subject to Principle 3, the Commission will adjust its award wages and salaries every six months in relation to the last two quarterly movements of the eight-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment.

(b) For this purpose the Commission will sit in February and August following the publication of the CPI for the December and June quarters respectively.

(c) The form of indexation will be uniform percentage adjustment unless the Commission decides otherwise in the light of exceptional circumstances. It is to be understood that any compression of relativities which may have occurred in recent times does not provide grounds for special wage increases to correct the compression.

(d) It would be appropriate for the Commission, after hearing the parties to an award and being satisfied that a proper case has been made out, to recommend the indexation of overaward payments when award payments are indexed."(20)

The submissions on this Principle were substantially the same as those before the Commission in the September 1983 Case. The ACTU argued that the

restoration of the purchasing power of wages by full adjustment of wages for prices is the means of ensuring real wage security which was essential to the successful operation of a centralised system. To this end, the primary position of the ACTU is that there should be full automatic quarterly indexation. However, the ACTU indicated that it would find the present provision for six-monthly prima facie full indexation acceptable. ACPA adopted the same position while the Commonwealth found "no good ground" for departing from the present Principle.

Victoria, South Australia and Western Australia supported the thrust of the Commonwealth's submissions in relation to Principle 1. New South Wales sought an amendment to the Principle to accommodate a periodic review of the minimum wage. Tasmania submitted that applications to increase wages on economic grounds should be dealt with by the Commission on an annual basis. Queensland favoured a return to a two-tiered system consisting of a base wage related to economic considerations and a secondary element related essentially to "traditional industrial concepts such as work value". Northern Territory was opposed to both automatic and prima facie adjustment of wages for prices and sought annual adjustments.

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(20)Print F2900, p.49; (1983) 291 CAR 3 at 51

On the other hand, CAI supported by other employer groups, argued that movements in the CPI did not reflect capacity to pay wage increases. It proposed annual national wage reviews on the following principle:

"The Commission will consider the adjustment of award wages for salaries once in each year after consideration of economic capacity, productivity and relevant economic indicators including movements in the CPI, and after hearing economic arguments from all interested parties and shall pay particular regard to the consequences for employment and inflation of any decision it might make."

CAI argued that the current prima facie principle creates expectations which are not sustainable and leads to disillusionment. It said that the need to discount for economic reasons in the past and the ACTU/Commonwealth Agree-

ment on Medicare and devaluation, showed that the principle of adjustment of wages for prices is economically unsound. CAI submitted that it was not implying that price movements are irrelevant but that prices should be only one of a number of factors to be taken into account in any national wage adjustment.

BCA made a similar submission. It said that it

"is strongly of the view that national wage decisions should only be reached after carefully considering and weighing up all the relevant circumstances - economic, industrial and social - obtaining at the time of the adjustment".

BCA enumerated a list of economic factors which should be taken into account by the Commission in assessing capacity. A similar list of factors was proposed by the ACC.

MTIA and the Australian Coal Association (ACA) emphasised the importance of considering international competitiveness in National Wage Cases. The NFF argued that priority needs to be given to inflation and unemployment and that to achieve this object, national wage adjustment either by reference to CPI under Principle 1 or productivity should be abandoned while unemployment and inflation continue as a sign of international economic problems.

There is merit in the various submissions of the employers on the importance of economic considerations but we believe that they misunderstand the concept

of prima facie indexation. "Prima facie" does not mean the neglect of economic considerations. This should be apparent from the space given by the Commission to economic submissions in its national wage decisions. Indeed, section 39(2) of the Act obliges us to

"have regard to the state of the national economy and the likely effects on that economy of any award that might be made . . . with special reference to the likely effects on the level of unemployment and on inflation".

Even the Accord is not rigid on the maintenance of real wages. The Commission noted in the September 1983 decision the following passage from the Accord:

"The principles of wage fixation should be such as to provide wage justice to employees whilst seeking to ensure that wage increases do not give added impetus to inflation or unemployment. The maintenance of real wages is agreed to be a key objective. It is recognized that in a period of economic crisis as now applying that will be an objective over time."(21)

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(21) Print F2900, p.7; (1983) 291 CAR 3 at 9

It is a misconception of the prima facie concept to argue, as BCA does, that it locks us into a "formula type approach involving prima facie adjustment based on a particular indicator, such as consumer prices". The Commission is not locked into any formula. The CPI is merely a starting point. It is up to the parties to take us beyond this point, and there is no doubt that this is what they have done repeatedly. It has been the practice for the Commission to do what BCA now says we should do, namely, that we should carefully consider and weigh up "all the relevant circumstances - economic, industrial and social - obtaining at the time of the adjustment".

CAI has said that it "has no difficulty with the Commission seeking to give some assurance to wage and salary earners that their claims will not be overlooked . . ." We do not see this as being far from the statement that the Commission will give high priority to the maintenance of real wages which simply means that the Commission will not lightly depart from full indexation. The economic material in favour of such a departure must in our view be strong and persuasive.

Moreover, in considering a particular adjustment, the Commission should not take a narrow view of its task, but should look at the built-in labour cost restraints contained within the package as a whole, in particular, the no extra claims provision under Principle 2. It follows that in any particular National Wage Case, the Commission will consider whether the increase in labour costs outside national wage by award or overaward has pre-empted the prima facie adjustment in whole or in part. Also, given the 2-year term of the package, the prospects for restraint extend beyond the immediate adjustment.

In this connection, experience has shown that a system based on prima facie adjustment of wages for prices is not inconsistent with improvements in the economic and industrial relations environment. In the 1983-85 period, this was achieved by the acceptance of the unions of the Medicare effect which resulted in a wage pause of twelve months and involved a reduction in real wages of 2.5 per cent. Further, there was deferment of productivity based increases and an acceptance of strict control on non-national wage increases in the award and overaward areas. Those who refer to the centralised system as it has operated as "inflexible" should look more closely at what has been achieved and compare it with what is realistically achievable under an alternative system in Australia.

However, to remove any misunderstanding as to what prima facie implies we propose to add the following words to Principle 1(a) which will reflect the

terms of section 39(2) of the Act:

". . . on grounds related to the state of the national economy and the likely effects on the economy, with special reference to the level of

employment and inflation."

In connection with Principle 1(a), submissions were also made by various employer groups to the effect that the system is not flexible enough to take account of economic incapacity of individual firms and industries. We deal with the misconception underlying these submissions later and provide a new Principle to clarify the position.

As for Principle 1(b), because of the delay in the determination of the national wage adjustment for the September and December 1985 quarters and our decision to allow this delay to count towards adjustment for the indirect effects of devaluation during 1985, the next national wage adjustment will not be due for another 6 months. Accordingly, we will re-write Principle 1(b) as follows:

The Commission expects that decisions on national wage adjustments will be made prior to 1 January and 1 July respectively to enable the adjustments to operate from those dates.

It will be necessary for national wage applications to be made sufficiently early to ensure that those operative dates are met.

As to the form of indexation, the ACTU and ACPA agreed that it should be a uniform percentage adjustment. Employers generally supported this part of the Principle in its present form. Queensland suggested a two-tiered system which would result in a plateau form of adjustment. We re-affirm what the Commission said in September 1983 in favour of uniform percentage adjustment:

"We see difficulties in plateau indexation or flat increases as the normal form of adjustment. Such a form of adjustment compresses relativities and reduces the real pay of sections of employees and, in the face of strong resentment from those affected, pressures are created for a restoration of relativities. Accordingly, we will provide that the percentage form will apply unless the Commission decides otherwise in the light of exceptional circumstances."(22)

ACPA submitted that we should delete that part of Principle 1(c) which disallows special wage increases to correct compression which may have occurred in recent times.

We are not prepared to accede to this application. As has been made clear on many occasions, maintenance of relativities of the kind implicit in this application, is inconsistent with a structured centralised system based on national wage adjustments. To allow increases on this ground would be contrary to the decisions or agreements which led to the compression of relativities. Its potential to enable sectional increases to be granted is enormous and could threaten the awarding of any national wage increase.

We therefore propose to leave the present Principle 1(c) unchanged.

As to the recommendations for the indexation of overaward payments, we are conscious of CAI's view that the Commission should not be involved in overaward problems and of the practical difficulties associated with the present Principles. We deal with the CAI view and other aspects of overaward payments later in our decision.

Nevertheless, it is our belief that the existence of Principle 1(d) which allows recommendations to increase overaward payments to be made if a proper case is made out, has helped avoid a major problem which has put pressure on

the centralised system in the past. In the context of such a system, we consider equal treatment between employees covered by minimum rates and paid rates awards to be important. In coming to this conclusion we have also taken into account the requirement, which is also built into the system, that there be no further claims either award or overaward.

We have therefore decided to retain Principle 1(d) as an interim measure pending a review of the broader issues involved in the relationship of paid rates awards and minimum rates awards.

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(22)Print F2900, p.23; (1983) 291 CAR 3 at 25

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The revised Principle 1 will be as follows:

(a) Subject to Principle 2, the Commission will adjust its award wages and salaries every six months in relation to the relevant quarterly movements of the eight-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment on grounds related to the state of the national economy and the likely effects of any adjustment on the economy, with special reference to the level of employment and inflation.

(b) The Commission expects that decisions on national wage adjustments will be made prior to 1 January and 1 July to enable adjustments to operate from those dates.

(c) The form of indexation will be uniform percentage adjustment unless the Commission decides otherwise in the light of exceptional circumstances. It is to be understood that any compression of relativities which may have occurred in recent times does not provide grounds for special wage increases to correct the compression.

(d) It would be appropriate for the Commission, after hearing the parties to an award and being satisfied that a proper case has been made out, to recommend the indexation of overaward payments when award payments are indexed.

Principle 2 - Other Claims

The present Other Claims Principle which appears under Principle 3, is as follows:

"Any claims for improvements in pay and conditions other than those provided by Principles 1 and 2 must be processed in accordance with Principles 4 to 11 below. No application for a national wage adjustment to an award will be approved by the Commission unless all the unions concerned in the award give an undertaking that for the duration of these Principles they will not pursue any extra claims, award or overaward, except in compliance with the Principles."(23)

The ACTU made it clear that it could not give a commitment until the unions were aware of the final form of the Principles. It sought the deletion of the individual commitments required by the present Principle and the substitution of collective responsibility. It also submitted that the no extra claims provision should be applied equally to employers so that current standards were not reduced during the life of the package.

We are not prepared to grant either of the claims. The present Principles involve both the collective responsibility of the trade unions through their peak councils and the individual responsibility set out in Principle 3. This is as it should be.

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(23)Print F2900, p.49; (1983) 291 CAR 3 at 51

As to the suggestion that current standards should not be reduced, we do not believe that we should prevent employers from applying to change existing provisions, although we emphasise that a strong case would need to be established before existing award provisions would be reduced whether those provisions were introduced by consent or by arbitration.

The employers submitted that the Principle should remain and that we should make it clear that the no extra claims provision has a continuing operation. For instance, no union which has significantly and regularly departed from its no extra claims commitment should be entitled to a national wage case adjustment. They further submitted that industrial action is a clear breach of the spirit and the letter of the no extra claims provision which was recognised under the previous Principles. That recognition, they said, should be carried over to the new Principles.

We are of the opinion that any claims that there has been a breach of commitment, whether on the grounds of disputation or otherwise, should be closely examined and the tests applied on an individual award basis. In our view any industrial action on matters covered by the guidelines is unnecessary and contrary to their spirit and intention. Further, it was not our intention in the period from September 1983 to date that only industrial action by a union at the time of the hearing of the claim should be taken into account.

We also believe that it is necessary for the unions individually to commit themselves to the package for it to be effective. We have therefore decided that, as in the previous package, all unions concerned with a particular award variation under Principle 1 should give an undertaking that they will not pursue any extra claims, award or overaward, except in compliance with the Principles, before they will be entitled to any benefits from this package.

We require this commitment to be given on this occasion before the 2.3% increase is granted, to cover the period until the next national wage decision is known. Thereafter we would expect a renewal of the commitment after each National Wage Case to cover the period until the next case.

In these circumstances we have decided to retain the wording of the present Principle with minor amendments.

The new Principle 2 will be as follows:

Any claims for improvements in pay and conditions other than those provided by Principle 1 must be processed in accordance with Principles 3 to 12 below. No application for a national wage adjustment to an award will be approved by the Commission unless all the unions concerned in the award give an undertaking that until the next National Wage Case decision they will not pursue any extra claims, award or overaward, except in compliance with the Principles.

Principle 3 - Superannuation

In our discussion on productivity, we noted that the Communique issued by the National Economic Summit Conference included the following item:

"8. It is a legitimate expectation that income of the employed shall be increased in real terms through time in line with productivity."

We also noted that despite the expectations created by the Summit Communique and in other ways, the present serious economic difficulties provide strong grounds that in the next two years as much as possible of productivity should be devoted to lowering prices. This would help to bring down interest rates and promote investment, employment and higher economic growth.

We further mentioned that as part of the package sought by the ACTU and supported by the Commonwealth, union applications were made pursuant to Principle 2 of the 1983 Principles for the payment by employers of either a 4% increase in wages and salaries or a "3% wage equivalent" to approved superannuation schemes in favour of their employees.

We discuss now the arguments pressed strongly by the ACTU and the Commonwealth and supported by a number of States, in favour of employer contribution to superannuation schemes as against a wage increase based on productivity.

It was submitted by the ACTU and the Commonwealth that the claim for superannuation was in line with their 1985 Agreement regarding the implementation of the Accord over the following two years, which is as follows:

"Superannuation. It is agreed that superannuation should be extended and improved on an industry by industry, occupation by occupation or, in limited circumstances, company by company basis.

The improvement should be offset against national productivity and be based on a 3 per cent wage equivalent.

It is agreed that negotiations can proceed on superannuation on the above basis provided that the cost impact of new or improved arrangements except in very isolated circumstances will not occur before 1st of July 1986.

The parties are committed to the establishment of genuine superannuation. The Government, after consultation with Employers and Unions, shall issue a set of guidelines concerning: vesting, preservation, security, portability, contributions, and control.

These provisions shall be the basis upon which taxation concessions are provided for occupational superannuation.

Before the expiration of the current Parliament the Government will

legislate to:-

. establish a national safety net superannuation scheme to which employers will be required to contribute where they have failed to provide cover for their employees under an appropriate scheme.

. provide for superannuation changes, particularly vesting, consistent with the productivity case outcome to its own employees."

On 11 June 1986 we received the Statement by the Treasurer entitled Operational Standards for Occupational Superannuation Funds which sets out the Operational Standards for Superannuation Funds together with guidelines for "a proposed 3% productivity award to be paid in the form of superannuation".

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It was said by the ACTU that the superannuation proposal provided for a fundamental and necessary reform of retirement income arrangements in Australia. This submission was supported by arguments addressed to:

(i) the implications arising from the trend towards an ageing of the population including the workforce;

(ii) the effects of the trend for earlier retirement;

(iii) the existing dependency on age pensions and the projected significant increase in the dependency of the aged on the working population with an explosion of age pension costs;

(iv) trends and patterns in superannuation which show that coverage in the

private sector rose from 24% in 1974 to 36% in 1984. The coverage in various industries differs substantially, for example, in 1984 the percentage in the construction industry had risen to 40%, mining to 81% and communication to 86%; and

(v) the fact that a large percentage of the work force is not covered by existing superannuation schemes and the claim that wide disparities exist in coverage according to sex, industry, occupation and income levels. As to this, it was also submitted that women, manual workers and those in the lower income level are less adequately covered than others.

It was claimed that all employees should be entitled to superannuation benefits and that this was consistent with the view that productivity should be distributed through National Wage Cases.

The ACTU contended that the alternative to granting its claim was the continued development of superannuation on an ad hoc basis outside the Commission and largely beyond the parameters of the centralised system. It also claimed that the actual cost of the claim would be about 2.5% of labour costs when allowance was made for such factors as payroll tax and workers compensation premiums.

It was further argued that granting the claim would involve a shift from consumption to savings which was consistent with the requirements of lower interest rates in the current economic circumstances and that with productivity growth there would be no reduction of profits as a result.

The submissions of the ACTU were supported by the Commonwealth which claimed, inter alia, that distribution of a 3% wage equivalent in the form of occupational superannuation benefits would promote income security in retirement and assist in the removal of current anomalies and inequities in the provision of occupational superannuation. It was also argued that workers have a legitimate expectation as a matter of social equity to a share in the fruits of the productivity growth to which they have contributed and that the claim could be granted without exacerbating inflation or unemployment.

The Commonwealth submitted that:

". . . the Government's tax treatment of superannuation recognises its important role in Australia. The Government has long accepted that it is in the public interest that as many people as possible make private provision for retirement income, not only to encourage self-reliance, but also to reduce reliance on Government benefits through the pension system. The Government continues to recognise and accept that position."

The Commonwealth raised a number of points against the option of a wage increase being available in lieu of superannuation - to achieve the same labour cost effect, the quantum of wage increase would have to be reduced because of on-costs; the option of a wage increase being taken by some would upset relativities, result in uncertainty and lead to industrial disputes to restore relativities; it would lead to double-counting and magnify labour costs; and it would be inconsistent with the intention of the Government to provide for a national safety net for those who, because of the nature of their employment, are not able to participate in occupational superannuation schemes.

As we have said earlier, we reject the option for a 4% increase in wages and salaries on account of productivity.

The superannuation claim was strongly opposed by the employers. It was stated that this claim had aroused the absolute antipathy of employers and that there has never been such united employer opposition to a claim in the Commission. They submitted that there was absolutely no evidence to demonstrate that a

repeat of the industrial disruption which occurred in 1981 would accompany the rejection of the ACTU/Government Agreement. They insisted that in the current economic climate employers would strongly resist any union attempts to impose occupational superannuation upon them. In addition to economic arguments which have already been discussed in this decision CAI argued that productivity should not be used as an index which justifies labour cost increases and that having regard to the state of the economy and the prospects for the future, the claim should not be granted. It went on to say that, if the claims were granted, superannuation would become a perpetual item in industrial relations and national wage case claims, with an enormous potential for conflict.

The private employers also expressed doubts about the application of the Government's draft guidelines which they contended left too much to be resolved in the field. They were also concerned about the future of existing company schemes saying that they feared that the new schemes would not be phased in as suggested by the ACTU and the Government. They submitted that the claim, if granted, would discriminate against those who already have adequate schemes, that demands for retrospectivity could be expected and that there was no machinery by which the Commission could control the introduction of superannuation.

In addition the view was expressed by CAI that the granting of the 3% claim would not provide an adequate base for retirement incomes and would lead to claims in the future for the level of contributions to be increased. As to this the ACTU accepted that the current claim would not in itself provide adequate retirement benefits but stated that it was necessary to begin to address the issue of retirement incomes now, otherwise the pressures resulting from demographic trends and similar factors will become more urgent. As to future claims, it said that they will be made and judged on their merits at the time.

In the consideration of the implementation of the unions' application many problems are apparent and would need to be resolved. By way of illustration we refer for example to:

1. The difficulty in the selection of the appropriate approved superannuation scheme or schemes in an establishment where there are many unions involved and, as a result, a variety of schemes including the employer's scheme which are available.

2. Problems associated with the determination of the use of the contributions within the selected scheme i.e. the application to final benefits or to other benefits such as vesting, portability, preservation, death or disability benefits within existing schemes.

3. The effect of the new scheme on the viability of existing employer schemes.

4. Problems resulting from changing employment, changing union membership and changing superannuation funds.

5. Difficulties in establishing the process to determine the entitlement on retirement from the work force or on death.

6. Problems involved in the establishment of the necessary trusts as well as the determination of the principal elements to be inserted in trust deeds including the appointment and the responsibilities of trustees.

We are also, of course, aware of different factors which apply in different establishments and in different industries. These differences have led to the present pattern which ranges from no superannuation scheme at all to a variety of schemes to meet the circumstances of the enterprises concerned. There could also be superannuation problems where, for instance, enterprises are engaged in more than one industry.

In addition, we are seriously concerned at the possibility of the implementation of any superannuation scheme not being appropriately phased in and otherwise extending beyond what is economically sustainable.

Although there are many problems to be resolved regarding the implementation and administration of superannuation schemes, there are other considerations which suggest that there is merit in the Commission regulating the introduction of such schemes:

. The Noble Lowndes Report tendered by MTIA stated, in part, in its executive summary:

"Noble Lowndes are of the opinion that an overall growth in the breadth of coverage and level of superannuation provision in general would be advantageous. From experience in many other countries we can tell that reliance solely on National Superannuation tends to produce a lower level of benefit or a rapidly escalating cost. We therefore welcome a partnership between Federal Government and private industry leading to an improvement in the lifestyle of older citizens. Any objections we have are not to the principle but to its detailed method of implementation."

In a supplementary submission by MTIA, Noble Lowndes were highly critical of the operational standards proposed by the Commonwealth.

. We note that many employers are not opposed in principle to occupational superannuation. For instance whereas BCA submitted that the "ACTU/Government superannuation deal" should be dismissed on various grounds including the fact that it involved the redistribution of past productivity claims which would have already been distributed in various ways, it went on to say that:

". . . the Council supports improved vesting; further supports the preservation and portability of benefits; it supports the linking of vesting to preservation, and it supports better prudential and administrative controls designed to maximise the security of the funds, and to ensure they are invested in the sole interests of fund members.

In respect of all of these issues relating to the coverage and design of schemes, there is a high degree of agreement, at least in principle, across the whole of the business sector. The Council firmly supports the view that, as a long term objective, and subject to costs constraints, it is desirable to work towards adequate and genuine superannuation coverage for all employees in the labour force but the ACTU and the Government has no mortgage on that objective . . . the Council strongly supports an approach whereby superannuation is developed largely on an enterprise basis over a time frame which has regard to the current and prospective economic circumstances of a particular concern; the magnitude of costs associated with implementing and expanding superannuation arrangements, and the nature and level of current superannuation arrangements."

. Further, while BCA argued that the Commission should not make any formal orders or decisions concerning superannuation, it suggested that "the Commission should be made readily available to assist the parties through conciliation services". However the Council stated that it "strongly believes that any increases in superannuation can most effectively and efficiently be applied to company schemes, rather than industry or union funds".

. CAI submitted that:

". . . the developments of the past 15 years indicate clearly that an evolutionary process has been occurring in the area of superannuation which is providing the process of adaption and change necessary to address the problems of the future ageing of the population. This evolutionary process has in fact been conceded by the ACTU and the government and it is evident from the

gradual improvement in benefits over the 15 years, evident from the material they in fact tendered. They show the process of government-initiated reviews and legislative action and they show the extent to which coverage of company superannuation has gradually extended and the benefits have gradually improved.

All of this indicates that in the environment outside the industrial relations system changes occur and occur at a steady - in fact, even a quickening pace. In our view, on these developments, one way or another addressing the issue of changing needs for retirement benefits within the Australian community is an evolutionary rather than a revolutionary process and it is one that was being handled in an efficient and effective manner. We believe this process should be allowed to continue without the intrusion of the heavy hand, if I may say so, with respect, of the Commission."

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. The expectations created by the ACTU/Commonwealth Agreement reinforced by the Government's guidelines have led to the establishment of new schemes by employers and unions and to active negotiations and understandings between them for contributions to new schemes and improved benefits to existing schemes. There is clear evidence of an acceleration of the "evolutionary process" referred to by the employers and further acceleration can be expected regardless of what we decide. If left outside the Commission's control, these developments, which are analogous to overaward payments, could threaten the very foundation of the centralised system.

In the light of these facts and circumstances, there is considerable merit, in the public interest, for the Commission to monitor and regulate any agreements entered into either for new superannuation schemes or improvement to existing schemes. This would help to ensure that agreements are implemented on an orderly and rational basis in keeping with the labour cost constraints of the centralised system. The jurisdiction clearly vested in the Commission by the High Court decision dated 15 May 1986 adds force to our statutory obligations in this connection.

As we pointed out earlier, in the light of the present economic difficulties and the uncertain economic outlook, we believe that any absorption of productivity by increased labour cost whether through superannuation contribution or wages, must proceed cautiously and tentatively and with a watchful eye on the economy. In particular we are concerned about the prospects of certain sections of industry, especially our export and import competing sectors and large numbers of small businesses. As we have also said, in the current circumstances the economy should be allowed to benefit as much as possible from any productivity increase over the next two years by way of lower prices. Further we are not satisfied that even with the phasing-in procedure suggested by the ACTU and the Commonwealth, the speed of implementation will be slow enough to be sustainable economically.

Both because of the state of the economy and the many unresolved problems of implementation and administration, we have decided that the Commission will not arbitrate to provide for superannuation as sought by the ACTU and the Commonwealth during the life of this package. However, for the reasons we have noted, especially in view of the likelihood of a large number of cases being negotiated outside the system, we believe it important for the Commission to monitor and regulate any agreements which might be entered into, and to assist by conciliation. We have noted that this would help to ensure that agreements are implemented on an orderly and rational basis and properly phased in, consistent with the state of the economy.

To this end, pursuant to section 28 of the Act we are prepared to certify agreements or make consent awards providing for employer contributions

to approved superannuation schemes for employees covered by such agreements or consent awards provided those agreements or consent awards:

(i) operate from a date determined or approved by the Commission in accordance with the Commission's phasing in procedure but not before 1 January 1987 except in special and isolated circumstances approved by the Commission;

(ii) do not involve retrospective payments of contributions;

(iii) do not involve the equivalent of a wage increase in excess of 3% of ordinary time earnings of employees;

(iv) are consistent with the Commission's Principles and determinations

by the Full Bench referred to in our decision;

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(v) are in accordance with the Commonwealth's Operational Standards for Occupational Superannuation Funds; and provided that

(vi) the consent of the employers is genuine; and

(vii) there is ambit.

Implementation of such agreements or awards, if endorsed, will not result in discounting of national wage decisions. Nor will they be treated as a breach of the unions' "no extra claims" undertakings. However the Commission will obviously have regard to any industrial action imposed on the employer in determining whether or not there is a genuine agreement.

To ensure consistency of treatment and an orderly implementation of claims relating to superannuation the President will call a conference of parties to the National Wage Case. That conference will examine the guidelines and procedures to be adopted in the consideration of claims relating to superannuation. Following such conference a Full Bench will establish and promulgate the procedures to be adopted. That Bench will also be able to determine the solutions to any outstanding problems, many of which are already apparent on the face of the submissions which have been made to us in these proceedings.

We reiterate that except in special and isolated circumstances to be determined by the Conference or by the Full Bench, no agreement providing for superannuation in accordance with this decision should operate before 1 January 1987. The Full Bench will also control the speed of the implementation of the various agreements including the dates of operation so that the economy is not overloaded.

The number and order of agreements will be carefully monitored to ensure that it will not be necessary to discount in National Wage Cases. If it is necessary to determine the order of implementation of agreements in keeping with economic requirements, it would be equitable to defer, as far as possible, the approval of agreements relating to those sections of employees who are already satisfactorily covered by existing schemes.

We point out however that it was the Government's stated objective as expressed in the Draft Guidelines dated 16 December 1985 to introduce safety net superannuation legislation before the end of its term of office.

After suitable guidelines and procedures have been established, it will, of course, be appropriate for individual members of the Commission to engage in conciliation proceedings in relation to superannuation with the object of obtaining a consistent approach to superannuation in the various industries. Any agreements reached between the parties should then be referred to the Full Bench to ensure that the phasing in is appropriate.

In view of our preparedness to give effect to agreements for superannuation on the above basis, the following Principle to give effect to this part of our decision will be included as Principle 3:

Pursuant to section 28 of the Act, agreements may be certified or consent awards may be made providing for employer contributions to approved superannuation schemes for employees covered by such agreements or consent awards provided those agreements or consent awards:

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(i) operate from a date determined or approved by the Commission in accordance with the Commission's phasing in procedure but not before 1 January 1987 except in special and isolated circumstances approved by the Commission;

(ii) do not involve retrospective payments of contributions;

(iii) do not involve the equivalent of a wage increase in excess of 3% of ordinary time earnings of employees;

(iv) are consistent with the Commission's Principles and determinations

by the Full Bench referred to in our decision;

(v) are in accordance with the Commonwealth's Operational Standards for Occupational Superannuation Funds; and provided that

(vi) the consent of the employers is genuine; and

(vii) there is ambit.

Principle 4 - Work Value Changes

The present Principle 4 is as follows:

(a) Changes in work value may arise from changes in the nature of the work,

skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this Principle.

However rather than to create a new classification it may be more convenient in the circumstances of a particular case to fix a new rate for an existing classification or to provide for an allowance which is payable in addition to the existing rate for the classification. In such cases the same strict test must be applied.

(b) Where new work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new work should be compensated by a special allowance which is payable only when the new work is performed by a particular employee and not by increasing the rate for the classification as a whole.

(c) The time from which work value changes should be measured is the last work value adjustment in the award under consideration but in no case earlier than 1 January 1978. Care should be exercised to ensure that changes which were taken into account in any previous work value adjustments are not included in any work evaluation under this Principle.

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(d) Where a significant net alteration to work value has been established

in accordance with this Principle, an assessment will have to be made as

to how that alteration should be measured in money terms. Such assessment should normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work. However, where appropriate, comparisons may also be made

with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards provided the same changes have occurred.

(e) The expression "the conditions under which the work is performed" relates to the environment in which the work is done.

(f) The Commission should guard against contrived classifications and over-classification of jobs.

(g) Where through technological or other change the impact of work value change on the work force is widespread or general, the matter should be dealt with in national productivity cases under Principle 2."(24)

The ACTU conceded that the work value Principle must be tightly worded to ensure that only genuine cases could be dealt with. It was acknowledged that any flow would undermine the no extra claims commitment and also the intention that increases outside National Wage Cases and superannuation should be limited.

It sought four changes to the wording of the Principle:

(1) The deletion of the requirement in (a) that the change in the nature of the work should "constitute such a significant net addition to work requirements as to warrant the creation of a new classification" on the grounds that the expression had little meaning. We are of the view that the words sought to be deleted by the ACTU from paragraph (a) have served a purpose in emphasising the nature of the change which is required. The changes should be significant enough to warrant a change in relativities for employees whose work has changed, either with employees in the same classification or with employees under the award or in the establishment concerned. We are therefore not prepared to delete those words.

(2) The alteration of the reference to new work in paragraph (b) to "new or changed work" because there may only be one aspect of the work that has changed. We are prepared to allow the alteration sought provided that the change in the work is of such a fundamental nature that it meets the strict test prescribed in paragraph (a). Paragraph (b) will be altered accordingly.

(3) The deletion from 4(c) of that part of the Principle which indicates that no work value changes before 1 January 1978 should be considered. In this connection CAI submitted that we should substitute for the existing date, 23 September 1983. In our opinion, the present provision has operated satisfactorily and no persuasive case was made to justify its alteration. This change is therefore refused.

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(24) Print F2900, p.50; (1983) 291 CAR 3 at 52

NATIONAL WAGE CASE JUNE 1986 41 (4) The deletion of the word "widespread" in 4(g) from the phrase "widespread or general" firstly because widespread work value changes may not give rise to significant aggregate cost increases and secondly because work value changes could be widespread among a particular section of employees, but not "general" to the workforce. We see great dangers of flow if this claim is granted and we therefore reject it.

ACPA sought the addition of a clause to make clear that the reclassification of a single position is not restricted by Principle 4, provided that normal

and proper standards of grading are applied. This is a difficult area. In general we believe that the Principles should be applied to all wage increases and not even the reclassification of single positions should be exempt. We are particularly concerned that wholesale reclassifications of positions can and have in fact been occurring, particularly in the public sector, without changes in the nature of the work. These reclassifications may simply be a means of avoiding the strictures of the present guidelines. Where objective criteria are available and persons are incorrectly classified in relation to those criteria, it should be possible to rectify the position. Such a process will simply be an exercise in interpreting the award correctly; an exercise which cannot be restricted by the Principles.

Notwithstanding the fact that we are prepared to make only limited changes to the wording of Principle 4 we are concerned about the operation of this Principle. There appears to be a tendency to grant increases for a change in the nature of the work at particular establishments when similar changes have previously been taken into account in the averaging process during the work value round in 1978-1980. This is expressly prohibited by the Principle and, if it continues, could lead to across-the-board increases taking place, contrary to the intention of the Principle.

We are also aware of major exercises being carried out which cover key classifications of employees. Unless these exercises can be controlled within the confines of the centralised system they have the capacity to destroy it. For these reasons we believe that work value cases, whether under Principle 4 or Principle 10(b), which seek to obtain increases for key classifications in awards of the Commission should be processed in conjunction with National Wage Cases. This should ensure that changes in relativities in industry cases do not occur so as to lead to claims for restoration of relativities. It will also allow consideration in National Wage Cases of the resulting labour cost increase. In such instances we would expect either the employer or the employee organization to make application for the claim to be heard by a Full Bench so that the procedure reflected in this part of our decision can be applied. If in fact the matter does proceed before a single member of the Commission, either pursuant to Principle 4 or Principle 10, it would be appropriate for the claim to be rejected because of the possible flow-on effects even if it appears on its own to meet the tests of the Principle.

Our attention was also drawn to a specific problem with management initiated structural reviews. The Australian Public Service Board in particular sought a mechanism for dealing with genuine restructuring exercises, primarily by employers bound by paid rates awards.

The successful completion of genuine restructuring exercises does not, in our view, require a change in the Principles. However, in regard to this matter, because of the serious nature of the issue and the desire of all parties that such exercises should not become vehicles for general increases, we have decided to set out the procedure which we see as being appropriate in relation to them. The procedure is based on the suggestions made by the Commonwealth.

Restructuring exercises should in the first place be dealt with strictly in accordance with Principle 4 and/or if necessary, Principle 10. Major exercises should be dealt with by a Full Bench, although the procedure of investigation and report by a member of the Bench may be appropriate.

When the changes in the work and the employees to whom those changes apply are identified, it may become apparent that the matter should be referred to the Anomalies Conference. If an arguable case is established there, the matter could then be referred back to the same Full Bench for determination. We are in agreement with the Commonwealth that to ensure that proposals are not made which may subsequently turn out to be outside the Principles, the parties should seek the guidance of the Commission before any attempt is made to evaluate the worth of work value changes.

Whilst this procedure may seem complex, we believe it is necessary to avoid re-structuring exercises becoming vehicles for increases across-the-board, thus avoiding the necessary restrictions required by Principle 4. Further, the procedure, if followed, should ensure that any restructuring is not dealt with in a piece-meal way and that the exercises are genuine.

Principle 5 - Standard Hours

The present Principle 5 is as follows:

"(a) In dealing with agreements and unopposed claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimized. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.

Opposed claims should be rejected.

(b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, should not be allowed.

(c) The Commission should not approve or award improvements in pay or other conditions on the basis of productivity bargaining. These improvements should only be allowed on the basis of the appropriate Principles."(25)

The ACTU, ACPA and the Queensland Union of Nurses (QUN) sought the abolition of the requirement that the introduction of the 38 hour week should only be by consent.

In support of this proposition the ACTU contended that the current provisions place a veto in the hands of employers which discourages some employers from conciliation and encourages others to demand unreasonable offsets. It was submitted first, that the Federal award standard was 38 and that it was inequitable to deny a small proportion of the workforce the

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(25)Print F2900, p.51; (1983) 291 CAR 3 at 53

general standard. Second, that the cost should be reduced where possible by offsets, but that this should not be the only criterion. Third, that prior to September 1983 arbitration of shorter hours was not prohibited and that the South Australian and Western Australian tribunals do allow arbitrated decisions to take place under their existing Principles.

The employers strongly objected to the proposed change claiming that the present Principle ensured that an employer had every opportunity to achieve cost offsets that were genuine. They also rejected the view that the 38 hour week was a Federal standard and the ACTU suggestion that award conditions should not be changed as part of the cost offsets.

We have some reservations about this matter, particularly having regard to the economic considerations set out earlier in the decision. We are also of the view that there are substantial practical problems associated with arbitrating both shorter hours and offsets. Nevertheless, having regard to other aspects of our decision, we are prepared to relax this Principle to the extent that the Commission may arbitrate in matters involving a claim for a 38 hour week. We make it clear however that such decisions should not be made on the understanding that the 38 hour week is a Commission standard. Further, when it comes to offsets, existing award standards are not sacrosanct. The Hours Principle has been redrafted to give effect to this change of approach.

The ACTU and ACPA also submitted that in special and isolated circumstances the Commission should endorse agreements below 38 hours per week. They submitted that such claims should be processed through the Anomalies Conference. These submissions were made in reference to two cases in which

hours below 38 operate in practice - employees working under the Graphic Arts Award 1977(26) and laboratory employees in the oil industry. It was contended that the circumstances under the Graphic Arts Award are special and isolated. In that case shorter hours have been implemented by the vast majority of employers for some time and cost offsets allowing greater flexibility have already been instituted. The position of laboratory employees in oil companies was also referred to as special and isolated without flow-on implications, because shorter hours have applied uniformly in the industry since the 1970s. The national integrated wage structure in the oil industry was also relied on as an isolating factor.

We have considered these arguments, but we are not prepared to vary the Principle to enable the adoption of standard hours of less than thirty-eight. We do not believe that the requirement for special and isolated circumstances can be met to contain argument for hours below thirty-eight.

The new Principle 5 will be:

(a) In dealing with claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimized. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.

(b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, should not be allowed.

(c) The Commission should not approve or award improvements in pay or other conditions on the basis of productivity bargaining. These improvements should only be allowed on the basis of the appropriate Principles.

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(26)Print D3516 [G014]; (1977) 194-3 CAR 5

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Principle 6 - Anomalies and Inequities

The present Principle 6 is as follows:

"(a) Anomalies

(i) In the resolution of anomalies, the overriding concept is that the Commission must be satisfied that any claim under this Principle will not be a vehicle for general improvements in pay and conditions and that the circumstances warranting the improvement are of a special and isolated nature.

(ii) Decisions which are inconsistent with the Principles of the Commission applicable at the relevant time should not be followed.

(iii) The doctrines of comparative wage justice and maintenance of relativities should not be relied upon to establish an anomaly because there is nothing rare or special in such situations and because resort to these concepts would destroy the overriding concept of this Principle.

(iv) The only exceptions to (iii) are that catch-up for the metal industry standard and adjustment of paid rates awards to establish an equitable base may be processed as anomalies. All such claims should be lodged by 31 December 1983.

(b) Inequities

(i) The resolution of inequities existing where employees performing similar work are paid dissimilar rates of pay without good reason. Such inequities shall be processed through the Anomalies Conference and not otherwise, and shall be subject to all the following conditions:

(1) The work in issue is similar to the other class or classes of work by reference to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is performed.

(2) The classes of work being compared are truly like with like as to all relevant matters and there is no good reason for dissimilar rates of pay.

(3) In addition to similarity of work, there exists some other significant factor which makes the situation inequitable. An historical or geographical nexus between the similar classes of work may not of itself be such a factor.

(4) The rate of pay fixed for the class or classes of work being compared with the work in issue is a reasonable and proper rate of pay for the work and is not vitiated by any reason such as an increase obtained for reasons inconsistent with the Principles of the Commission applicable at the relevant time.

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(5) Rates of pay in minimum rates awards are not to be compared with those in paid rates awards.

(ii) In dealing with inequities, the following overriding considerations shall apply:

(1) The pay increase sought must be justified on the merits.

(2) There must be no likelihood of flow-on.

(3) The economic cost must be negligible.

(4) The increase must be a once-only matter.

(c) Procedure

(i) An anomaly or inequity which is sought to be rectified must be brought to the Anomalies Conference by the peak union councils, namely, the ACTU and the ACPA, or by any union not affiliated with those bodies.

(ii) The matter is first discussed with the employers and other interested parties at the Conference.

(iii) The broad principles for processing the anomaly or inequity raised are:

(1) If there is complete agreement as to the existence of an anomaly or inequity and its resolution, and the President is of the opinion that there is a genuine anomaly or inequity, the President will make the appropriate order to rectify it.

(2) If there is no agreement at all, one of two situations can arise. Either the President will hold that there is no anomaly or inequity falling within the concept of the Conference which would mean an end of the matter as far as the Conference is concerned or on the other hand the President could hold that there was an arguable case which would then go to a Full Bench of the Commission for consideration.

(3) This procedure can be departed from by agreement and with the President's approval.

(4) In the case of matters in the Australian Public Service they may have to be dealt with somewhat differently in order to comply with the provisions of the Public Service Arbitration Act."(27)

A number of changes of substance and a number of procedural changes were suggested for the Anomalies and Inequities Principle.

(27)Print F2900, pp.51-2; (1983) 291 CAR 3 at 53-54

1. The present Principle provides that claims for catch-up for the metal industry standard and adjustment of paid rates awards to establish an equitable base should be lodged by 31 December 1983. The ACTU and ACPA asked for the deletion of the date on the basis that it was not related to merit. They said the prescription had served its purpose which was to allow the Anomalies Conference to have a proper perspective of the range of claims. CAI opposed the deletion of the date, contending that new applications should not be allowed because this could lead to unions being permitted to re-open claims already dealt with.

We have decided to grant this part of the unions' claim but would indicate that only in rare circumstances would we expect claims lodged after the date of this decision to be successful.

2. The ACTU also sought the inclusion of service increments as an additional matter which might be processed through the Anomalies Conference. Service increments were described by CAI as a "new growth industry" and it referred to decisions based on Principle 4 which misunderstood or misapplied that Principle. Accordingly, it opposed the change.

Service increments appear to us to fall into two categories. They either reflect increased skill and responsibility associated with experience in a particular job or they take the place of overaward payments. The former should be considered in the terms of Principle 4; the latter are appropriately considered in the Special Review. In these circumstances, we are not prepared to amend Principle 6 to include service increments.

3. As to the Inequities Principle, CAI contended that it should be deleted whilst the ACTU and ACPA argued that it should be expanded to provide that an historical or geographical nexus may be a significant factor which makes a situation inequitable.

We reject both applications. We agree with CAI that the "multiplicity of systems organizations and arbitrators and pressure of historical relationships" make it difficult to confine any use of comparative wage justice. Furthermore, the Principle is not intended to allow people to receive increases by way of comparative wage justice or maintenance of relativities otherwise than in accordance with the strictures laid down. However, we believe the Principle has operated satisfactorily, particularly since the decision in the Brisbane City Council Case(28), and we are not prepared either to delete it or change its terms.

4. The ACTU submitted that the equitable base provision in Principle 6(a)(iv) should also apply to minimum rates awards. In the light of the consensus that this matter should be dealt with by the Special Review we make no decision on the merits of the claim in this case.

5. ACPA submitted that under Princple 6(a) the prohibition on comparative wage justice and maintenance of relativities should be modified to allow account to be taken of cases where people have a direct working relationship with each other. We are already concerned at attempts which have been made under Principle 6(a) to extend comparative wage justice and maintenance of relativities beyond what was envisaged by that Principle, and we are not prepared to extend the operation of those

(28)Print F4678

doctrines beyond the limits which presently apply. As outlined in our decision of 23 September 1983, where supervisory personnel receive less than their subordinates they may be paid an allowance to bring them to parity with those supervised "for the duration of the relationship". This is as far as we are prepared to go.

6. We would also make mention of the submissions made on behalf of the QUN which asked that an additional clause be added to Principle 6(a) to allow for increases in pay and conditions to be granted in essential services such as the nursing industry where "direct dependence upon those employees by the public for health, welfare and safety" precluded industrial campaigns. The QUN also submitted that the Commission should recognise the nursing industry as a special case in order to guard against different interpretations of the Principles being applied to nurses in the various States.

We are not prepared to grant either of the applications because to do so would completely negate the intention of the present Principles. Further we believe that if nurses do in fact have a special case then that special case can be dealt with pursuant to the existing Anomalies/Inequities Principle.

In addition to these substantive changes to Principle 6, changes were also sought to the Conference procedure. For instance, it was suggested by the ACTU and ACPA that:

(i) where agreement is reached by the direct employer and the unions concerned, the President may rectify an Anomaly/Inequity notwithstanding that there is not complete agreement at the Conference;

(ii) where no agreement is reached and no arguable case is determined, either party should have the right to have the matter referred to a Full Bench;

(iii) provision should be made for a matter to be referred to a single member.

It was suggested by the Commonwealth that employers should be able to initiate proceedings before the Anomalies Conference.

CAI also suggested a number of amendments to ensure that parties were aware of the issues at the Conference so that areas of possible flow-on could be identified. It emphasised the danger to the Principles as a whole from an improper use of Principle 6 stating that:

"Flow-on will be determined by the genuineness of the special, isolated and rare circumstances surrounding the application. Flow-on will not be prevented by a wall of words. Flow-on will only be prevented when those examining the decision believe and genuinely believe that the decision has no application to their circumstances."

We have considered the various suggestions but are not moved to change any of the existing procedures. In particular, we do not wish to undermine the vetting and co-ordination role of either CAI or the ACTU. In our view, the present procedures have worked reasonably well and we do not consider any change to be necessary.

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Principle 7 - Paid Rates Awards

The present Principle 7 is as follows:

"(a) Except in the case of first awards, the Commission will refrain from making any new paid rates awards. In the making of first awards the conditions as provided in Principle 10 below must be complied with.

(b) The Commission may convert into a minimum rates award a paid rates award which fails to maintain itself as a true paid rates award. The conversion of

such a lapsed paid rates award into a minimum rates award will involve the valuation of the classifications in it by comparison with similar classifications in other minimum rates awards excluding supplementary payments.

(c) Claims for the adjustment of existing paid rates awards to establish an equitable base should be processed as anomalies through the Anomalies Conference as provided in Principle 6. All such claims should be lodged by 31 December 1983."(29)

Both the ACTU and BCA contended that the Commission should allow the making of paid rates awards otherwise than in the case of first awards provided the parties met stringent criteria. However, no argument was put to us which convinces us to depart from Principle 7(a) as it now stands and the Principle should remain as it is, pending examination at the Special Review.

In relation to Principle 7(b) which provides that the Commission may convert a paid rates award into a minimum rates award CAI contended that the seriousness of the interaction between paid rates and minimum rates required absolute integrity in the making of paid rates awards and suggested that the Commission should act to preserve their integrity either at the request of the parties or on its own motion.

We do not doubt the importance of the existing Principle 7(b) and its significance to the Commission's operations. We believe this provision should be applied in appropriate circumstances but are of the opinion that the terms and operation of the Principle should be considered in the Special Review. In the meantime we do not intend to vary it.

In the proceedings before us there was a special application to permit the making of the Vehicle Building (Toyota Manufacturing Australia Ltd) Award as a paid rates award. Toyota Manufacturing Australia Ltd is at present bound by the Vehicle Industry Award 1982.(30) It was put that all other vehicle manufacturing plants had house awards which are paid rates awards; the Company was the most recent entrant to car manufacturing in this country and the growth of its plant at Altona has been rapid and distinctive; the present award to which it is bound is a minimum rates award and is inappropriate; all relevant parties want a paid rates award, there having been agreement for the same since the beginning of 1984; a paid rates award is practicable and the claim is not contrary to the purpose or spirit of the Wage Fixing Principles.

Toyota contended, and we agree, that an application to pursue this matter could only be made to this Bench in accordance with the existing Principles and that the matter could not properly be dealt with by the Review.

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(29)Print F2900, pp.52-3; (1983) 291 CAR 3 at 54-55

(30)Print F0813 [V005]

In the special circumstances of this case, subject to all parties to the award making statutory declarations that no overaward payments will be made, we are prepared to allow this matter to be dealt with by a member of this Bench for possible resolution.

Principle 8 - Supplementary Payments

The present Principle 8 is as follows:

"(a) The Commission will refuse claims for new supplementary payments.

(b) Existing supplementary payments should not be increased except for national wage adjustments."(31)

The parties all agreed that the matter of supplementary payments would be appropriately considered in the Special Review.

Pending that review, the existing provision will continue.

Principle 9 - Allowances

The present Principle 9 is as follows:

"Allowances may be adjusted or awarded only in accordance with this Principle and Principle 6. Service increments may be adjusted or awarded only in accordance with paragraph (c) of this Principle.

(a) Existing Allowances

(i) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

(ii) Existing allowances which relate to work or conditions which have not changed may be adjusted from time to time to reflect the movements in wage rates as a result of national wage adjustments.

(iii) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 4.

(b) New Allowances

(i) New allowances will not be created to compensate for disabilities or aspects of the work which are comprehended in the wage rate of the classification concerned.

(ii) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(iii) New allowances to compensate for changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 4.

(iv) New allowances to compensate for new work or conditions will be determined in accordance with the provisions of Principle 10(b).

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(31)Print F2900, p.53; (1983) 291 CAR 3 at 55

(v) No other new allowances may be awarded.

(c) Service Increment

(i) Existing service increments may be adjusted in the manner prescribed in (a)(ii) of this Principle.

(ii) New service increments may only be allowed to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant provisions of Principle 4."(32)

The ACTU contended that allowances should move consistently with wage increases, particularly where the allowances are associated with the nature of the work. It also contended that an opportunity should exist to establish a proper base, having regard to relevant industrial and community standards and that where allowances exist to reimburse expenses incurred, they should be adjusted to reflect the actual level of expenses incurred.

We agree with the ACTU that allowances which are associated with the nature of

the work should be treated in the same manner as wages and essentially that is what the present Principles achieve. We do not, however, believe that we should open up the Allowances Principle to claims that allowances are undervalued. There may be exceptions in relation to claims for re-evaluation of allowances to reimburse expenses. Such claims could be considered by the Anomalies Conference.

We reject the submission by ACPA that allowances should be created for aspects of the work not comprehended in the wage rate, without the need to establish changes in the nature of the work. This would be contrary to the general principle that when an award is made relating to wage rates, whether by consent or by arbitration, all factors existing at the time are considered to have been taken into account. Further, we believe that if such a position was allowed, even with the safeguard of the Anomalies Conference, there would be a grave danger of increases taking place beyond those envisaged for industry cases.

The terms of the Principle will therefore not be changed.

Principle 10 - First Awards and Extensions of Existing Awards

The present Principle 10 is as follows:

"(a) In the making of a first award, the long established principles shall apply i.e. prima facie the main consideration is the existing rates and conditions (General Clerks Northern Territory Award).(33)

(b) In the extension of an existing award to new work or to award-free work the rates applicable to such work will be assessed by reference to the value of work already covered by the award.

(c) In awards regulating the employment of workers previously covered by a State award or determination, existing rates and conditions prima facie will be the proper award rates and conditions."(34)

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(32)Print F2900, pp.53-4; (1983) 291 CAR 3 at 55-6 and Print F8100, p.21 (1985) 297 CAR 7 at 27

(33)Print B0701 [G0198], P.18; (1965) 111 CAR 899 at 916

(34)Print F2900, p.54; (1983) 291 CAR 3 at 56

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Considerable debate took place on the appropriate application of this Principle.

The ACTU wanted clarification of two issues in relation to the making of first awards: firstly that the Principles as a whole were available for determining rates and conditions for first awards, and secondly that the reference to "existing rates and conditions" in Principle 10(a) should be understood to refer to the existing rates and conditions in Federal awards in an industry or a number of employers in that industry; not to the existing rates and conditions in the area in which the employer previously operated.

ACPA wanted a paragraph added to Principle 10(a) stating that the Commission shall have regard to the prima facie position that existing rates and conditions shall be applied when ratifying an agreement under section 28 for first awards.

CAI said a first award encompassed by Principle 10(a) is one where there has not previously been regulation by this Commission or by a State Tribunal and that the reference to the Northern Territory Clerks' Award is to a minimum rates situation and this is to be distinguished from the making of first

awards which are paid rates awards. In response to the ACTU, CAI said the reference to existing rates and conditions in 10(a) is not to those contained in Federal or State awards in an industry, but to the actual rates and conditions being applied to the employees in question.

Employers in banking and financial institutions, which intervened in the proceedings specifically to make submissions in relation to this Principle, sought a statement from the Bench qualifying the role of the Northern Territory Clerks' Award in the light of the requirements of the present Principles. With CAI they also sought affirmation that Principle 10(b) is confined to the extension of Federal awards to new work as between existing parties to an award and that it does not refer to the roping-in of additional respondents to an existing Federal award. Further they said Principle 6 should not be available for the making of first awards and that care should be taken in the making of a first award to ensure that Principle 4 was applied.

To clarify the position as to the proper application of the Principle we think it is necessary to confirm that:

(1) Principle 10(a) relating to making of first awards has application only to cases where there is no existing Federal or State award to which the parties are bound.

(2) Principle 10(b) applies to the extension of an existing award to cover new work or award-free work where the employer is already bound by that award.

We would also make it clear that:

(i) We do not intend Principle 10(a) to allow for the making of a paid rates award otherwise than by consent of the parties. In addition, such an award must be practicable. Where for example an industry consists of a number of employers operating in different markets or regions a paid rates award may not be practicable, and in such circumstances a paid rates award should not be made. In all cases statutory declarations are to be given by both sides that the integrity of the paid rates award will be preserved.

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In the making of a first paid rates award prima facie the rates set should be the rates actually being paid. However, care should be taken to ensure that movements in wage rates inconsistent with the Wage Fixing Principles in operation since September 1983 or the current Principles are not included.

(ii) Where a first minimum rates award is to be made pursuant to Principle 10(a), prima facie there should be no increase in wage rates and the new award rates should not exceed those properly fixed for similar classifications or similar work in other relevant Federal minimum rates awards which have been made in accordance with the Commission's principles at the time.

(iii) Where a first Federal minimum rates award is to be made in relation to employees previously covered by a number of State awards or determinations, the Commission should fix appropriate rates having regard to the rates in such State awards and determinations.

(iv) Conditions in all new awards will prima facie be those already applying to the employees in question. They should not however exceed standards in relevant Federal awards for similar classifications or work and in all cases must be tested against the Principles as a whole.

(v) Whether an award is made pursuant to section 28 of the Act or otherwise the application of Principle 10 is the same.

(vi) Where additional employers are roped in to an existing award, prima facie there should be no increase in wage rates or conditions. Where however an existing award regulates a substantial part of the industry and contains properly fixed minimum rates and conditions, it may be permissible to apply

these standards.

(vii) As to the availability of Principle 6 for the making of first awards, Principle 6 can only come into operation after an award is made. It is not possible therefore for the making of a first award to be processed as an anomaly or inequity.

We have decided to delete the reference to the General Clerks Northern Territory Award in Principle 10(a) because reference to that decision has been, in our view, the source of much of the confusion as to the application of the Principle.

Principle 10 will read as follows:

(a) In the making of a first award, the long established principles shall apply i.e. prima facie the main consideration is the existing rates and conditions.

(b) In the extension of an existing award to new work or to award-free work the rates applicable to such work will be assessed by reference to the value of work already covered by the award.

(c) In awards regulating the employment of workers previously covered by a State award or determination, existing rates and conditions prima facie will be the proper award rates and conditions.

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Principle 11 - Conditions of Employment

The present Principle 11 is as follows:

"Applications for changes in conditions other than those provided elsewhere in the Principles must be considered in the light of their cost implications both directly and through flow-ons. Where such cost increases are not negligible, we would expect the relevant employers to make application for the claims to be heard by a Full Bench."(35)

No party or intervener suggested any change to this Principle. However, we would make it clear that adjustments to conditions of employment, even by consent, must meet the overall test of the Principle that increases outside national wage constitute a very small addition to overall labour costs.

We would also emphasise the necessity when dealing with improvements to conditions, to consider whether a particular decision could be used by others in such a way that it would become a vehicle for general improvements in conditions. Furthermore, the variations must be justified on their merits and not by way of comparative wage justice.

Principle 12 - Economic Incapacity

CAI, BCA, AMMA and other employers submitted that the centralized system should be flexible enough to recognise economic incapacity as a valid ground for not flowing wage increases to individual firms or industries.

In its decision of September 1983, the Commission referred to the ACTU's submission that:

"The thrust of a centralized system is to provide an orderly and rational system of wage fixation in which all groups are treated equally. To allow employers to opt out of that system and to deny the application of a centralized system to some section of the work force would completely undermine the essential features of a centralized system. If, as the CAI suggests, the no extra claims provision does not apply to employers, it applies to no one. If employers are free to deny the centralized system on the grounds of incapacity, that is to pursue sectional claims, it follows that

employees must be free to pursue their sectional claims in excess of increases arising out of that centralized system in cases where capacity for additional wage increases exists."(36)

The Commission said in this connection:

"We believe that the ACTU's argument has considerable force. While we would not debar argument being advanced on economic incapacity we would emphasize not only the long established principle of wage fixation that those seeking to argue incapacity to pay must present a strong case, but also that the fundamental basis of a centralized system is uniformity and consistency of treatment. In particular in cases involving the adjustment of rates in line with national wage decisions the Commission should not refuse an increase except in extreme circumstances."(37)

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(35) Print F2900, p.54; (1983) 291 CAR 3 at 56

(36) Print F2900, p.18; (1983) 291 CAR 3 at 20

(37) Print F2900, p.19; (1983) 291 CAR 2 at 21

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In the present proceedings, CAI pointed out that the reference to incapacity was in the body of that decision and submitted that the issue was of such importance that it should be addressed in the preamble to the Principles. CAI also proposed that an incapacity provision be written into the Principles in the following terms:

"In the event that any increase in labour costs is awarded pursuant to these principles, any employer, party to the award may, pursuant to the Conciliation and Arbitration Act, make application to the Commission for exemption from such a decision on the grounds of incapacity to pay."

BCA suggested that, for "overwhelming equity and economic reasons", there should be an explicit mechanism within the centralized system to allow an employer or industry to argue financial incapacity to meet any general labour cost increase. The onus would be on those seeking to argue incapacity to present a strong case and "the criteria should confine incapacity to extreme or desperate economic circumstances".

Accordingly, BCA proposed the inclusion of the following principle:

"Any respondent to an award may make application to the Commission to reduce and/or postpone the application of a national wage or any other increase granted under these Principles in respect of that respondent on the grounds of very serious or extreme economic adversity."

ACC suggested that the convention of incapacity to pay at present available to employers should be written into the new principles. Where an application is made to invoke incapacity, the applicant would be required to show incapacity.

AMMA submitted that if the Commission is not prepared to accept its proposal for no national wage increase,

"it ought to be made clear that there will be a real opportunity to argue incapacity to pay on a case-by-case basis rather than what we have suggested to the Commission is an illusory opportunity which has been offered to date".

AMMA also argued that under the present Principle there was a "virtually irrebuttable" presumption that the national wage increase will be paid.

The Commonwealth submitted that the flexibility of the centralised system was demonstrated by the way claims based upon economic capacity were dealt with at

the award level under "the strict tests appropriate for handling such exceptional cases in the context of a centralised system".

The ACTU objected to the inclusion of a principle providing for economic incapacity as a ground for no national wage increase. It repeated the concern it expressed in the 1983 case which we quoted above and said that there should be no role for incapacity. However, if the Commission was against such a proposal, the limited role conferred by the 23 September 1983 decision should not be exceeded. The provision of an incapacity principle would result in that principle being exploited to delay wage increases. More importantly, the ACTU argued that the integrity of the centralised system would be undermined if employers are allowed to "opt out" of the system on the basis of incapacity; it would only be a matter of time before the "countervailing pressure for upward movement above the average is found irresistable in terms of logic and equity".

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The ACTU also submitted that there was strong economic authority for not allowing the incapacity ground. It referred to the late Dr W.E.G. Salter's work Productivity and Technical Change in support of the contention that to promote structural changes it is desirable to ensure that comparable labour has the same price in expanding and declining industries and that the argument that an industry cannot "afford" higher wages is, in the long run, extremely dangerous.

We do not believe that properly applied an incapacity principle would violate Dr Salter's point on structural change especially under the present conditions of high unemployment. Nor, in a practical sense, do we find the parallel between incapacity claims and sectional claims in excess of national adjustments valid. The former would be only in special controlled circumstances bearing in mind, among other things, the welfare of the employees affected; the latter would most likely set in motion an uncontrollable general flow which would undermine the system. We should add that in the Engineering Oil Industry Case(38) the Commission decided that its rejection of profitable capacity as a valid ground for wage increase did not in any way affect "the right of an employer or an industry to plead incapacity to meet a claim".

As for incapacity applications designed to delay adjustments, such delaying tactics would be discouraged by the fact that the prescribed date for national adjustments would prima facie be the date of operation applying to unsuccessful applications.

We stress that the inclusion of a principle along the lines suggested by CAI and BCA would not alter the intent of what was said in the September 1983 decision and we affirm what was said. It would, however, remove any doubt about the rights of employers in this connection and we see merit in such an outcome. It would also help to dispel popular fallacy about the rigidity of the centralised system. In the light of experience, we would expect a limited role only for the incapacity principle in relation to national wage increases, especially in view of the widespread existence of overaward payments in minimum rates awards.

Neither CAI nor BCA advanced a specific formula for testing incapacity. CAI said that it had avoided "highlighting particular economic circumstances or particular circumstances that a corporation may face because . . . that will rest on the merits at the time". It also suggested that the matters relating to incapacity "ought to be very rigorously tested". BCA said that all available material should be presented to the Commission and that the examination of incapacity would be dependent on a number of factors.

ACC suggested that the test of incapacity should be the "medium term economic prospect of the firm or industry with special emphasis upon the employment investment outlook". AMMA argued that by "incapacity to pay is meant

incapacity to pay without economic damage and not incapacity to pay without commercial extinction".

We have considered providing the tests on which incapacity should be determined but we have come to the conclusion that such tests could be inappropriate and possibly misleading in particular cases. The variety of factors and combination of factors which could arise in incapacity claims make it unwise for any guidelines to be set down. We agree with CAI and BCA that an incapacity application should be decided on all the material presented in such a case.

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(38)Print B5642; (1970) 134 CAR 159 at 167

In the structured centralised system we have adopted, the onus should rightly be on those who seek to rely on incapacity and we so decide.

Accordingly, the following Principle will be included:

Any respondent or group of respondents to an award may apply to reduce and/or postpone the application of a national wage increase or any other increase in labour costs determined under the Principles on the ground of very serious or extreme economic adversity. The merit of such application shall be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested.

We would expect the employer seeking to argue incapacity to make application for the matter to be heard by a Full Bench.

Concluding Observations

Throughout this decision, we have emphasised the main difficulties facing the economy. Although these difficulties have come more immediately from outside the country, they bear heavily on the existing weaknesses of the domestic economy. Economic adjustments are called for which impose strict limits on costs and prices if rising unemployment is to be avoided.

The centralised system which we have proposed for the next two years offers the best prospects for containing labour cost increases consistent with reducing inflation and unemployment. However, our decision to retain within this system the prima facie element of Principle 1 as well as to phase in agreements and consent awards for superannuation under strict conditions, makes it of paramount importance that labour cost increases outside national wage are very small. Failure to meet this condition will almost certainly lead to higher inflation and unemployment.

To date there has been a high degree of compliance with this condition. This is partly reflected in the fact that since 1983, 96% of award wages increases have come from national wage increases. However, despite the strictures contained in the preamble to the 1983 Principles, there have been problem areas which we have identified.

These problem areas occur by consent and they involve arrangements outside the Commission and attempts to have agreements ratified by the Commission. They also include proceedings in the Commission where unions and employers, in both the public and private sectors, support increases in rates of pay on grounds which have the potential to generate general improvements in wages contrary to the intent of the Principles. In some cases the parties seek to use Principle 11 to improve conditions of employment without regard to the requirement that cost increases, both directly and through flow-ons, are very small.

In addition major excercises are being contemplated and in some cases being processed in relation to key classifications in awards which affect large

numbers of employees.

In the difficult economic times which lie ahead, attempts to weaken the Principles by circumventing or stretching them beyond reasonable limits have the potential to destroy the system and do serious damage to the employment prospects of wage and salary earners.

In relation to the present preamble to the Principles, the ACTU submitted that the preamble should be changed to make clear that the great bulk of improvements in both wages and working conditions should emanate from CPI movements and national productivity.

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That the great bulk of conditions of employment should emanate from National Wage Cases is, of course, consistent with the objectives of the proposed package, and we will include the substance of the ACTU's proposed amendment in the re-drafted preamble. We have also re-drafted the preamble to more adequately reflect the terms of the existing package.

The ACTU further submitted that where a claim clearly met the tests of a specific principle and was justified on its merits, provision should exist to phase in such adjustments in order that the cost, over time, can satisfy the requirement that such increases must constitute a very small addition to overall labour costs.

Phasing in of increases is not prohibited by the Principles and we believe that it would rarely, if ever, be the case where an increase otherwise justified, was of such magnititude that it would involve increases to particular establishments and/or industries contrary to the ordinary requirement of the Principles. The implications for the package as a whole of particular increases in costs would need to be considered in the light of each case, whether or not increases are to be phased in. We do not believe it is necessary to change the Principles in this connection.

In view of the contents of the package already discussed it will be necessary to make minor adjustments to the wording of the preamble which will now be as follows:

In considering whether wages and salaries or conditions should be awarded or changed for any reason either by consent or arbitration, the Commission will guard against any contrived arrangement which would circumvent these Principles.

The Principles have been formulated on the basis that the great bulk of wage and salary movements and improvements in conditions will emanate from national wage adjustments and consent arrangements in relation to superannuation. Increases outside national wage and superannuation arrangements - whether in the form of wages, allowances or conditions, whether they occur in the public or private sector, whether they be award or overaward - must constitute a very small addition to overall labour costs.

The Commission will guard against any Principle other than Principles 1 and 3 being applied in such a way as to become a vehicle for general improvement in wages and conditions.

SPECIAL REVIEW

All parties and interveners supported a Special Review of the relationship between paid rates and minimum rates and both the ACTU and CAI contended that the Commission should establish the Review on the basis of the applications before it.

As the ACTU pointed out, award rate fixation has developed different principles and practices, depending on the nature of the award, and the relationship between minimum rates awards and paid rates has caused serious

problems. Additionally, it was claimed that within the centralised system, there is internal inconsistency of approach in relation to minimum and paid rates awards due to the existence of overaward payments. The ACTU contended that the enquiry should examine all relevant issues including the making of paid rates awards, supplementary payments, the establishment of an equitable base for the operation of the centralised system and the minimum wage.

CAI agreed but submitted that the minimum wage served no useful purpose and to include it in the Review would make its demise more difficult. Whilst opposing its inclusion in the list of matters to be reviewed CAI sought to add the question of penalty rates.

We do not believe it appropriate to include penalty rates, a matter which we consider in detail later. However, we do intend to include the minimum wage in the Review, whilst acknowledging the attitude of CAI to the concept and without prejudice to the adoption of its views.

JUNIOR RATES

CAI urged us to institute an enquiry into Junior Rates and asked that it be held by a member of the National Wage Bench who should examine all the issues. It opposed a piecemeal approach and submitted that the Commission should determine a common policy. It said there was an international consensus on the need to investigate fully the effect of labour costs on the level of youth unemployment.

The enquiry was opposed by both the ACTU and the Commonwealth.

There was a substantial discussion of Junior Rates in the National Wage Decision of April 1985. On that occasion the Commission concluded in the following terms:

"We have reported on the material before us in some detail because of the great concern we share with the parties and interveners on the question of youth unemployment. However, the wide range of junior rates and the differing provisions for juniors in awards suggest that an award by award consideration, rather than a broad-brush uniform action, may be a more appropriate course. Furthermore, the indeterminate nature of the statistical evidence in favour of the course proposed by CAI, and the fact that the Kirby Report recommendations are currently in train, including the consultations referred to above, have led us to the conclusion that it would be unwise, on the submissions before us, to accede to the CAI's application."(39)

Nothing in the submissions made in this case convinces us to depart from the case by case approach we have previously adopted.

PENALTY RATES

CAI also submitted that there ought to be an enquiry into the level of penalty rates. It said the existing levels were the result of ad hoc agreements and decisions having regard to factors no longer sacrosanct. It was argued that the level of penalty rates was a major factor in preventing employers from offering work to those ready, willing and available to work the hours offered. Queensland went even further, contending that there ought not to be an automatic flow on to penalty rates from national wage decisions and that there needed to be an evaluation of the role of penalty rates in awards generally. In the meantime, it said the amount of the penalty payments should be frozen.

The Commonwealth submitted that despite a number of studies nothing conclusive could be proved except the importance of penalty rates in ensuring an adequate supply of labour in non-standard hours. It said the diversity and scope of arrangements made it necessary and desirable to consider industry circumstances. The ACTU argued that any departure from the current treatment

would be inconsistent with a system designed to achieve uniformity of treatment and the maintenance of living standards.

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(39)Print F8100, p.14; (1985) 297 CAR 7 at 20

In the decision of April 1985, the Commission said:

"We have decided that the limited material before us is insufficient to establish that any section of industry could successfully argue that loadings payable for overtime, weekend work, shift work or public holidays should not be increased as a result of this National Wage decision. However, it may well be that the circumstances in particular awards, if examined in detail, might lead to a conclusion that the existing rates should be restructured."(40)

We do not accept the ACTU's reasons for rejecting the enquiry proposed by CAI. However, the submissions of CAI and Queensland in the present proceedings do not persuade us to depart from our earlier expressed view that a case by case approach is preferable.

OVERAWARDS

The employers contended that they should be able to increase overaward payments, but that unions should not be able to make claims or campaign for them. However, any such increases in overaward payments should be taken into account in National Wage Cases. They opposed members of the Commission making decisions and/or recommendations in relation to overaward payments.

We are concerned about the Commission's role in this area, even in cases where employers and unions ask the Commission to make recommendations and decisions on overaward payments. Whether overaward payments occur because of employers' attempts to attract labour or as a result of proceedings in the Commission, industrial disturbances of a serious and intractable kind can result, and in combination increases in overaward payments no matter how they occur can lead to pressures for across-the-board increases. Reference to proceedings before the Commission in recent times illustrates the correctness of this view.

In these circumstances we would indicate that increases in overaward payments, other than the reflection of indexation increases, are inconsistent with the National Wage Principles and pending the Special Review the Commission should not arbitrate or recommend any increases in overawards other than in accordance with Principle 1(d).

VARIATIONS OF AWARDS

We will not in this decision vary any of the awards before us. The matter involving the Storemen and Packers (Retail Warehouses, Victoria) Award 1981 (C No. 142 of 1986) will be listed for award variation before the President at 10:30 a.m. on 7 July 1986 in Melbourne and the matter involving the Metal Industry Award 1984 - Part I (C No. 3114 of 1986) will be listed before Mr Justice Williams at 10:30 a.m. on 10 July 1986 in Sydney. The unions will be expected to give the necessary commitments under Principle 2 at those hearings.

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(40)Print F8100, pp.14-15; (1985) 297 CAR 7 at 20-21

APPENDIX A

DECISION SUMMARY

A great deal of relevant material has been put for our consideration and we have discussed the issues raised at some length. In coming to our decision we have given particular weight to:

. The various indications of labour cost restraint, economic recovery and improvement in industrial relations under the centralised system which has operated since September 1983.

. The serious balance of payments problem, greatly compounded by a very adverse movement in the terms of trade which has developed since the middle of 1985.

. The need to deal with the resulting threat of an economic downturn and increased unemployment by rapidly removing the gap between our inflation rate and that of our trading partners, stabilising the exchange rate, lowering interest rates and encouraging private investment.

. The need in the meantime to keep income claims, including wages, within the bounds of a reduced real national income.

We believe that the decision we have made provides the best option for dealing with labour costs in a realistic and orderly way. Our decision is consistent with a substantial slowing down of inflation, the maintenance of profitability and relative stability in industrial relations.

However, these outcomes depend not only on the Principles being observed generally but also on labour cost restraint being matched by restraint in non-wage incomes and prices, including government charges.

In summary, our decision on the applications before us is as follows:

1. We have decided to retain the structured centralised system and to make only minor changes to the Principles of the previous package. The new package will operate for two years as from 1 July 1986.

2. We have decided to award a national wage increase of 2.3% in relation to the CPI increase of 4.3% for the September and December 1985 quarters.

This increase will operate from the first pay period beginning on or after 1 July 1986 and will be subject to the no extra claims undertaking by the unions.

The next national wage adjustment is expected to operate six months later.

3. We have decided to reject the claim for a 4% pay increase on account of productivity.

We have also decided not to impose by arbitration any occupational superannuation contributions on employers during the 2-year life of this package.

4. However, the expectations created by the ACTU/Commonwealth agreement have led to the establishment of new schemes by employers and unions and to active negotiations and understandings between them for contributions to new schemes and improved benefits to existing schemes. These developments are likely to accelerate and could threaten the very foundation of the centralised system. We believe that to avoid such an outcome and to prevent superannuation agreements from overloading the

economy, it is necessary to keep the cost of such agreements within the constraints of the centralised system. Our responsibility in this connection is reinforced by the jurisdiction clearly vested in the Commission by the recent High Court decision.

Therefore, pursuant to section 28 of the Act, the Commission will ratify agreements and make consent awards relating to employer contributions to approved superannuation schemes for employees covered by such agreements or consent awards provided those agreements or consent awards:

(i) operate from a date determined or approved by the Commission in accordance with the Commission's phasing in procedure but not before 1 January 1987 except in special and isolated circumstances approved by the Commission;

(ii) do not involve retrospective payments of contributions;

(iii) do not involve the equivalent of a wage increase in excess of 3% of ordinary time earnings of employees;

(iv) are consistent with the Commission's Principles and determinations by the Full Bench referred to in our decision;

(v) are in accordance with the Commonwealth's Operational Standards for Occupational Superannuation Funds; and provided that

(vi) the consent of the employers is genuine;

and

(vii) there is ambit.

To ensure that appropriate criteria are observed and that implementation of superannuation is phased in at a rate consistent with the objectives of reducing inflation and unemployment, we will regulate and implement agreements and consent awards in an orderly way. For this purpose the President will call a conference of the parties to the National Wage Case to formulate the guidelines and procedures for dealing with the ratification of agreements and consent arrangements.

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Appendix B

TABLE 1

THE CONSUMER PRICE INDEX AUSTRALIA AND OECD

	AUSTRALIA		OECD
	Major Eight Trading Capitals	Partners (a)	Total (b)
	(Per cent change on previous period)		
Year:			
1982-83	11.5	6.3	5.0
1983-84	6.9	(7.9)	5.3 3.7
1984-85	4.3	(5.8)	4.9 4.1

Quarter: (Per cent change on a year earlier)

1984 June 3.9 (6.5) 5.4 3.9

September 3.6 (6.1) 5.2 3.9

December 2.6 (5.1) 4.8 4.0

1985 March 4.4 (5.3) 4.6 4.1

June 6.7 4.8 4.5

September 7.6 4.4 4.3

December 8.2 4.5 (c) 4.0 (c)

1986 March 9.2 na 3.3

Quarter: (Per cent change on previous period)

1984 June 0.2 (1.1) 1.3 1.2

September 1.3 1.0 0.7

December 1.4 1.1 1.2

1985 March 1.4 1.1 0.9

June 2.4 1.5 1.6

September 2.2 0.7 0.5

December 2.0 1.2 (c) 1.0 (c)

1986 March 2.3 na 0.2

(a) Figures in parenthesis are for the all groups index adjusted by Treasury to remove the effect of the introduction, from 1 February 1984, of the new health insurance arrangements under Medicare.

(b) Australia's eight major OECD trading partners comprises the United States, Japan, West Germany, France, the United Kingdom, Italy, Canada and New Zealand: percentage changes are weighted using import and export weights current for each financial year.

(c) Three months to November 1985.

Source: ABS, Consumer Price Index (Cat No. 6401.0), Treasury estimates and OECD Main Economic Indicators. From Commonwealth Exhibit 26.

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TABLE 2

MOVEMENTS IN CONSUMER PRICE INDEX

FULL-TIME ADULT WEEKLY AWARD RATES AND EARNINGS

(Percentages)

	Weekly Award Percentage Change CPI Rates on Eight-Capitals Previous Period (a)	Average Wage & Salary Earners	Weekly Ordinary Time Earnings	Average Weekly Earnings
Year:				
1982-83	11.5	10.9	14.2	12.3
1983-84	6.8 (7.9)	5.5	7.8	8.1
1984-85	4.3 (5.8)	5.1	7.6	8.2
1985-86 I	4.4	3.2	3.2	3.5
(b)				
Percentage Change on a Year Earlier				
Quarter:				
1984 March	5.9 (7.5)	5.0	7.5	8.2
June	3.9 (6.5)	8.5	10.4	11.2
September	3.6 (6.1)	9.1	10.6	11.1
December	2.6 (5.1)	4.6	8.5	9.0
1985 March	4.4 (5.3)	4.3	6.9	7.6
June	6.7	2.7	4.8	5.3
September	7.6	2.7	5.1	5.8
December	8.2	6.5	5.8	6.3
1986 March	9.2	6.5	7.3	-

(a) Figures in brackets: Treasury adjusted to remove Medicare effect.

(b) Increases based on March and June 1985 Quarters.

Source: The Treasury, The Round-up, January 1986 and May 1986 and ABS, Average Weekly Earnings (Cat No. 6302.0).

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TABLE 3

PERCENTAGE CHANGE IN EMPLOYMENT (a)

Full-time	Total	Percentage Change on Previous Period	Percentage Change on A Year Earlier	Percentage Change on Previous Period	Percentage Change on A Year Earlier
Year:					
1982-83		-2.9	-1.7		
1983-84		0.7	0.9		
1984-85		2.2	2.8		
Average in three months ending (b):					
1985 April		0.3	1.9	0.6	2.2
July		0.5	1.7	0.8	2.2
October		1.0	2.6	1.1	3.1
1986 January		1.5	3.4	1.7	4.2
April		0.8	3.9	0.9	4.6

July 1983 to April 1986: Increase in Full-time employment 435,000 or 8.3%.

Increase in Total employment 692,300 or 10%.

(a) The Statistician has revised the definition of employment to include all persons who worked without pay for 1 hour or more in a family business or farm. The revised series is not available prior to March 1985. Comparisons with data prior to March 1985 for part-time and total employment can therefore not be made with accuracy.

(b) Seasonally adjusted. Based on new series data where available, with a link to the old series at March 1985.

Source: ABS, The Labour Force, Australia (Cat No. 6202 and 6203.0) From Commonwealth Exhibit 26.

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TABLE 4

UNEMPLOYMENT AND PARTICIPATION RATES (a)

(Seasonally Adjusted Percentages)

Month	Unemployment Rate	Participation Rate
1983 March	9.9	60.4
June	10.2	60.4

September 10.4 60.6

December 9.5 60.5

1984 March 9.2 60.8

June 9.1 60.8

September 8.8 60.6

December 8.5 60.4

1985 March 9.1 61.7

June 8.4 61.1

September 8.0 61.3

December 7.7 61.5

1986 March 7.9 61.9

April 7.9 62.4

May 7.8 61.9

(a) The Statistician has revised the definition of employment to include all persons who worked without pay for 1 hour or more in a family business or farm. The revised series is not available prior to March 1985. Comparisons with data prior to March 1985 can therefore not be made with accuracy. All data including and subsequent to March 1985 are revised estimates based on the new definition. All data prior to March 1985 are the most recent revised seasonally adjusted estimates under the old series.

Source: ABS Labour Force, Australia (Preliminary) (Monthly) (Cat No. 6202.0).

ABS The Labour Force, Australia, (Monthly) (Cat No. 6203.0.)

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TABLE 5

FACTOR INCOMES

(Percentage shares)

Private Non-farm

Non-farm Sector* Corporate Sector Wage Share Profit Share Wage Share Profit Share

(a) (b) (c) (d)

Average:

1966-67 to 61.8 17.5 67.7 32.2

1972-73

Year:

1972-73 62.1 17.4 67.5 32.5

1873-74	64.4	15.5	70.4	29.6
1974-75	67.2	13.5	73.2	26.8
1975-76	65.7	13.9	72.1	27.9
1976-77	64.8	14.2	71.4	28.6
1977-78	64.8	13.4	72.3	27.7
1978-79	63.0	14.8	69.6	30.4
1979-80	62.7	15.3	68.5	31.5
1980-81	63.3	15.1	68.9	31.1
1981-82	64.8	13.5	71.6	28.4
1982-83	65.0	12.7	72.3	27.7
1983-84	61.8	15.0	67.4	32.6
1984-85	61.3	14.9	67.4	32.6

Half Year (e):				
1983-84 I	62.3	14.5	na	na
II	61.2	15.5	na	na
1984-85 I	61.5	14.9	na	na
II	61.0	14.8	na	na
1985-86 I	60.1	15.5	na	na

(a) Non-farm wages, salaries and supplements as a percentage of gross non-farm product at factor cost.

(b) Gross operating surplus of trading enterprise companies and financial enterprises (less imputed bank service charge) as a percentage of gross non-farm product at factor cost.

(c) Ratio of the wages, salaries and supplements of the private non-farm corporate sector to the gross product at factor cost of the non-farm corporate sector.

(d) Ratio of the gross operating surplus of the private non-farm corporate sector to the gross product at factor cost of the private non-farm corporate sector. The gross operating surplus of the private non-farm corporate sector is defined as the gross operating surplus of non-farm trading enterprise companies and private financial enterprises.

(e) Seasonally adjusted.

Source: ABS, Quarterly Estimates of National Income and Expenditure. (Cat No. 5206.0), unpublished ABS estimates, and Treasury estimates. From Commonwealth Exhibit 26.

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Table 5 - contd

* The Treasury has pointed to the difficulties arising from the inclusion of the public sector, imputed rents and unincorporated enterprises in interpreting movements in the shares of wages and profits in the non-farm sector. See The Treasury, The Round-up, October 1983.

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TABLE 6

INDEXES OF AVERAGE REAL UNIT LABOUR COSTS

(Base for Indexes: Average 1966-67 to 1972-73 = 100.0)

	Non-farm Private Non-farm Sector	Corporate Sector
	(a)	(b)
Year:		
1972-73	101.6	99.9
1973-74	105.4	104.2
1974-75	110.6	108.4
1975-76	107.8	106.9
1976-77	107.5	105.9
1977-78	108.5	107.1
1978-79	104.9	103.2
1979-80	104.3	101.6
1980-81	105.1	102.2
1981-82	107.4	106.1
1982-83	107.5	107.2
1983-84	102.1	100.0
1984-85	100.4	100.1
Half Year (c):		
1983-84 I	103.1	na
II	101.0	na
1984-85 I	101.4	na
II	99.6	na
1985-86 I	98.9	na

(a) Ratio of non-farm wages, salaries and supplements plus payroll tax per hour worked by non-farm wage and salary earners deflated by the implicit price deflator for gross non-farm product to gross-farm product at average (1979-80)

prices per hour worked by all persons employed in the non-farm sector.

(b) Ratio of wages, salaries and supplements and payroll tax (less employment subsidies) paid by the private non-farm corporate sector to private non-farm corporate sector gross product at factor cost plus payroll tax (less employment subsidies).

(c) Based on seasonally adjusted data.

Source: ABS, Quarterly Estimates of National Income and Expenditure (Cat No. 5206.0) unpublished ABS estimates and Treasury estimates. From Commonwealth Exhibit 26.

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TABLE 7

BALANCE OF PAYMENTS ($ MILLION)

	Ten Months Ended:			
		April	April	
1982-83	1983-84	1984-85	1985	1986
Exports 20656	23680	29210	23335	27156
Imports -21705	-23497	-30104	-24255	-30070
Merchandise Trade Balance -1049	183	-894	-920	-2914
Net Services -2783	-2915	-3963	-3148	-3554
Balance on Goods and Services -3832	-2732	-4857	-4068	-6468
Net Transfers -2891	-4540	-5909	-4816	-5604
Balance on Current Account -6723	-7272	-10766	-8884	-12072
Official Capital -1613	-1395	3833	3062	4251
Non-Official Capital (including Balancing Item) 8336	8667	6933	5822	7821
Official Reserve Assets 10748	12417	13517(a)	13988	12553

(a) From September 1984, figures for official reserve assets are not fully comparable with earlier data due to changes in the Reserve Bank's accounting procedures.

Source: ABS, Balance of Payments, Australia (Cat No. 5301.0). From Commonwealth Exhibit 26.

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TABLE 8

AUSTRALIA'S TERMS OF TRADE (a)

Quarters ended:	Index (b)
1984 March	99.5
June	98.9
September	97.7
December	97.7
1985 March	97.4
June	93.8
September	90.7
December	88.4
1986 March	84.2

(a) Calculated by relating the implicit price deflators for exports of goods and services and for imports of goods and services.

(b) Based 1979-80=100.0

Source: ABS, Quarterly Estimates of National Income and Expenditure, March quarter 1986, (Cat No. 5206.0).

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TABLE 9

PERCENTAGE CHANGES IN MAJOR COMPONENTS OF GROSS DOMESTIC PRODUCT (a)

Quarter (b)	1982-83	1983-84	1984-85	Sept.1985	Dec.1985	Mar.1985
(Per cent change on previous period)						
Consumption Expenditure (c):						
1. Private	1.7	2.5	4.0	0.6	1.0	- 0.8
2. Government	3.3	3.9	5.4	- 0.4	4.7	- 1.2
Gross Fixed Capital Expenditure:						
Private:						

3. Dwelling -22.0 7.9 12.5 3.0 - 2.6 - 2.4

4. Non-dwelling

Construction (d) -13.1 -23.4 20.8 5.2 - 4.9 14.0

5. Equipment (d) -14.2 - 6.1 0.4 - 4.6 - 0.7 - 7.3

6. Business Fixed

Investment (d) -13.9 -10.4 4.7 - 2.1 - 1.9 - 1.6

7. TOTAL (d)(e) -16.2 - 2.8 7.2 - 0.3 - 2.4 - 2.8

8. Public (d) 3.8 - 1.2 5.3 - 3.6 5.7 - 2.4

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9. Private Final

Domestic Demand

(c) (d) - 2.5 1.4 4.6 0.4 0.3 - 1.3

10. Public Final

Domestic Demand

(c) (d) 3.5 2.2 5.4 - 1.4 5.0 - 1.6

11. Final Domestic

Demand - 1.2 1.6 4.8 - 1.4 - 1.3

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12. Exports 1.1 7.1 13.9 1.4 - 2.1 6.7

13. Imports - 8.5 5.6 15.4 1.9 2.9 - 4.5

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14. Gross Non-farm

Product (expenditure-

based) (f) - 0.8 2.7 4.0 1.6 - 0.4 0.4

15. Gross Non-farm

Product (income-

based) 0.1 3.5 4.6 2.4 - 0.3 - 0.3

16. Gross Farm

Product -16.8 33.6 1.7 - 8.9 4.0 1.8

17. GDP (expenditure-

based) (f) - 1.8 4.2 3.9 0.9 - 0.1 0.5

18. GDP (income-

based) - 0.9 5.0 4.5 1.6 - 0.1 - 0.1

(a) At average 1979-80 prices.

(b) Quarterly figures are at average 1979-80 prices: seasonally adjusted.

(c) The introduction of Medicare from 1 February 1984 had the effect of transferring certain expenditures on health care, formerly included as private final consumption expenditure, to public final consumption expenditure. Figures have been adjusted where necessary to allow for this effect.

(d) The published figures have been adjusted to remove the impact of the sale to the private sector of public sector assets under leaseback arrangements.

(e) Includes real estate transfer expenses.

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Table 9 - contd

(f) Derived by subtraction of the statistical discrepancy from the published income-based estimate.

Source: Commonwealth Exhibit No. 26, Table 1, revised and updated to incorporate the March 1986 Quarterly Estimates of National Income and Expenditure (ABS Cat No. 5206.0).

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APPENDIX C

CONCILIATION AND ARBITRATION COMMISSION

C Nos 1690, 1773 and 1794 of 1985;

142 and 3114 of 1986

NATIONAL PRODUCTIVITY, REVIEW OF PRINCIPLES

AND NATIONAL WAGE CASE FEBRUARY 1986

MR JUSTICE MADDERN, PRESIDENT

MR JUSTICE WILLIAMS

MR DEPUTY PRESIDENT ISAAC

JUSTICE COHEN

MR COMMISSIONER CONNELL 13 FEBRUARY 1986

STATEMENT

There are four matters for consideration.

1. The CAI raised a number of important issues in connection with an application, pursuant to section 41(1)(d)(iii), to dismiss forthwith the "ACTU productivity claim".

It submitted, among other things, that:

"The application is not genuine. It is a device to circumvent the limits on the jurisdiction of the Commission, to legitimize a sweetheart deal between the government and the ACTU, and to undermine the proper role of the Commission."

It claimed that the application was imprecise and that the applicant had no intention of asking the Commission to vary any award or make any order. It also claimed that the Commission would, by hearing the matter, be creating,

not settling industrial disputes.

In our view, a number of the arguments raised by the CAI are more closely related to the merits of the matters before us than to the 41(1)(d) application. Further, we agree with the Commonwealth that to dismiss the claim relating to productivity movements without hearing the parties on the merits and irrespective of the merits would be a drastic course.

The first part of the application by the Manufacturing Grocers Employees Federation of Australia in matter C No. 1690 of 1985 is in a similar form to Principle 2 of the Principles adopted on 23 September 1983. The claim reads as follows:

"Application is hereby made by The Manufacturing Grocers Employees Federation of Australia for variation of the abovementioned award in the following respects:

CLAIM

1. 4% increase in wages and salaries or changes in conditions of employment on account of national productivity.

2. The Union acknowledges that to the extent to which improvements in superannuation arrangements are, consistent with the National Wage Principles, made by agreement between the union and the employer, the productivity increase or part thereof shall not apply to the employees covered by such agreement.

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3. Any other consequential variations necessary."

We also set out the details of the claim by the Association of Professional Engineers, Australia in relation to matter C No. 1773 of 1985 which reads as follows:

"APPLICATION IS HEREBY MADE by the Association of Professional Engineers, Australia for variation of the Professional Engineers (General Industries) Award 1982 by increasing salaries for Professional Engineers classified in Clause 7 of the Award by 4.0 per cent to take account of movements in national productivity and to give effect to the provisions of Principle 2 of the Wage Fixation Principles handed down by the Commission in its National Wage Case decision of 23 September, 1983."

We have no doubt that the Commission could make valid orders on the basis of those applications. Moreover, we are not convinced that we are unable to make an order providing that superannuation improvements should be offset against a wage increase.

We are also influenced by the submission of the Commonwealth at p.53 of the transcript where it indicated that:

". . . any decision sought and any application pursued in this Commission with the support of the Commonwealth Government will be a request for an application to the Commission to make orders or to vary awards in a manner which is within its jurisdiction. I should indicate that that aspect of the claim, including implementation, would be a matter which the Commonwealth will address as part of its submissions. For reasons which we will develop shortly we will make it quite clear that that whole question is premature at this stage, before the ACTU has even had the opportunity of presenting its submissions in support of its case."

For the above reasons, we are not prepared to dismiss the matter before hearing the ACTU's detailed submissions on the claim and the implementation of the claim.

However, in the course of the proceedings, it will be necessary for us to be satisfied not only that any award we are asked to make has merit and is practicable, but also that such an order would be within our jurisdiction.

2. An issue relating to the November 1985 National Wage decision raised for clarification by the ACTU is whether, in extending the period of application of the Principles, the Commission had in mind the extension of all Principles or, as CAI contends, all Principles other than Principles 1 and 2.

Our intention was that all Principles should continue to apply pending the outcome of the review of the Principles to ensure that no hiatus would occur. This is explicitly stated on pp.6 and 7 of the November 1985 decision as well as on p.22 in our formulation of the No Extra Claims clause. It should be noted also that the comments on p.18 of that decision have a bearing on the way CPI and productivity claims should be considered in the present case.

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Although it was generally submitted in those proceedings that no hiatus should occur in the operation of Wage Fixing Principles, no debate took place on the issue of whether certain of the existing Principles should not be applied in any future National Wage Case. In view of the fact that the review of the Principles, the CPI claims and the productivity claims are being heard together in the present proceedings, the parties are not precluded from making further submissions on this issue as part of their overall submission on the three matters before us.

3. We were asked to adjourn these proceedings on account of industrial action which was threatened or taking place in the coal industry and the transport industry.

We deal first with strike action threatened by the coal mining unions. As to this, we were advised that The National Liaison Committee had endorsed a resolution to the effect that "a seven day stoppage of work would take place commencing the end of the last shift Wednesday, February 12th . . ."

We were told that the threatened stoppage will involve approximately 26,000 people who will be on strike for a period of 7 days with a clear indication of a recommendation of further industrial action in connection with the campaign.

We are gravely concerned at the ramifications of the action being taken, in particular at the estimate of lost export income to Australia of $20 million per day, the losses to users of coal for domestic purposes and the effects on related industries such as transport, shipping and power generation.

On the basis of the material before us, the unions' claims and the direct action which is threatened puts into question both their adherence to the "no further claims" provision and the viability of the ACTU/Commonwealth agreement.

However, although the economic effect and the threat to the present centralised system must necessarily be of importance in our deliberations on the merits of the matters before us that dispute is within the jurisdiction of the Coal Industry Tribunal and as we understand it, that Tribunal has made recommendations in relation to the dispute.

In the circumstances, we are not prepared to adjourn these proceedings because of the matters raised in relation to the coal industry.

4. We are equally concerned at the direct action which is taking place in the transport industry; a matter which relates to employees covered by awards of this Commission.

We have been informed that the direct action engaged in by the TWU does not have the support of the ACTU. We are aware that efforts are being made to solve the dispute and we have been advised that, at the initiative of the

ACTU, a meeting of the parties was scheduled for this morning in an attempt to resolve the dispute.

A hearing of this Commission was also listed before Commissioner McKenzie for 10.00 a.m. this morning to deal with a notification of the existence of an industrial dispute by the Australian Road Transport Industrial Organization in relation to the TWU claim for "occupational superannuation for employees in the Australian road transport industry". The notification states that industrial action is "having a serious and detrimental effect on major transport operators", and will ". . . extend quickly to industries other than the road transport industry".

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We take a very serious view of the action that is being taken because, as we understand it, the matters in dispute are related to the matters which are before this Full Bench for hearing and determination.

We will relist these proceedings at 11.00 a.m. tomorrow and if the transport dispute is not settled by that time we would expect to hear a full debate on the matters in dispute and on the significance of that dispute for these proceedings.

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AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

C Nos 1690, 1773 and 1794 of 1985;

142 and 3114 of 1986

NATIONAL PRODUCTIVITY, REVIEW OF PRINCIPLES AND

NATIONAL WAGE CASE FEBRUARY 1986

MR JUSTICE MADDERN, PRESIDENT

MR JUSTICE WILLIAMS

MR DEPUTY PRESIDENT ISAAC

JUSTICE COHEN

MR COMMISSIONER CONNELL 27 MARCH 1986

STATEMENT

In these proceedings there are five applications as follows:

(i) C No. 1690 of 1985; an application by the Manufacturing Grocers Employees Federation of Australia to vary the Manufacturing Grocers Award 1985 by increasing wages and salaries or changing conditions of employment on account of national productivity;

(ii) C No. 1773 of 1985; an application by The Association of Professional Engineers, Australia to vary the Professional Engineers (General Industries) Award 1982 by increasing salaries by 4.0 per cent to take account of movements in national productivity;

(iii) C No. 1794 of 1985; an application by the Confederation of Australian Industry to review the Principles of Wage Fixation;

(iv) C No. 142 of 1986; an application by The Federated Storemen and Packers Union of Australia to vary the Storemen and Packers (Retail Warehouses Victoria) Award 1977 by adjusting wages to compensate for movements in the Consumer Price Index for the six months ended December 1985; and

(v) C No. 3114 of 1986; an application by The Amalgamated Metal Workers' Union to vary the Metal Industry Award 1984 Part I in similar terms to the application in C No. 142 of 1986.

Of particular importance to this decision are the first two applications to vary awards which were made in accordance with Principle 2 of the 1983 Principles of Wage Fixation.

Those applications read as follows:

(i) C No. 1690 of 1985

"Application is hereby made by The Manufacturing Grocers Employees Federation of Australia for variation of the abovementioned award

in the following respects:

CLAIM

1. 4% increase in wages and salaries or changes in conditions of employment on account of national productivity.

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2. The Union acknowledges that to the extent to which improvements in superannuation arrangements are, consistent with the National Wage Principles, made by agreement between the union and an employer, the productivity increase or part thereof shall not apply to the employees covered by such agreement.

3. Any other consequential variations necessary."

(ii) C No. 1773 of 1985

"APPLICATION IS HEREBY MADE by the Association of Professional Engineers, Australia for variation of the Professional Engineers (General Industries) Award 1982 by increasing salaries for Professional Engineers classified in Clause 7 of the Award by 4.0 per cent to take

account of movements in national productivity and to give effect to the provisions of Principle 2 of the Wage Fixation Principles handed down by the Commission in its National Wage Case decision of 23 September, 1983."

Principle 2 on which the applications relied reads as follows:

"NATIONAL PRODUCTIVITY

Upon application and not before 1985, the Commission will consider whether an increase in wages and salaries or changes in conditions of employment should be awarded on account of productivity."

The jurisdictional base for the applications is found in letters of demand and logs of claims served by the two applicants respectively. The record of findings in relation to The Manufacturing Grocers Employees Federation of Australia was made in matter C No. 1152 of 1985 on 5 June 1985. The record of findings in relation to The Association of Professional Engineers, Australia was made in matter C No. 189 of 1982 on 10 March 1982.

Both logs of claims cover wages and conditions of employment and a number of demands in those logs are relevant to the present proceedings. In particular, the Manufacturing Grocers Federation's log contains a specific clause relating to the provision of a superannuation scheme by employers.

There is no doubt that the applications to vary are within the ambit of those original disputes.

At the outset of these proceedings the employers argued pursuant to section

41(1)(d)(iii) of the Act that the Commission should dismiss the productivity claims.

In relation to that application we held, in part:

"We have no doubt that the Commission could make valid orders on the basis of those applications. Moreover, we are not convinced that we are unable to make an order providing that superannuation improvements should be offset against a wage increase."

Following that ruling, and in the course of submissions on all issues, the ACTU and the Commonwealth Government made submissions as to why an increase based on Principle 2 of the 1983 Principles of Wage Fixation should be approved and as to the method of implementation of any decision.

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The submissions of the ACTU and the Commonwealth Government were supported by the Australian Council of Professional Associations and the States of New South Wales, Victoria, South Australia and Western Australia.

As part of its submissions, the ACTU tendered a draft order which provided for "an increase in all wages and salaries and those allowances which are conventionally adjusted with wages and salaries by 4%". The increase was to operate on and from 1 July 1986 with leave reserved for any employer to be exempted from the order if a 3% wage equivalent was paid to a superannuation fund. Details of the ACTU's draft order are contained in Exhibit ACTU 15.

The Commonwealth made extensive submissions in support of its contention that orders should be made requiring employers to pay award benefits to their employees in the form of contributions to an approved superannuation fund.

Both the ACTU and the Commonwealth Government contended that the Commission could and should make orders in the form they suggested which they described as their preferred option.

Following the completion of the submissions of the ACTU and the Commonwealth Government, the CAI submitted that in relation to the productivity "there is no case before this Commission for us to answer, both on grounds related to jurisdiction and on grounds related to public interest".

In particular they submitted that:

(i) The Commission has no power to make the order in the form proposed by the ACTU or the Commonwealth "because in each case the order relates to a matter which is not an industrial matter" that

(ii) given the limits on the Commission's jurisdiction the appropriate course of action for the Commission is "to not get involved in the arrangements in the limited way that has been proposed by the ACTU and the Government" and to indicate to the ACTU and the Government that the Commonwealth should "legislate directly with respect to superannuation" and that

(iii) "the whole course of action that has been proposed will be creative of industrial disputation rather than be the cause of settling industrial disputation".

One result of acceding to the CAI submissions, as put by CAI, is that it would not have to put submissions to us in relation to productivity. In particular, the CAI submitted that

"a detailed reply on the productivity aspect of this case would occupy the Commission in the order of four to five days, and there is an enormous amount of preparation in preparing that sort of submission which, we submit, is totally undesirable and an unfair and unnecessary burden in the event that at the end of the day the Commission were to hold it had no jurisdiction in

relation to the matter".

We consider that this submission fails to distinguish between the nature of the claim and the form of order and that it ignores the inter-relationship between the various applications.

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We believe that there are genuine disputes in the case before us evidenced by the findings of dispute and the applications to vary by the Manufacturing Grocers Employees Federation of Australia and The Association of Professional Engineers Australia. Indeed, CAI did not argue otherwise and in its reply submitted that "We at no stage put to the Commission that there was not a real and genuine dispute before the Commission. We put to the Commission that it had no power to make the order in settlement of that dispute in the form proposed by the ACTU."

Nothing in the extensive submissions of the parties and interveners convinces us to change our original decision that we can in these proceedings, if convinced on the merits, make a valid order providing for the distribution of national productivity by increasing wages and salaries or by changing conditions of employment.

In particular, in relation to any decision we might make we refer to the provisions of section 55 of the Act which reads as follows:

"Relief not limited to claim

55. In making an award in relation to an industrial dispute, the Commission is not restricted to the specific relief claimed by the parties to the industrial dispute, or to the demands made by the parties in the course of the dispute, but may include in the award any matter or thing which the Commission thinks necessary or expedient for the purpose of preventing or settling the dispute or of preventing further industrial disputes."

Apart from the question of superannuation, the manner and form of distribution of national productivity is clearly related to the Principles of Wage Fixation which are also before us for decision.

This is apparent from an examination of the present Principles of Wage Fixation, the principles supported by the ACTU and the principles sought by CAI. In all instances the principles provide for the consideration and/or determination of various issues relating to productivity.

For instance, in addition to Principle 2 which we earlier set out, the

preamble to the present Principles provides:

"The Principles have been formulated on the basis that the great bulk of wage and salary movements will emanate from national adjustments. These adjustments may come from two sources - CPI movements and national productivity. Increases outside national wage - whether in the form of wages, allowances or conditions, whether they occur in the public or private sector, whether they be award or overaward - must constitute a very small addition to overall labour costs."

Similar provisions are contained in the ACTU's suggested principles of wage fixation (Exhibit ACTU 10) and principle 1 of the CAI's principles provides for the Commission to consider each year the adjustment of award wages

"after consideration of economic capacity, productivity and relevant economic indicators including movements in the CPI, and after hearing economic arguments from all interested parties and shall pay particular regard to the consequences for employment and inflation of any decision it might make."

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In our view, on the limited material before us, it is clear that distribution of productivity whether by way of wage movements, improvements in conditions of employment or by other means - award or overaward - will need to be considered. This is so whether or not we are prepared to make orders in the form suggested by the ACTU and/or the Commonwealth Government or in some other form.

In short, the argument relating to the distribution of productivity is central to the debate on the Wage Fixing Principles that should be adopted as a result of these proceedings.

Further, amongst other factors the ACTU/Commonwealth Government Agreement, arrangements made and foreshadowed between employers and unions and the disputes that have occurred regarding superannuation have important ramifications for the form of any "No Further Claims Clause" which is an integral part of the existing Principles and the principles suggested by the ACTU and CAI.

We do not deny that the CAI has put strong arguments relating to the form of any order. These arguments will need to be seriously considered. However, in the circumstances of this case, with its inter-related issues, we believe it is not only desirable but necessary that debate take place on the various questions relating to national productivity and its method of distribution, if any distribution is justified.

To rule in favour of the CAI application at this stage and to hear no further debate on national productivity and its distribution by way of award movement of wages, improvements in award conditions of employment or otherwise, would be to ignore an issue fundamental to the claims before us.

We have given particular consideration to the discretionary arguments that the Commission should not become involved in matters relating to superannuation, that the Commonwealth Government should legislate directly with respect to superannuation if it wishes to implement the agreement with the ACTU and that the course of action proposed by the ACTU and the Commonwealth would create rather than settle industrial disputes. However, we believe they are overwhelmingly related to the merits of the claims. We are not prepared to rule on them without hearing all the material and examining what is said in the context of the debate on Wage Fixing Principles and a possible package for the immediate future.

In the light of all these circumstances - in particular the terms of section 55 of the Act, and because we are considering the possibility of a wage fixation package involving wages and conditions of employment "whether they be in the public or private sector and whether they be by award or over-award" - we are not prepared to determine at this time as a matter of jurisdiction, discretion or merit that the CAI has no case to answer in relation to the productivity claim.

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APPENDIX D

THE PRINCIPLES

In considering whether wages and salaries or conditions should be awarded or changed for any reason either by consent or arbitration, the Commission will guard against any contrived arrangement which would circumvent these Principles.

The Principles have been formulated on the basis that the great bulk of wage and salary movements and improvements in conditions will emanate from national wage adjustments and consent arrangements in relation to superannuation. Increases outside national wage and superannuation arrangements - whether in the form of wages, allowances or conditions, whether they occur in the public

or private sector, whether they be award or overaward - must constitute a very small addition to overall labour costs.

The Commission will guard against any Principle other than Principles 1 and 3 being applied in such a way as to become a vehicle for general improvement in wages and conditions.

1. NATIONAL WAGE ADJUSTMENTS

(a) Subject to Principle 2, the Commission will adjust its award wages and salaries every six months in relation to the relevant quarterly movements of the eight-capitals CPI unless it is persuaded to the contrary by those seeking to oppose the adjustment on grounds related to the state of the national economy and the likely effects of any adjustment on the economy, with special reference to the level of employment and inflation.

(b) The Commission expects that decisions on national wage adjustments will be made prior to 1 January and 1 July to enable adjustments to operate from those dates.

(c) The form of indexation will be uniform percentage adjustment unless the Commission decides otherwise in the light of exceptional circumstances. It is to be understood that any compression of relativities which may have occurred in recent times does not provide grounds for special wage increases to correct the compression.

(d) It would be appropriate for the Commission, after hearing the parties to an award and being satisfied that a proper case has been made out, to recommend the indexation of overaward payments when award payments are indexed.

2. OTHER CLAIMS

Any claims for improvements in pay and conditions other than those provided by Principle 1 must be processed in accordance with Principles 3 to 12 below. No application for a national wage adjustment to an award will be approved by the Commission unless all the unions concerned in the award give an undertaking that until the next National Wage Case decision they will not pursue any extra claims, award or overaward, except in compliance with the Principles.

3. SUPERANNUATION

Pursuant to section 28 of the Act, agreements may be certified or consent awards may be made providing for employer contributions to approved superannuation schemes for employees covered by such agreements or consent awards provided those agreements or consent awards:

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(i) operate from a date determined or approved by the Commission in accordance with the Commission's phasing in procedure but not before 1 January 1987 except in special and isolated circumstances approved by the Commission;

(ii) do not involve retrospective payments of contributions;

(iii) do not involve the equivalent of a wage increase in excess of 3% of ordinary time earnings of employees;

(iv) are consistent with the Commission's Principles and

determinations by the Full Bench referred to in our decision;

(v) are in accordance with the Commonwealth's Operational Standards for Occupational Superannuation Funds; and provided that

(vi) the consent of the employers is genuine;

and

(vii) there is ambit.

4. WORK VALUE CHANGES

(a) Changes in work value may arise from changes in the nature of the work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification.

These are the only circumstances in which rates may be altered on the ground of work value and the altered rates may be applied only to employees whose work has changed in accordance with this Principle.

However rather than to create a new classification it may be more convenient in the circumstances of a particular case to fix a new rate for an existing classification or to provide for an allowance which is payable in addition to the existing rate for the classification. In such cases the same strict test must be applied.

(b) Where new or changed work justifying a higher rate is performed only from time to time by persons covered by a particular classification or where it is performed only by some of the persons covered by the classification, such new or changed work should be compensated by a special allowance which is payable only when the new or changed work is performed by a particular employee and not by increasing the rate for the classification as a whole.

(c) The time from which work value changes should be measured is the last work value adjustment in the award under consideration but in no case earlier than 1 January 1978. Care should be exercised to ensure that changes which were taken into account in any previous work value adjustments are not included in any work evaluation under this Principle.

(d) Where a significant net alteration to work value has been established in accordance with this Principle, an assessment will have to be made as to how that alteration should be measured in money terms. Such assessment

should normally be based on the previous work requirements, the wage previously fixed for the work and the nature and extent of the change in work. However, where appropriate, comparisons may also be made with other wages and work requirements within the award or to wage increases for changed work requirements in the same classification in other awards provided the same changes have occurred.

(e) The expression "the conditions under which the work is performed" relates to the environment in which the work is done.

(f) The Commission should guard against contrived classifications and over-classification of jobs.

(g) Where through technological or other change the impact of work value

change on the work force is widespread or general, the matter should be dealt with in National Wage Cases.

5. STANDARD HOURS

(a) In dealing with claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimized. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.

(b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, should not be allowed.

(c) The Commission should not approve or award improvements in pay or other conditions on the basis of productivity bargaining. These improvements should only be allowed on the basis of the appropriate Principles.

6. ANOMALIES AND INEQUITIES

(a) Anomalies

(i) In the resolution of anomalies, the overriding concept is that the Commission must be satisfied that any claim under this Principle will not be a vehicle for general improvements in pay and conditions and that the circumstances warranting the improvement are of a special and isolated nature.

(ii) Decisions which are inconsistent with the Principles of the Commission applicable at the relevant time should not be followed.

(iii) The doctrines of comparative wage justice and maintenance of relativities should not be relied upon to establish an anomaly because there is nothing rare or special in such situations and because resort to these concepts would destroy the overriding concept of this Principle.

(iv) The only exceptions to (iii) are that catch-up for the metal industry standard and adjustment of paid rates awards to establish an equitable base may be processed as anomalies.

(b) Inequities

(i) The resolution of inequities existing where employees performing similar work are paid dissimilar rates of pay without good reason. Such inequities shall be processed through the Anomalies Conference and not otherwise, and shall be subject to all the following conditions:

NATIONAL WAGE CASE JUNE 1986 85

(1) The work in issue is similar to the other class or classes of work by reference to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is performed.

(2) The classes of work being compared are truly like with like as to all relevant matters and there is no good reason for dissimilar rates of pay.

(3) In addition to similarity of work, there exists some other significant factor which makes the situation inequitable. An historical or geographical nexus between the similar classes of work may not of itself be such a factor.

(4) The rate of pay fixed for the class or classes of work being compared with the work in issue is a reasonable and proper rate of pay for the work and is not vitiated by any reason such as an increase obtained for reasons inconsistent with the Principles of the Commission applicable at the relevant time.

(5) Rates of pay in minimum rates awards are not to be compared with those in paid rates awards.

(ii) In dealing with inequities, the following overriding considerations shall apply:

(1) The pay increase sought must be justified on the merits.

(2) There must be no likelihood of flow-on.

(3) The economic cost must be negligible.

(4) The increase must be a once-only matter.

(c) Procedure

(i) An anomaly or inequity which is sought to be rectified must be brought to the Anomalies Conference by the peak union councils, namely, the ACTU and the ACPA, or by any union not affiliated with those bodies.

(ii) The matter is first discussed with the employers and other interested parties at the Conference.

(iii) The broad principles for processing the anomaly or inequity

raised are:

(1) If there is complete agreement as to the existence of an anomaly or inequity and its resolution, and the President is of the opinion that there is a genuine anomaly or inequity, the President will make the appropriate order to rectify it.

(2) If there is no agreement at all, one of two situations can arise. Either the President will hold that there is no anomaly or inequity falling within the concept of the

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Conference which would mean an end of the matter as far as the Conference is concerned or on the other hand the President could hold that there was an arguable case which would then go to a Full Bench of the Commission for consideration.

(3) This procedure can be departed from by agreement and with the President's approval.

(4) In the case of matters in the Australian Public Service they may have to be dealt with somewhat differently in order to comply with the provisions of the Public Service Arbitration Act.

7. PAID RATES AWARDS

(a) Except in the case of first awards, the Commission will refrain from making any new paid rates awards. In the making of first awards the conditions as provided in Principle 10 below must be complied with.

(b) The Commission may convert into a minimum rates award a paid rates

award which fails to maintain itself as a true paid rates award. The conversion of such a lapsed paid rates award into a minimum rates award will

involve the valuation of the classifications in it by comparison with similar classifications in other minimum rates awards excluding suplementary payments.

(c) Claims for the adjustment of existing paid rates awards to establish

an equitable base should be processed as anomalies through the Anomalies Conference as provided in Principle 6.

8. SUPPLEMENTARY PAYMENTS

(a) The Commission will refuse claims for new supplementary payments.

(b) Existing supplementary payments should not be increased except for national wage adjustments.

9. ALLOWANCES

Allowances may be adjusted or awarded only in accordance with this Principle and Principle 6. Service increments may be adjusted or awarded only in accordance with paragraph (c) of this Principle.

(a) Existing Allowances

(i) Existing allowances which constitute a reimbursement of expenses incurred may be adjusted from time to time where appropriate to reflect the relevant change in the level of such expenses.

(ii) Existing allowances which relate to work or conditions which have not changed may be adjusted from time to time to reflect the movements in wage rates as a result of national wage adjustments.

(iii) Existing allowances for which an increase is claimed because of changes in the work or conditions will be determined in accordance with the relevant provisions of Principle 4.

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(b) New Allowances

(i) New allowances will not be created to compensate for disabilities or aspects of the work which are comprehended in the wage rate of the classification concerned.

(ii) New allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses.

(iii) New allowances to compensate for changes in the work or

conditions will be determined in accordance with the relevant

provisions of Principle 4.

(iv) New allowances to compensate for new work or conditions will be determined in accordance with the provisions of Principle 10(b).

(v) No other new allowances may be awarded.

(c) Service Increment

(i) Existing service increments may be adjusted in the manner prescribed in (a)(ii) of this Principle.

(ii) New service increments may only be allowed to compensate for changes in the work and/or conditions and will be determined in accordance with the relevant provisions of Principle 4.

10. FIRST AWARDS AND EXENSIONS OF EXISTING AWARDS

(a) In the making of a first award, the long established principles shall apply i.e. prima facie the main consideration is the existing rates and conditions.

(b) In the extension of an existing award to new work or to award-free

work the rates applicable to such work will be assessed by reference

to the value of work already covered by the award.

(c) In awards regulating the employment of workers previously covered by a State award or determination, existing rates and conditions prima facie will be the proper award rates and conditions.

11. CONDITIONS OF EMPLOYMENT

Applications for changes in conditions other than those provided elsewhere in the Principles must be considered in the light of their cost implications both directly and through flow-ons. Where such cost increases are not negligible, we would expect the relevant employers to make application for the claims to be heard by a Full Bench.

12. ECONOMIC INCAPACITY

Any respondent or group of respondents to an award may apply to reduce and/or postpone the application of a national wage increase or any other increase in labour costs determined under the Principles on the ground of very serious or extreme economic adversity. The merit of such application shall be determined in the light of the particular circumstances of each case and any material relating thereto shall be rigorously tested.

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Appearances:

I. Watson of the Australian Council of Trade Unions with G. Sword, W. Kelty, S. Crean, G. Weaven, B. Eames, S. Jones, and G. Bellchamber for The Federated Storemen and Packers Union of Australia, The Amalgamated Metal Workers' Union and The Manufacturing Grocers' Employees' Federation of Australia.

D. Spratt with S. Green and F. Austin for the Australian Council of Professional Associations and The Association of Professional Engineers, Australia.

C.G. Polites for the Confederation of Australian Industry, the Chamber of Commerce and Industry of South Australia Incorporated, the Tasmanian Chamber of Industries, the Employers Federation of New South Wales and the Chamber of Manufactures of New South Wales, with G.R. Smith for The Retail Traders' Association of Victoria, The Australian Chamber of Manufactures, the Metal Industries Association Tasmania and The Victorian Employers Federation, with R. Boland for the Metal Trades Industry Association of Australia and the Metal Industries Association, South Australia.

E.R. Cole for the Australian Public Service Board.

R. Merkel Q.C. with G. Moore of Counsel for the Minister of State for Employment and Industrial Relations on behalf of the Commonwealth (intervening).

M. Moore of Counsel with K. Hall for Her Majesty the Queen in Right of the State of New South Wales (intervening).

R.N. Overall with D. Page and M. Wright for Her Majesty the Queen in Right of the State of Victoria (intervening).

J.W. Johnston with B. Greenhill, A. Herbert of Counsel, J.E. Murdoch and I.

McKenzie for Her Majesty the Queen in Right of the State of Queensland (intervening).

M. Jarman for Her Majesty the Queen in Right of the State of Tasmania (intervening).

P. Jackson of Counsel with G. Harbord for Her Majesty the Queen in Right of the State of South Australia (intervening).

J. Carrick with S. Home for Her Majesty the Queen in Right of the State of Western Australia (intervening).

A. Kelly with B. Lyons and R.J. Swan for the Government of the Northern Territory (intervening).

R. Smith for the State Public Services Federation (intervening).

P. Houlihan and G. Carmody for the National Farmers Federation (intervening).

D.J. Marks for the Master Builders Federation of Australia (intervening).

R. Buchanan of Counsel and B. Shinners for the Australian Mines and Metals Association Inc. (intervening).

B.D. Purvis for the Australian Wool Selling Brokers Employers Federation (intervening).

B. Hungerford of Counsel for the Australian Coal Association (intervening).

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Appearances - contd

I. Douglas Q.C. with G. Guidice of Counsel for the Australian Petroleum Agents and Distributors Association and others (intervening).

G. Fenlon with D. Jones and K. Volp for the Queensland Nurses Union of Employees (intervening).

R.B. Davis with M. D'Rozzario and G. Wills for the Australian Chamber of Commerce (intervening).

J.T. Waters and B. Moore for Co-operative Bulk Handling Ltd. (intervening).

G.T. Smith and Mr Ginnane for Toyota Manufacturing (Australia) Ltd. (intervening).

I. Douglas Q.C. with J.F. Turner for Advance Bank Australia Ltd., Macquarie Bank Ltd. and others.