THE INDUSTRIAL RELATIONS SOCIETY OF SOUTH AUSTRALIA

President: R. E. Hurst, M.P.; *Vice-Presidents:* Professor K. Hancock, Commissioner J. H. Portus, A. J. Scriven; *Hon. Secretary:* L. Bowes, c/o Dept. of Labour and Industry, 32 Grenfell St., Adelaide; *Hon. Treasurer:* E. S. Johnson, c/o Aust. Bank Officials' Assn., 118 King William St., Adelaide; *Committee:* G. A. Bennett, Mrs. G. Dunstan, C. I. Hayes, B. C. Hennessy, Miss J. C. Henriott, F. Wycherly.

THE INDUSTRIAL RELATIONS SOCIETY OF QUEENSLAND

PATRON: Hon. Mr. Justice Hanger.

President: Professor E. I. Sykes; *Vice-Presidents:* N. J. Mansini, R. A. E. Simes; *Hon. Secretary:* S. F. McManus, c/o Dept. of Labour and National Service, Box 1382R, G.P.O., Brisbane; *Hon. Assistant Sec./Treasurer:* A. A. Adsett, Sec., Queensland Branch, Federated Storemen and Packers' Union of Aust., Brisbane; *Committee:* J. P. Coneybeer, A. Gibson, J. R. James, H. O. Muhl, B. J. McLoughlan, S. J. MacPherson, M. Kane, M. W. Prideaux, G. R. Palmer.

THE INDUSTRIAL RELATIONS SOCIETY OF VICTORIA

PATRON: Sir Richard Kirby.

President: Dr. I. G. Sharp; *Immediate Past President:* Professor J. E. Isaac; *Vice-Presidents:* A. P. Aird, Q.C., G. Polites, W. P. Evans, K. W. MacDermott; *Secretary/Treasurer:* E. P. Rogan, c/o Commissioner's Office, Victorian Railways, Spencer St., Melbourne; *Assistant Secretary:* J. F. Currie, c/o Dept. of Labour and National Service, 125 Swanston St., Melbourne, C.1, Victoria; *Asst. Treasurer:* J. R. Faichney; *Members:* I. E. Douglas, K. W. Hince, J. J. Neal, K. C. Piesse, K. C. Stone, Professor F. J. Willett, R. D. Williams, E. A. Woodward.

THE INDUSTRIAL RELATIONS SOCIETY OF WESTERN AUSTRALIA

President: D. W. Oxnam; *Vice-Presidents:* J. M. Currie, Professor K. F. Walker; *Hon. Secretary:* J. W. Winfield, Guidance and Appointments Office, The University of Western Australia; *Hon. Treasurer:* A. Petridis, Faculty of Economics and Commerce, The University of Western Australia; *Committee:* A. G. Barker, E. S. Cross, G. C. Gibbs

Volume 8, No. 3 NOVEMBER, 1966

THE JOURNAL OF INDUSTRIAL RELATIONS

The Journal of the Industrial Relations Society of Australia

ARTICLES

SYDNEY UNIVERSITY PRESS

NOTES

BOOK REVIEWS

Some Implications of the 1966 National Wage Decisions[1]

T. J. KEARNEY

Department of Labour and Industry, New South Wales

MEMBERS of this Society have, for some years past, been provided with reviews of current national wages cases. Generally, such reviews have been presented on the occasion of the annual Terrigal Convention when it was possible to assess the results of the national wage case decisions published during the previous twelve months. Many articles in the Journal have covered these cases either specially or in conjunction with discussions on wages policy in Australia.

On this occasion I intend to anticipate such Terrigal review in an attempt to provoke discussion on certain aspects of the 1966 decisions which were handed down on the 8th July last.

Unlike previous decisions of a national wages character, the 1966 decisions do not permit of any final evaluation. A post-mortem will not be possible until the Commission makes further pronouncements after considering any reports, interim or otherwise, which may be supplied to it by Mr. Commissioner Winter, who has been assigned a special task by the Commission.

Granted that the decisions were made in record time (three weeks after decisions were reserved) and that the addition of $2.00 to the prevailing basic wage, plus marginal increases to the lower paid adult males, were appreciated by trade unionists, the interim nature of the decisions (other than on the basic wage element), plus the implications of the decisions for the future pattern of wage fixation in Australia have aroused considerable speculation in industrial circles.

Ever since the employers made their submissions in 1964 seeking the deletion of basic wage clauses from Federal Awards generally and the insertion of wage rates expressed as a total wage, controversy has been aroused as to the full implication of these moves.

What has evoked most emotion, no doubt, has been the prospect that the basic wage concept as a traditional corner-stone of the Australian system of wage regulation should be threatened with extinction. No doubt some of the advocates for a total wage will argue that

the complete abolition of the basic wage concept is not necessarily involved. Adherents to the basic wage concept, on the other hand, have sound reasons to believe otherwise. Until the Commission constituted for the purpose finally pronounces on the employers' submissions (dealt with in Part A of the employers' log of claims), the issues raised in this controversy will remain unresolved.

The 1966 decisions, whilst indicating a change of opinion by at least two Presidential Members since 1964, are couched in such terms as to defy any true prediction as to the answer eventually to be given to the employers' applications. In the Announcement accompanying the decisions the Presiding Judge (Wright J.) said:—

> "We have indicated in our reasons the extent to which we favour the employers' proposal for conversion of the wage structure to the basis of a *single wage*[2] but we have decided to defer the question of implementation pending further consideration of the present structure of marginal rates and further argument."

A reference to the reasons for the decision does not materially assist in clarifying the eventual fate of the employers' application. The Presiding Judge in dealing with the employers' claims said:—

> "In my previous thinking about the prescription of a total wage—and of course I have not previously had to deal with the question officially—I had been concerned about jurisdictional aspects because of my belief (which still persists) that under Section 33 every wage rate for an adult employee prescribed by an award of this Commission contains in law a "basic wage", however difficult and complex may be its ascertainment. However, I feel relieved of that anxiety by the earlier decision of the learned President, and that of the Presidential Bench now concerned, that a basic wage rate may be expunged from an award, thus avoiding for the present any question of jurisdictional demarcation. However, I do not agree with what is sometimes said, that what is proposed involves "abolishing" the basic wage, for I believe that even under total-wage prescription the Commission will for jurisdictional reasons still have to concern itself with the basic wage definition when variations of wage rates are sought."

Later he said:—

> "On merit I would favour an immediate change to the *format*[2] of a total wage in the Metal Trades award, but as a matter of practical convenience I can see some advantage in deferring it pending developments on the marginal aspect following the report which we intend obtaining from Mr. Commissioner Winter, which will also give State authorities longer notice of this Commission's intentions."

Mr. Justice Moore who, when a Member of the 1964 Total Wage Bench had said—"The employers are asking the Commission to abandon the concept which has been an integral part of Australian wage fixing for over 50 years", in the 1966 Case explained his change of approach in the following passage:—

> "The non-economic arguments set out in the 1964 decision, such as statutory intention and the history of the basic wage, are still valid, but the views then expressed must be considered in the light of what has happened since, including the nature of the present proceedings. A pattern of wage fixation was developing through the 1961, 1963 and 1964 decisions which was disturbed by the majority decision of last year. Although I disagree with that decision, it is a fact of industrial life to which some weight must be given. This, together with the arguments of the employers as to desirability of the total wage concept, now inclines me to the view that the Commission should probably ultimately accept the concept. This involves a change in views on my part, but wage fixation must be dynamic and those involved in it prepared to accept change when change becomes necessary. However, consistent with my expressed views as to notice and gradualism, I am not prepared to do more than state that, *subject to further argument*,[2] I am inclined now to the view that when we finally deal with secondary wages in this award, the wages should be *expressed*[2] as total wages. It is essential that before such a step is taken, notice should be given to all concerned, including Governments both Commonwealth and State, and that notice should be given now. This will also give State industrial authorities an opportunity to consider their position and may possibly lead to a conference of State industrial authorities under Section 67 as mentioned by the President in his 1965 decision *(Print B429,* p. 28)."

Mr. Justice Moore continued—

> "An agreement in principle to the ultimate implementation of this part of the employers' claim does not involve ultimate agreement to the application of the economic theorem which the employers have pressed upon. If proper principles of wage fixation are applied to a total wage, both in economic and work value reviews, there is no reason why wage and salary earners should suffer from what, in some ways, is no more than a *procedural change*.[2]

Mr. Justice Gallagher (also a Member of the 1964 Total Wage Bench) who in that case had remarked—"The case for the retention of the basic wage is beyond argument", explained his change of approach in the following:—

> "Notwithstanding the unequivocal statements above set out, I have come round to thinking in 1966 that the time is now approaching for the introduction of a total wage system. The reasons for my change of attitude are these:—
>
> (1) My participation in the decision reached in 1965 that there should be annual reviews of the economy at which one bench of the Commission should make a simultaneous determination for the following twelve months of the basic wage and the level of margins so far as the latter is fixed on general economic grounds.
>
> (2) The circumstance that basic wage and margins claims have this year been in fact heard together.
>
> (3) The likelihood that the procedure followed this year would be continued.

(4) The circumstance that a simultaneous hearing conveniently enables consideration of wage rates as a whole and obviates the necessity for separate assessments.

(5) The circumstance that under the system now being followed an employee would be expected to think in terms of his wage rate as a whole and not in terms of so much for the basic wage and so much for margin.

(6) The circumstance—and I regard this as a ground of paramount importance—that special provision is about to be made for employees on lower margins."

Whatever was intended by the learned Presidential Members when Wright J. referred to "change to the format of the total wage in the Metal Trades Award"; in the case of Moore J. to "procedural change", and Gallagher J. to the "introduction of a total wage system", the total wage question when handled by Mr. Commissioner Winter appears in a different and decidedly clearer light. In the course of his decision Mr. Commissioner Winter said:—

"To a wage earner and in fact to the community at large it is the combination of all elements of the wage expressed as one amount that is thought of when speaking of a wage—a total wage.

"I cannot, in the light of the current approach of the parties to wage fixation on a marginal basis, conceive that there is any wrong principle involved in considering that there has been established *notionally*[2] a total wage. However, I would long hesitate before removing from the wage the means by which its basic wage component might be clearly identified.

"One hopes that it never occurs, but it may be necessary to return solely to needs concepts. National misfortune of a grave nature may require it. That is not to say that needs concepts in relation to work values should not necessarily now be considered with respect to low-wage earners."

The Commissioner summarised his conclusion on the question of the total wage in the following terms:—

"6. *The Question of a Total Wage.*

For my part, I would not implement a total wage now. However, I would by proclamation in these decisions of the Commission serve notice upon all concerned that at the conclusion of the work-value case in the metal trades industries which is envisaged elsewhere herein, the Commission would be prepared again to consider the question of *prescribing a total wage.*[2]

"I consider, however, even if a total wage concept were accepted, that *there should always be within the wage a readily recognizable basic wage component which had been determined upon an easily identifiable date.*"[2]

Whatever is the final answer to the total wage question, the future of the basic wage concept must necessarily be involved.

Will the existing components of the total wage, namely, the basic wage and the margin be merely combined and expressed as a total sum involving no more than a change of *"format"* or a mere *"procedural change"*, or will the basic wage concept as we have known it since the early days of arbitration be abolished or abandoned as a criterion for wage determination?

If the change to be made in the wage structure is nothing more than the arithmetical expression of the basic wage plus the margin as a total sum, then no fundamental change will be effected. As a matter of fact most N.S.W. State Awards express the wages payable to employees as totals of the basic wage and margins applicable to the workers concerned.

The basic wage applicable to such awards is, of course, governed by statute and its operation is expressed in the awards in an appropriate basic wage clause.

If, on the other hand, the basic wage as a concept representing the foundational wage, is to be abolished, this would constitute a revolutionary change in wage determination in Australia.

The concept of a "basic" or "living" wage related to "needs" was a direct result of the application of principles of Christian philosophy to wage determinations; was promoted by humanitarian writers about the turn of the century and was translated into effect by the early Judges of the first arbitration courts, both State and Federal.

It fell to Mr. Justice Heydon of the New South Wales Industrial Court in 1905 to first enunciate the principle. When giving judgment in the Sawmillers' Case he said "that every worker, however humble, shall receive enough to enable him to lead a human life, to marry and bring up a family and maintain them and himself with, at any rate, some small degree of comfort." (4 N.S.W. A.R. p. 309.)

The first President of the Commonwealth Arbitration Court, Mr. Justice O'Connor, adopted the principle in 1906 when deciding a dispute between seamen and their employers when he considered that his Award should allow "for the increased cost of living in Australia, not only by reason of the higher cost of some of life's necessaries, but also by reason of the increased comfort of living and the higher standard of

social conditions, which the general sense of the community in Australia allows to those who live by labour." (1 *C.A.R.* p. 27.)

Then followed in 1907 the famous Harvester Judgment of Mr. Justice Higgins wherein the "needs" criterion was given formulation which made it a guiding principle in wage fixation in Ausralia for at least the next 23 years. In his decision, the Judge rejected "the usual, but unequal, contest, the 'higgling of the market' for labour with the pressure for bread on one side and the pressure for profits on the other" as leading to wage-rates which would be 'fair and reasonable'. He continued: "The standard of 'fair and reasonable' must, therefore, be something else; and I cannot think of any other standard appropriate than the normal needs of the average employee, regarded as a human being living in a civilised community . . . as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things, and clothing and a condition of frugal comfort estimated by current human standards. This then, is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as 'fair and reasonable' in the case of unskilled labourers." (2 *C.A.R.* p. 3-4.)

In what he described as "the first true arbitration case", Mr. Justice Higgins adopted his own Harvester standard in fixing a minimum rate of wage for marine cooks, bakers and butchers. "No guidance is given as to the principles on which I am to act in settling a dispute or in fixing wages", he said, "and I have to find out principles for myself . . . I must settle the dispute on terms which seem to me to be just . . . on terms which I deem to be 'fair and reasonable between the parties', as my predecessor, Mr. Justice O'Connor, expressed it . . . ; and I cannot conceive of any terms to be fair and reasonable which do not at the very least allow a man to live from his labour, to live as a human being in a civilized community." (2 *C.A.R.*, p. 60.)

A survey of Court decisions in both the Federal and State jurisdictions during the period 1906-1931 reveal that the terms "living wage", "basic wage", "foundational wage", "minimum wage" and "family needs wage" were employed inter-changeably. They refer to a wage as direct pay intended to provide and maintain a family of up to five persons on not merely a subsistence level but at a real standard.

Undoubtedly based on ethical grounds the Court postulated an absolute right vested in every able-bodied adult male worker to a family needs wage for a unit of up to five persons. This right was vested in

the worker regardless of the social value of the work performed. As Judge Scholes of the New South Wales Industrial Court said in 1911:—

> "There is a generally prevailing idea, and it has been stated in this case, that the man who is being paid the living wage is the lowest grade of workman, and that each workman of a better class must be graded upwards from him according to the comparative value of his work. This, in my opinion, is an error. The living wage is not necessarily the value of the man's work; it may be more than that value. Several grades of labour of different values may be together awarded the living wage. The man who asks for more than the living wage must show, not merely that he is above the lowest grade of workman; he must also show that the value of his work is greater than the living wage." (N.S.W. A.R. Vol. 10, p. 641).

Two other features of the "basic" or "living" wage concept ought at this stage be emphasised:—

(1) *It was to be awarded as an irreducible minimum.*

Though at first inclined to take into account the ability of an "industry" (but never of an individual employer) to pay the "Harvester wage", Higgins J. soon ruled that the wage should be treated by the Court as "sacrosanct", and that industries unable to pay it should either go out of existence (or be subsidized) (3 *C.A.R.* 32). The Court's basic wage thus acquired a status equivalent to a legislative minimum wage imposed to prevent sweating. Until 1930 the guiding principle always adopted by the Court was "to award a basic wage not less in real value than the Harvester wage whether the industry be depressed or not." (28 *C.A.R.*, p. 604.)

(2) *It was to be preserved as a real minimum.*
Beginning in 1913 the living was made adjustable to changes in an index of selected prices entering the wage earner's cost of living; from 1922 to 1953 the adjustments were made automatic and on a quarterly basis.

The year 1931 may be taken as a turning point in the Federal Court's assessment of the basic wage. By ordering a 10% reduction of all wage rates under its awards in January of that year, Members of the Court showed themselves to be conscious of the implications of the fact that their decisions were related to the general level of wages in the country. This decision ushered in a period of assessment of the basic wage "on the capacity of the whole of industry to pay." There is evidence, however, that the "needs" concept was never entirely displaced, although the "capacity" argument undoubtedly exerted a dominating influence on all decisions since 1931.

In the 1964 total wage case the Chief Judge Kirby, Moore J. and Mr. Commissioner Winter in a majority judgment summarized their views as follows:—

> "It is trite to say that the basic wage which the employers now submit should be abolished is a uniquely Australian creation and that to understand its past and present significance it is necessary to understand in large part the history of wage fixation in Australia on a national basis. We say this because we wish to make it clear that we understand the necessity for Mr. Robinson to trace the history of the basic wage itself and of the Conciliation and Arbitration Act as it dealt with the basic wage from time to time. Quite a part of that history dealt with the view of the Court as to the meaning of the term in the past, but the term is now defined for us in the Act and, in the view we take, the meaning of the term does not really help us in resolving the issue before us. Looking back on history one may argue that it was perhaps vital that the basic wage, or something very like it, should have come into being and have been retained in Australia. On the other hand it may be that if one were now to start afresh and were charged with bringing into operation a national wage code, one would not worry about creating a basic wage or anything similar to it. But it is history that a basic wage became and remained a national phenomenon and the real problem is whether that phenomenon still remains of value in the field of national wage fixation. As we discuss Mr. Robinson's general submissions it will be obvious that, apart from the rejection of his economic proposal, we do not think that in the present circumstances and at the present time a case for the abolition of the basic wage has been made out."

In the 1966 case the issue as to assessment of the basic wage on the "needs" criteria was directly raised by Mr. K. Wybrow on behalf of the Australian Coal Association. A transcript records Mr. Wybrow's submissions as follows:—

> "Employers in the coal industry consider that the wage policy which would most effectively enable the coal industry—or any other industry, for that matter—to be a prosperous industry and a high wage industry at the same time in the context of the Australian arbitration system is a policy conforming to the following principles:
>
> (a) The basic wage to be fixed according to needs.
>
> (b) Where an employee, because of the work upon which or the industry in which he is employed, is judged by an arbitration authority to be worth more than the basic wage, this employee should be paid the wage which the proper arbitration authority determines in accordance with the value of his work.
>
> (c) Any excess capacity in an industry or part of an industry to pay higher wages than those determined by arbitration—which, of course, is a general term including conciliation—should be distributed as agreed to between employer and employee."

On the employers' side these were the only submissions advocating the consideration of the basic wage relative to "needs" and indeed, were the only submissions raising the question of an assessment of

margins on a work value basis. This latter view was evidently adopted by the Reference Bench when it assigned Mr. Commissioner Winter the unenviable task of reviewing the structure of the Metal Trades Award on a work value basis.

The employers' applications for the deletion of basic wage clauses from the Federal Awards were rejected both in 1964 and 1965, and as we have observed have not yet been finally disposed of by the Commission. Whatever the fate of the present application, those who believe in the "needs" basic wage concept as an essential element in wage fixation will find some consolation in the approval now evidenced by Members of the Commission when considering the margin to be paid to the low wage earner.

In the mind of Mr. Commissioner Winter at least, the retention of a "needs" concept is clearly in view in the assessment of a rate for the adult male receiving a low margin.

When dealing with what he described as "the plight of the low wage earner", Mr. Commissioner Winter said:—

> "According to current and predictable economic realities, Australia has attained a position wherein there should not be prescribed, in the Metal Trades Award, a marginal rate which would not permit the recipient to live in a reasonable standard of living. It is not necessary to undertake an elaborate, lengthy or widespread examination to discover that a man with wife and children would have extreme difficulty in living in conformity with the reasonable needs of this civilized community on, say, a weekly margin of 9s. or 17s. 6d. added to a basic wage of £15.7.0 per week.
>
> "I consider that a platform should be built presently into the award below which platform there should not be any margins prescribed. I would set this figure at 37s. 6d."

Does the platform "below which there should be no margins prescribed" represent a determination of "basic", "living" or a "minimum" wage on the same criteria as that already involved in a basic wage assessed in the traditional manner? If the answer to this question is in the affirmative, then the eventual exclusion from awards of basic wage clauses will not represent such a revolutionary change as would be involved in the abolition of the basic wage concept without a substitution therefor of a minimum marginal rate assessed on the traditional criteria.

The unexpected unanimous decisions of the 1966 Bench to prescribe an immediate marginal increase for the lower paid adult might well be interpreted as a first step in the final adoption of a total wage

concept, but involving the preservation of a concept directly related to needs.

One looks in vain through the decisions to find any substantial basis for this increase other than a regard for ethical considerations.

The Presiding Judge in dealing with this question said:—

> "To this I would make one exception, however, in order to preserve to the most lowly-rated employees what I would term a 'decent wage' and we propose to make such an exception on a provisional basis."

and later confirmed this view in the following terms:—

> "The object of this proposal is to *relieve the position*[2] of the lowly-paid workers who are on award rates, pending further examination of their position, and I do not feel that it would be a *fair interim settlement*[2] of the dispute regarding marginal rates without some amelioration of the position of those who are on award rates in the lower grades of the classification table."

Mr. Justice Moore said:—

> "It seems to me *proper*[2] to write into the Metal Trades Award a provision that no employee working under the award shall receive as actual pay less than the sum of the basic wage applicable to him and an amount of $3.75 a week. This will have the effect of ensuring that low-wage earners employed under the Metal Trades Award will receive an increase which should improve their economic situation."

and later—

> "I would expect, however, some step to be taken to improve the position under other awards of low-wage earners of the kind now being dealt with."

As indicated earlier, Mr. Justice Gallagher listed as one of the reasons for his change of opinion concerning the total wage matter was that:—

> "The circumstances—and I regard this as a ground of paramount importance—that *special provision*[2] is about to be made for employees on lower margins."

Leaving apart questions of relativity, one may assume that the rate for the low wage earner in any future award structure might well assume the importance which has always been attached to the traditional basic wage as a "foundational" element in the final assessment of total wages.

If this assumption is correct, one might well question the value of the vigorous and sustained efforts by employers' organisations to effect a change from the time-worn methods of wage assessment. The assessment of all elements of the wage at the one point of

time has wide appeal as a matter of convenience. If, however, both a "basic" or "foundational" element and a marginal element are still present in the wage structure, and if the "foundational" element is readily "identifiable" as apparently Mr. Commissioner Winter envisages it to be, then what real progress has been made from the position which confronted wage fixing authorities before the *total wage concept* was *conjured up.*

At that point of time (early in 1964) the basic wage was under annual review by the Commission having regard to movements in the Consumer Price Index with economic reviews at less frequent intervals. The margin was subject to movements upon application by the parties. The criteria applied in determining both elements related to general economic considerations.

Work value assessments had virtually ceased except in the professional or semi-professional fields.

The professed intentions of some employers in mounting a case for a total wage was to avoid the "two bites at the cherry" approach by unions and a desire to have both elements reviewed at the one hearing. This objective was achieved in the majority decision of the 1965 Bench (Gallagher J., Sweeney J., Nimmo J.), when it was decided:—

(a) There should be simultaneous determinations in the 1965 case by one bench of the Commission of the basic wage and of a test case on variation of margins on economic grounds.

(b) Thereafter there should be annual reviews of the basic wage and the level of margins so far as the latter is fixed on economic grounds.

(c) On the present claims there should be no alteration in the basic wage, but there should be an increase in margins in the Metal Trades Award, to be calculated at $1\frac{1}{2}$ per cent of the sum of the Six Capital Cities basic wage and the margin, taking the margin from 106s. to 112s. Subject to certain exceptions their Honours expected that the increase would be speedily reflected throughout Federal Awards.

With the introduction, as it were, by a side wind, into the 1966 decisions of two matters hitherto well in the background, namely—

(1) The "relief" of low wage earners on grounds remarkably similar to the "needs" criteria hitherto applied only to the basic wage element,

and—

(2) The decision to essay a work value assessment in the metal trades,

can it be said that the laudable cause of achieving a sound and consistent wage policy in Australia has been promoted by the introduction of these complicating factors?

Have not the relatively simple issues of a basic wage and margin assessment on general economic factors been complicated by unnecessary doubts arising from:—

(1) The extension in all awards of "relief" measures for low wage earners; and

(2) A work value assessment on criteria not yet resolved?

Might not the future wage, therefore, be constructed of at least three elements—

(1) the "basic" or "foundational" element crystallised in the rate payable to the low-wage earner,

(2) a margin assessed on work value premises,

(3) a revision of both of the above elements (1) and (2) on economic grounds?

One cannot predict the exact place the 1966 decisions will take in the history of wage fixation in this country. They could become the guide lines for future assessments, or the principles referred to might well be discarded in future judgments.

At least one can be sure that the Commission's demonstrably but healthy disregard for precedent in dealing with what has been described as a "dynamic" situation in the field of socio-economic affairs, will enable answers to be provided not only to the questions raised in this paper but to the many questions which have not been asked.

FOOTNOTES

1. Presidential address to the Industrial Relations Society of N.S.W., Aug. 24, 1966
2. My italics.

The Present Position of Commonwealth Basic Wage Determination

KINGSLEY LAFFER

University of Sydney

1. THE BACKGROUND

UNDER the constitution of the Commonwealth the Commonwealth Parliament may make laws with respect to "Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." Mr. Justice Higgins, the second President of the Commonwealth Court of Conciliation and Arbitration established under this placitum, determined in his celebrated Harvester Award in 1907 what became the first Commonwealth basic wage. It was a basic assumption of Higgins that such a basic wage was essential if industrial disputes were to be prevented. "Unless great multitudes of people are to be irretrievably injured in themselves and in their families, *unless society is to be kept perpetually in industrial unrest*, it is necessary to keep this living wage as a thing sacrosanct, beyond the reach of bargaining," (my italics) Higgins said in a *Broken Hill* case.[1] The basic wage necessary to prevent industrial disputes must meet the basic needs of the worker and should cover "the normal needs of an average employee regarded as a human being living in a civilized community",[2] a criterion having strong ethical overtones. This industrial relations/ethical approach informs the whole Australian system of wage determination by compulsory arbitration, of which Commonwealth arbitration constitutes the leading sub-system, and not merely basic wage determination.

The concept, "normal needs of an average employee", has, however, no objective basis. Moreover, how can one be sure that the economy can afford the particular standard decided upon? Higgins solved both these problems by taking as his guide the wages being paid by non-profit-making bodies, e.g. semi-governmental authorities and municipal councils, at the time. Higgins's "needs" standard was the conventional standard of the time as enjoyed by those employed in non-profit-making concerns. He in effect assumed that other employers could meet similar